

ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO. 4, CHUNUKOLI, SAILESHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR-751021

Present: Shri S C Mahapatra, Chairperson
Shri G Mohapatra, Member
Shri S K Ray Mohapatra, Member

Case No. 54/2023

M/s. TRL Krosaki Refractories Ltd.	.....	Petitioner
Vrs.		
TPWODL & Others	.....	Respondents

In the matter of: Application under Section 94(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 and Regulation 6(6), 70 & 76 of the OERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of Order dated 29.03.2019 of the Commission passed in Case No.74 of 2018.

AND

Case No. 55/2023

M/s. TRL Krosaki Refractories Ltd.	.....	Petitioner
Vrs.		
TPWODL & Others	.....	Respondents

In the matter of: Application under Section 94(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 and Regulation 6(6), 70 & 76 of the OERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of Order dated 22.04.2020 of the Commission passed in Case No.74 of 2019.

AND

Case No. 58/2023

M/s. TRL Krosaki Refractories Ltd.	.....	Petitioner
Vrs.		
TPWODL & Others	.....	Respondents

In the matter of: Application under Section 94(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 and Regulation 6(6), 70 & 76 of the OERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of Order dated 26.03.2021 of the Commission passed in Case No.75 of 2020.

AND

Case No. 57/2023

M/s. TRL Krosaki Refractories Ltd.	.....	Petitioner
Vrs.		
TPWODL & Others	.....	Respondents

In the matter of: **Application under Section 94(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 and Regulation 6(6), 70 & 76 of the OERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of Order dated 24.03.2022 of the Commission passed in Case No.109 of 2021.**

For Petitioners: Shri Pronoy Mohanty, Advocate

For Respondents: Shri K.C. Nanda, GM (RA & Strategy), TPWODL, Shri Bibhu Charan Swain on behalf of M/s. Swain & Sons and M/s. Scan Steel Ltd., Shri P.K. Pradhan, Shri Ananda Kumar Mohapatra on behalf of Shri Soumya Ranjan Pattnaik & self, Shri A.K. Sahani and Shri A.K. Mishra, Heal Legal, GRIDCO Ltd.
None appears on behalf of the other Respondents.

ORDER

Date of Hearing: 18.07.2023

Date of Order: 18.07.2023

The Petitioner-M/s. TRL Krosaki Refractories Ltd. has filed the present petitions in Case No.54 of 2023, Case No.55 of 2023, Case No.58 of 2023 and Case No.57 of 2023 under Section 94(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 and Regulation 6(6), 70 & 76 of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order 47Rule-1 of the Code of Civil Procedure,1908 seeking review of the Commission's Orders dated 29.03.2019 passed in Case No.74 of 2018, dated 22.04.2020 passed in Case No.74 of 2019, dated 26.03.2021 passed in Case No.75 of 2020 and dated 24.03.2022 passed in Case No.109 of 2021 respectively raising the issue of erroneous granting of interest on the security deposit of the petitioner by the Licensee-TPWODL. The Petitioner has prayed for condonation of delay in filing the Review Petitions under nomenclature of Interim Application.

2. For the sake of convenience all the above cases have been taken up together since common issues are involved and as such, the same are being disposed of by this common order,to follow hereinafter.

