

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

**Present: Shri S. P. Nanda, Chairperson
Shri B. K. Misra, Member
Shri S. P. Swain, Member**

Case No. 23/2013

M/s. T S Alloys Ltd.	Petitioner
Vrs.		
M/s. OPTCL & Others	Respondents

In the matter of: An Application to pass consequential orders keeping in view of the Judgment dated 21.12.2012 passed by the Hon'ble ATE in Appeal No.94 of 2011 & judgment dated 14.12.2012 passed in Appeal No.30 of 2012.

For the petitioner: Shri R. P. Mohapatra, the authorized representative.

For the respondents: Shri N. C. Panigrahi, Sr. Advocate, Shri L. N. Mohapatra, Advocate & Shri S. R. Panigrahi, Advocate all are on behalf of M/s. OPTCL
Shri L. R. Padhi, DGM (Comm.), CESU,

Nobody is present on behalf of GRIDCO and Sr. GM (PS), SLDC.

Date of Hearing: 03.05.2013

Date of Order: 01.08.2013

ORDER

The present petition has been filed by M/s. T. S. Alloys Ltd. (formerly known as Rawmet Ferrous Industries Ltd.) for passing consequential orders in accordance with the judgement dtd. 21.12.2012 of the Hon'ble ATE passed in the Appeal No. 94 of 2011.

2. The Commission in Suo-Moto proceeding bearing Case No. 36/2005 dtd. 22.07.2006 had observed as follows:

“28. These EHT feeders constitute as part and parcel of the EHT transmission line which has to be built, owned and operated by the OPTCL to ensure optimal utilization of the generation and transmission asset. To avoid delay in construction by the transmission licensee, the prospective consumer can construct a line on behalf of OPTCL and handover the same to OPTCL perpetually and in such an instance, the OPTCL shall be entitled only to the supervision charge of 6% of the gross estimate. xxxxxxxx

29. The Commission finds no justification for collection of Rs.10 lakh per MW from the prospective consumer for construction of lines and s/s upto the load centre to be developed by OPTCL after due regulatory approval which has to be financed by OPTCL following prudent financial practices. However, the Commission shall have no objection if prospective consumers come forward voluntarily for giving loan to the transmission company at the prevailing bank rate.”

3. M/s. OPTCL on 17.10.2006 filed a review petition bearing Case No. 63/2006 praying for review of the Order dtd. 22.07.2006 of the Commission on certain grounds which inter alia includes prayer for continuance of the permission to M/s. OPTCL to collect Rs.10 lakh per MW as infrastructure loan from prospective EHT consumers. The Commission rejected the claim of the petitioner with certain observations in its Order dtd. 26.04.2011.

Against the above Order of the Commission dtd. 26.04.2011 OPTCL filed Appeal No. 30/2012 and the present Petitioner filed Appeal No. 94/2011 before Hon’ble ATE and both the appeals were disposed of by judgement dtd. 14.12.2012 and 21.12.2012 respectively by Hon’ble Tribunal. In their judgement Hon’ble ATE partly allowed the appeal of OPTCL whereas the appeal filed by the present petitioner was disposed of with a direction to the Commission to pass consequential order keeping in view the observation passed in the judgement within two months from the date of judgement. After disposal of the appeal by Hon’ble ATE the Petitioner has filed the present case before this Commission for implementation of the Order of the Hon’ble Tribunal.

4. The Petitioner during hearing submitted that the consequential order in view of the judgement dtd. 21.12.2012 on Appeal No. 94/2011 by the Petitioner should

not only be passed but also Order may be issued on the judgement dtd. 14.12.2012 of Hon'ble ATE in Appeal No. 30/2012 filed by OPTCL.

5. Hon'ble ATE in Para 33 in Appeal No. 94/2011 has also observed that *the Commission in its Review Order dated 16.4.2011 has directed the 2nd respondent OPTCL to stop demanding the Infrastructure Loan from prospective EHT Consumer as precondition of connectivity. Having done so, the Commission ought to have looked into the circumstances under which the agreement was signed and decided the issue accordingly.*
6. After perusing all the records available and taking note of the observation of the Hon'ble Tribunal in the remand order we find that the agreement between OPTCL and M/s. Rawmet was amended on 27.07.2006. Therefore, it was executed when the Order of the Commission dtd. 22.07.2006 was in full force. Both the Petitioner and OPTCL were fully aware of the contents of the Commission's order where the Commission had disapproved collection of money from the consumer by OPTCL. Both the parties have professionally qualified people in their Organization and also the benefit of legal advice from the Counsels in such a situation were available to them. It is difficult to hold on the basis of material available on the record that the agreement between the Petitioner and OPTCL have been signed under duress.
7. The Order of the Commission dtd. 22.07.2006 has been upheld by Hon'ble ATE. Therefore, parties are directed to implement that Order.
8. Accordingly, the instruction of the Hon'ble ATE in Appeal No. 94/2011 is disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson