

**ODISHA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN**  
**UNIT-VIII, BHUBANESWAR - 751 012**  
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**Present :     Shri S. P.Nanda, Chairperson**  
**Shri S. P. Swain, Member**  
**Shri A. K. Das, Member**

**Case No.13 of 2010**

GRIDCO ..... Petitioner

Vrs.

SOUTHCO ..... Respondent

**In the matter of:**     **Application under S. 86(1) (f) of the Electricity Act, 2003 for adjudication regarding violation of Escrow Agreement by SOUTHCO.**

**For Petitioner:**     **Sri N. Sahu, GM (F), GRIDCO, Sri B. Bhatta, DGM (F), GRIDCO**

**For Respondents:**     **Sri B. N. Mallick, GM (Fin), SOUTHCO and Shri S. K. Routray, DMF (Comm. & RA), SOUTHCO**

**ORDER**

**Date of Hearing: 20.05.2010**

**Date of Order: 12.08.2014**

1. The present case relates to allegation of the Petitioner GRIDCO on violation of Escrow arrangement by the DISCOM namely SOUTHCO. The said DISCOM has violated the escrow agreement existing between it and GRIDCO by depositing Rs.1.00 crore in another account which had been received by it as a part of an award of Special Arbitration Tribunal (BIFR) from M/s. Jayshree Chemical Ltd.
2. The Respondent-SOUTHCO submitted that they have deposited the entire electricity dues an amount of Rs.901 Lakh since 2002 of M/s. Jayshree Chemical Ltd. as per BIFR order (Award) in the escrow account on realization basis from time to time as per the installment approved by BIFR. Only the interest component in the award which is miscellaneous revenue has been deposited in non-escrow (miscellaneous account). The interest as per BIFR award is over and above the DPS and is therefore, non-escrow revenue.
3. Heard the parties at length. The order passed by BIFR (submitted by SOUTHCO) is taken on record. We perused the BIFR award and got no indication of BIFR treating Rs.1.00 crore as retained by SOUTHCO as interest component of the award. Also the Respondent-

- SOUTHCO could not give proper justification as to why the BIFR award interest component should not be treated as revenue related to supply of electricity.
4. The escrow agreement entered between GRIDCO and SOUTHCO on 04.08.2000 stipulates *“So long there is any default in the payment of any amount due to GRIDCO on the due dates as provided in the **Bulk supply Agreement** SOUTHCO hereby irrevocably and unconditionally agree that from the time the default occurs, all receivables to the extent of default amount without exception from the electricity sold or supplied by SOUTHCO shall be deposited or caused to be deposited by SOUTHCO in the account maintained by the Escrow Agreement (hereinafter called GRIDCO Escrow Agreement) xxxxxx.”*
  5. Similarly, the Bulk Supply Agreement executed in the year 1999 between the parties herein provides as follows:-  
  
*“Without prejudice to its other rights, GRIDCO shall have the first and paramount charge over all receivables of SOUTHCO at all times for all the amounts becoming due from SOUTHCO to GRIDCO under this agreement, the **Bulk Supply Tariff Order** issued by the Commission and concurrently for the amount due from SOUTHCO to GRIDCO under the Agreement 1999 between GRIDCO and SOUTHCO ..... ”*
  6. By judicious reading of both the Escrow Agreement and Bulk Supply Agreement, we come to the conclusion that all the receivables of SOUTHCO irrespective of its nature should be deposited in escrow account to meet its liability towards GRIDCO.
  7. In summary we find SOUTHCO has made a default by not depositing an amount of Rs.1.00 cr. received towards interest out of the award of BIFR in M/s. Jayshree Chemical case. Further, though the matter occurred between 28.11.2007 to 28.01.2008, it came to the notice of GRIDCO only on 17.09.2009 i.e. after lapse of 1 year and 9 months. This is a clear cut lapse on the part of GRIDCO by not maintaining proper check and balance on Escrow Account, who is the sole beneficiary. SOUTHCO and GRIDCO are directed to adjust Rs.1.00 crore in escrow account towards the dues of GRIDCO.
  8. Accordingly, the case is disposed of.

**Sd/-**  
**(A .K. Das)**  
**Member**

**Sd/-**  
**(S. P. Swain)**  
**Member**

**Sd/-**  
**(S. P. Nanda)**  
**Chairperson**

