

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

**Present: Shri A. K. Das, Member
Shri S. K. Parhi, Member**

Case No. 49/2016

M/s. Nava Bharat Ventures Ltd.	Petitioner
Vrs.		
CESU	Respondent

In the matter of: **An application under Section 142 of the Electricity Act, 2003 for non-compliance of Order dated 28.05.2015 of the GRF, Dhenkanal passed in C. C. Case No. 329 of 2014.**

For Petitioner: Shri A. K. Parida, NBVL Ltd, Shri Prabhu Prasad Mohanty Advocate.

For Respondent: Shri S. K. Harichandan, AGM (Law), Shri C R Swain, DGM (Com.), Shri B. K. Nayak Advocate.

ORDER

Date of hearing: 22.11.2016

Date of order: 16.02.2017

The present petitioner M/s. NBVL has a Ferro Alloys Unit at Khadgaprasad, Dist- Dhenkanal, Odisha with two Nos. of Captive Generating Plant (CGP) of 30 MW and 64 MW capacity each to support its ferro alloys plant. The petitioner, a consumer of CESU claims for refund of Rs.21,80,000/- which has been retained by CESU. The dispute as submitted by petitioner is related to the energy bill of CESU for the month of January and February, 2012. During January, 2012 CESU raised a bill of Rs.26,64,462/- as energy charges against the petitioner which was paid in time. Subsequently, M/s. NBVL found that CESU has illegally claimed and collected demand charges of Rs.15,24,000/- and Rs.6,56,000/- respectively for the month of January and February, 2012 (total amounting to Rs.21,80,000/-). Despite several correspondences and verbal pursuance CESU did not refund the amount compelling the petitioner M/s. NBVL to approach GRF, Dhenkanal on 15.09.2014 which was registered as Case No. 329 of 2014. GRF Dhenkanal in its order dated 28.05.2015 directed CESU to adjust Rs.21,80,000/- on the ground that though the maximum demand of the petitioner exceeded its Contract Demand during the month of

January and February, 2012, the SMD of CESU had not increased during the aforesaid period and hence, the petitioner is not liable to pay the penal charges as per para 557 of RST order of FY 2011-12 of the Commission. Despite the order from the GRF Dhenkanal, CESU was reluctant to refund the amount despite several correspondences which compelled the petitioner to approach the Commission under Section 142 of the Electricity Act, 2003.

2. CESU in its reply submitted that the petitioner should have approached Ombudsman-I within 30 days of the order of the GRF as per the direction of the Forum for either non acceptance or non implementation of GRF order dated 28.05.2015. Further, CESU submitted that M/s. NBVL has a liability of Rs.82,86,02,773/- and Rs.1,14,64,274/- payable to CESU on account of Cross Subsidy Surcharge for losing its CGP status and on account of using power for construction supply respectively as per the order of the Commission dated 29.01.2016 in Case No. 43 of 2014 and 44 of 2014. Instead of complying to the directives of the Commission M/s. NBVL has challenged the order vide a writ petition in WP(C) No. 11158 of 2016 in the Hon'ble High Court of Odisha. The act of M/s. NBVL in contrary to the undertaking submitted by the petitioner at the time of availing emergency power supply to its 64 MW NBVL IPP which is reproduced below:-

“We undertake that if any amount would be legally due on M/s. NBVL and payable to M/s. CESU on account of construction power for the construction of 64 MW IPP of M/s. NBVL, on that event the same would be payable by M/s NBVL to M/s. CESU.”

Thus, the petitioner has violated its own undertaking as well as the order of the Commission making such a huge amount of outstanding against which the amount payable by CESU is quite negligible.

3. CESU further submitted that the Commission has categorically directed the Ombudsman to accept the cases of non implementation of the GRF order by the Licenses vide OERC letter dated 13.01.2006 arising out of 2nd interactive session between OERC and Ombudsman/GRF held on 21.09.2005 which is reproduced below:-

“If the complainant is aggrieved with either by this order or due to non-implementation of the order of the Grievances Redressal Forum in time, he/she can make the representation to the Ombudsman-I, within 30 days from the date of order of the Grievance Redressal Forum.”

4. Hence, CESU prays before the Commission to reject the claim of M/s. NBVL and instruct the petitioner to approach the GRF Dhenkanal again for modification of the order or the Commission may allow the amount claimed but the petitioner to be adjusted against the outstanding receivable by CESU on account of cross subsidy surcharge.
5. Heard the parties in details. We observe that the present case is related to non compliance of GRF order by a licensee where the Commission has a limited role to play and hence, we decline to enter into the legality of GRF order on dated 28.05.2014.
6. Regarding the contention of CESU that the application of NBVL should be rejected on the ground that the petitioner has failed to approach Ombudsman-I in obedience to GRF order dated 28.05.2014 we feel that the order of the GRF to approach the Ombudsman is a matter of option only on Petitioner but cannot be thrust upon.
7. Further Section 42(6) of the Electricity 2003, clause 6(1)(A) of OERC GRF Regulation, 2004 has categorically permits Ombudsman to receive petitions by an aggrieved consumer who has failed to find relief from the Grievance Redressal Forum of a distributing licensee. Accordingly we agree with the contention of M/s. NBVL that being satisfied with the GRF decision there was no need for the petitioner to approach the Ombudsman.
8. Regarding the letter of the Commission dated 13.01.2006 allowing the Ombudsman to receive cases related to non implementation of GRF order we observe that the spirit of that letter was to offer another avenue for an aggrieved consumer to approach Ombudsman for being not satisfied with the decision of GRF. Thus a consumer has an option to either approach Ombudsman for directions or to the Commission directly under Section 142 of the Electricity Act, 2003 in case of non implementation of GRF order. Hence, we do not find any reason to reject the petition of M/s. NBVL on the basis of contravention of GRF order dated 28.05.2015 for not approaching the Ombudsman.
9. From the submission of CESU we observe that CESU is not aggrieved with the decision of GRF rather wants to adjust the refundable amount with receivable from M/s. NBVL on account of cross subsidy surcharge dispute of which is pending before Hon'ble High Court. On nonpayment of cross subsidy surcharge by M/s. NBVL in violation of the order of the Commission vide Case Nos. 43 & 44 of 2014 we opine that it is an entirely

different issue and hence, independent of the present case in view of the interim order of the Hon'ble High Court dated 15.07.2016. Instead CESU should expedite the case for quicker settlement of the amount receivable as cross subsidy surcharge with Hon'ble High Court of Orissa.

10. In view of the above, we feel that the order of GRF is to be complied with and therefore, CESU is hereby directed to implement the order of the GRF, Dhenkanal in Case No. 329 of GRF 2014 and give effect to the order of refund within three months of issue of this order. Both parties are at liberty to negotiate refund in installments.
11. Accordingly the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member