ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012
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Present : Shri K.C. Badu, Member
Shri B. K. Mishra, Member

Case No.39/2010

M/s.OCL India Ltd…….. ……. Petitioner
Vrs.
M/s. WESCO & Others……. Respondents

In the matter of: **Application under S.142 of the Electricity Act, 2003 for non-compliance of Order dated 27.11.2009 passed in Case No.Omb(II) W-23/2009.**

For Petitioner: Shri Prabhu Prasad Mohanty, Advocate

For Respondents: Shri Debasish Das,GM(Corp.Reg. Affairs),CSO. BBSR.
Shri Pradipta Kumar Behera, SLDC,OPTCL,Bhubaneswar

Date of Hearing: 25.05.2010 **Date of Order :31.05.2010**

ORDER

Brief fact of the case is that the petitioner is a consumer of WESCO bearing consumer No.163(L0,RRKL/3-0064 under HI category Industry. The petitioner-M/s.OCL India Ltd. being aggrieved by the levy of wheeling charges of Rs.84,35,826/- for the period from 30th March,2008 to 29th March,2009by WESCO , filed a Compliant petition before the GRF,Rourkela, which was registered as Compliant Case No.172/2009. The said compliant case was disposed of by the GRF with a contradictory order. As a result of which M/s.OCL India Ltd. had made a representation before the Ombudsman-II with a prayer to quash the illegal demand of WESCO. During pendency of the proceeding before the Ombudsman-II WESCO had issued disconnection notice containing the arrear dues of the wheeling charges for which the petitioner had deposited 50% of the wheeling charges i.e.about Rs.93.57lakhs(approx.) to avoid disconnection of power supply. The Ombudsman-II had disposed of the said C.R.Case No.23/2009 on 27.11.2009 after hearing both of the parties, in favour of M/s. OCL India Ltd. stating therein that the petitioner-M/s. OCL India

Ltd. is not liable to pay the wheeling charges of DISCOM's distribution system or additional surcharge . After receiving the order of the Ombudsman-II, the petitioner communicate the same vide its letter dated 17.12.2009 to the respondent-WESCO with a request for refund of Rs.1,04,29,963/- (i.e. including interest@ 12%PA plus principal amount) within 15 days from the date of receipt of the letter. The said letter was received by WESCO on the same day but the authorities of WESCO have not implement the order of the Ombudsman-II, hence this petition filed before the Commission under Section 142 of the Electricity Act,2003.

2. The respondent- WESCO, submitted in its reply that M/s. OCL India Ltd.had filed Case No.10/2008 before the Commission praying for waiving of charges applicable to Open Access consumer for availing surplus power of more than 5MW from the CGP of M/s.OISL for use of its Unit through short –term Open Access as per OERC (Terms and Conditions for Open Access) Regulation,2005. The Commission had disposed of the above case on 01.12.2008 by allowing the open access to M/s.OCL India Ltd. on payment of surcharge, cross-subsidy surcharge in addition to other charges and held that M/s.OCL India Ltd. shall be treated as an open access customer from 30.03.2008. M/s.OCL India Ltd. can not claim benefit on account of the dedicated 11KV line, transformer etc. which is to be deemed as a part of the distribution system of DISCOM. Being aggrieved by the order of the Commission M/s. OCL India Ltd.had preferred an Appeal bearing No.20/2009 before the Hon'ble ATE, New Delhi. The Hon'ble ATE had disposed of the said Appeal on 03.11.2009 by upholding the order of the Commission passed in Case No.10/2008 stating that there is no merit in the contention of M/s. OCL India Ltd.

3. After the Appeal No.20/2009 was disposed of by the Hon'ble ATE, the respondent-WESCO vide its letter dated 07.05.2009 directed M/s. OCL India Ltd. to make payment of the balance amount of wheeling charge of its distribution system within 3 days of receipt of the letter. By receiving the above letter of WESCO, the petitioner-M/s. OCL India Ltd.without paying the balance amount of wheeling charges had moved to the GRF, Rourkela in Case No.172/2009 with a prayer for stay of the demand notice regarding wheeling charges and not to take any coercive action for disconnection of power supply

to its Unit till disposal of the aforesaid GRF case. The said GRF had disposed of the C.C.Case No. 172/2009 with a contradictory views of the President,GRF and the Co-operative Member as stated by the petitioner- M/s.OCL.India Ltd. To set aside the contradictory order of the GRF, Rourkela M/s. OCL India Ltd.had moved to the Ombudsman-II who had passed the order in its favor. As the order of the Ombudsman-II goes against the respondent- WESCO, it has filed a Writ Petition before the Hon'ble High Court of Orissa bearing W.P.(C).No.6923 of 2010 praying for setting aside the impugned order of the Ombudsman-II and also for payment of the balance arrear of wheeling charges. The said Writ is pending before the Hon'ble High Court.

In the meanwhile, even after the limitation period the petitioner- M/s. OCL India Ltd. has preferred an appeal before the Hon'ble Supreme Court challenging the order of the ATE passed in Appeal No.20/2009 bearing Civil Appeal No.D/38701 of 2009 along with an application for condonation of delay for filing of the appeal. The said appeal is also subjudice before the Hon'ble Supreme Court. So the representative of WESCO prayed the Commission not to admit the petition of M/s. OCL India Ltd. at this stage as it is premature and liable to be rejected at the threshold.

4. After hearing the parties on question of admission and perusal of the case records, we do not think it proper to admit this case at present . as it is found that the matter is subjudice before the Hon'ble High Court filed by WESCO and as well as an appeal preferred by the petitioner- M/s. OCL India Ltd. before the Hon'ble Supreme Court.
5. Accordingly, the Case is not admitted under S. 142 being pre-mature and devoid of merit.

Sd/-
(B. K. Misra)
Member

Sd/-
(K.C. Badu)
Member