3. These matters are taken up for hearing on the question of maintainability at the stage of admission on account of delay in filing petitions.
4. Averments of the Petitioner made in its petition are summarized hereinafter:
 - a) The applicant company is having the business of manufacture, sale and supply of refractory materials with registered office at Belpahar in Jharsuguda District of Odisha and a HT consumer of the DISCOM-TPWODL (erstwhile WESCO). The petitioner has deposited its security deposit amount with the licensee as and when demanded by them. TPWODL, vide its demand notice dated 18.05.2022, demanded for deposit of additional security amounting to Rs.73,90,318.74 and the petitioner deposited the same on 26.05.2022.
 - b) Further, the petitioner-company has been credited with the interest on its security deposit amount lying as on 31.03.2023 with TPWODL and the said amount of interest on security deposit has been adjusted against the bills of the petitioner by TPWODL. However, the said interest on security deposit of the Petitioner has been computed by TPWODL on the basis of wrong interest rate in a misconceived and unlawful manner and not as per the provisions mandated under the Electricity Act, 2003 and provisions of the OERC Distribution (Conditions of Supply) Code, 2019.
 - c) The licensee-TPWODL has computed the interest on security deposit based on the Bank Rate of RBI as per the Commission's order dated 29.03.2019 passed in Case No.74 of 2018 (for FY 2019-20), order dated 22.04.2020 passed in Case No.74 of 2019 (for FY 2020-21), order dated 26.03.2021 passed in Case No.75 of 2020 (for FY 2021-22), order dated 24.03.2022 passed in Case No.109 of 2021 (for FY 2022-23), which provide for computation of interest on security deposit based on the old Distribution Supply Code, 2004. The Supply Code, 2004 has been repealed after notification of the OERC Distribution (Conditions of Supply) Code, 2019 and as per this new Supply Code, the licensee shall pay the interest on security deposit to the consumer at the Bank Rate (SBI Base Rate as on 1st April of the relevant year). Further, the Electricity Act, 2003 mandates for calculation of interest on security deposit of the consumer at the rate equivalent to the Bank Rate or more as may be specified by the State Commission. The petitioner has further contended that the CERC Tariff Regulations, 2014 also defines the Bank Rate as the base rate of interest as specified by State Bank of India from time to time or any replacement thereof for the time being in effect plus 350 basis points.

- d) The Licensee-TPWODL has wrongly adopted the interest on security deposit as per the OERC Distribution Code, 2004 which is unlawful particularly when the new OERC Distribution Code, 2019 is in force. This results in non-compliance of the statutory benefits to be conferred on the consumers in gross violation of the legal provisions. Further, the Tariff Orders dated 29.03.2019 passed in Case No.74 of 2018, dated 22.04.2020 passed in Case No.74 of 2019, dated 26.03.2021 passed in Case No.75 of 2020 and dated 24.03.2022 passed in Case No.109 of 2021 suffer from error apparent on the face of the record, inasmuch as, it provides for calculation of interest on security deposit as per the OERC Distribution (Conditions of Supply) Code, 2004 which has become obsolete particularly when the OERC Distribution (Conditions of Supply) Code, 2019 came into force. As the aforesaid Tariff orders are in violation and non-compliance of the provisions of the Electricity Act, 2003 and the Regulations framed thereunder, the impugned Tariff Orders dated 29.03.2019 passed in Case No.74 of 2018, dated 22.04.2020 passed in Case No.74 of 2019, dated 26.03.2021 passed in Case No.75 of 2020 and dated 24.03.2022 passed in Case No.109 of 2021 are to be reviewed.
5. The representative of the Respondent-TPWODL submitted that interest on security deposit is being computed as per the Retail Supply Tariff Orders issued by the Commission for the relevant years, which stipulate that Bank Rate for calculation of interest on security deposit shall be the rate as declared by the Reserve Bank of India for the relevant year. Accordingly, TPWODL has credited interest on the security deposit in the consumers' account. Further, the Review Petitions have been filed after inordinate delay of 1455 days in Case No.54 of 2023, 1066 days in Case No.55 of 2023, 728 days in Case No.58 of 2023 and 365 days in Case No.57 of 2023 and no sufficient cause explaining such huge delay, has been made out by the petitioner and that in absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly and hence, the cases may be dismissed at the stage of admission.
6. The Respondents, Shri Bibhu Charan Swain, Authorised Representative of M/s. Scan Steels Ltd. & Others, Shri A.K. Sahani, Authorised Representative of M/s. Bajrangbali Sponge & Power Ltd., Shri Ananda Kumar Mohapatra, on behalf of Shri Somya Ranjan Pattnaik & Self and Er. (Dr.) P.K. Pradhan sought for time for hearing on the ground that the copies of the Review Applications have not been supplied to them. They also seek for supply of the

same. Shri A.K. Mishra, Head Legal, GRIDCO Ltd. prays for a copy of the Review Petition as they have not yet received it. None of the remaining Respondents appears.

7. Heard the parties through hybrid mode (virtual and physical). On perusal of the record, it is seen that the small question that needs to be determined in the present proceeding initiated under Section 94(1)(f) read with Section 86(1)(k) of the Electricity Act, 2003 and Regulation 6(6), 70 & 76 of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908 is “whether there is any apparent error on the face of the record in the decision of this Commission in the impugned order dated 29.03.2019 in Case No.74 of 2018, order dated 22.04.2020 in Case No.74 of 2019, order dated 26.03.2021 in Case No.75 of 2020 and order dated 24.03.2022 in Case No.109 of 2021, calling for review”. To put in other words, the question is whether the Review Petitioner is able to make out any case in his favour compelling this Commission to review its own order keeping in view the statutory provisions and related Regulations, if any. In such a matter, the Respondents / Objectors can hardly be said to be necessary or proper parties to be heard. Further, since the Commission for the reasons to be recorded hereinafter is going to decide the present Review Application, on the basis of Regulation 70 of the OERC (Conduct of Business) Regulations, 2004, which prescribes period to file Review Application, the Commission does not feel it necessary to drag on the matter any further. Hence the submissions made by the present Respondents merit no consideration.
8. The Tariff orders of the relevant years were pronounced by the Commission after hearing all the parties and stakeholders. The crucial question to be answered is whether this Commission can entertain the Review Application for consideration filed after the time capsule of ninety days as mandated in Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004. The same is quoted below for convenience.

“The Commission may on its own motion, or on application of any of the person or parties concerned, within 90 days of the making of any decision, direction or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit.”

9. Evidently, the Review Petitions have been filed after inordinate delay of 1455 days in Case No.54 of 2023, 1066 days in Case No.55 of 2023, 728 days in Case No.58 of 2023 and 365 days in Case No.57 of 2023. The delay in filing the petitions can be condoned only when sufficient grounds are found. No strong ground has been raised by the Petitioner for

entertaining the Review Applications with condonation of delay. The rigour of the law of limitation cannot be winked at without sufficient cogent grounds. The rigour of limitation has been well expounded by the Hon'ble Supreme Court of India in the Case of ANTRIKSH DEVELOPERS AND PROMOTORS PRIVATE LIMITED & ANR. Versus KUTUMB WELFARE SOCIETY (REGD.) & ANR. in SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 31629/2022: 04-11-2022 [2022 LiveLaw (SC) 930]. The relevant para of the said case law is quoted below:

“As observed and held by this Court in the case of New India Assurance Co. Ltd. Vrs. Hilli Multipurpose Cold Storage Pvt. Ltd.(2020) 5 SCC 757, the Tribunal has no jurisdiction to condone the delay beyond the prescribed period mentioned in the Statute.”

It is well settled in law that the period of Limitation cannot be brushed aside without very cogent strong grounds.

10. A period of limitation of 90 days for preferring review of Orders of the Commission has been stipulated under Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004. There is no provision under the OERC (Conduct of Business) Regulations, 2004 conferring jurisdiction on the Commission for condonation of delay beyond the time capsule of 90 days from the date of order. Keeping in view the principles settled by Hon'ble Apex Court as quoted above and there being no ground much less sufficient or cogent from the side of the Review Petitioner, application at hand deserves to be rejected being barred by Limitation in view of Regulation 70(1) of OERC (Conduct of Business) Regulation, 2004.
11. Accordingly, the Case Nos. 54 of 2023, 55 of 2023, 58 of 2023 & 57 of 2023 are dismissed and proceedings are closed.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson