

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.4, CHUNOKOLI, SHAILASHREE VIHAR,
BHUBANESWAR - 751021**

**Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member**

Case No. 98/2023

M/s. SMC Power Generation Ltd. Petitioner
Vrs.
The Executive Engineer (Elect.),
JED, Jharsuguda, TPWODL, Jharsuguda & others Respondents

In the matter of: Application under Section 142 of the Electricity Act, 2003 alleging non-compliance of order dated 13.03.2013 passed in C.C. Case No.80 of 2012-13 and order dated 05.07.2013 passed in Review Case No.15 of 2013-14 arising out of the GRF Case No.80 of 2012-13 of GRF, Burla, Sambalpur.

For Petitioner: Shri Bibhu Charan Swain, the Authorized Representative of the Petitioner along with Shri Laxmidhar Pangari, Learned Sr. Counsel and Sri Sohan Mishra, Learned Advocate, Shri Vikas Rawal, Sr. Corporate Affairs along with Sri Abhishek Sahoo of M/s. SMC Power Generation Ltd.

For Respondents: Sri Amaresh Chandra Bal, D.M (Legal), TPWODL.

ORDER

Date of Hearing: 26.12.2023

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This is an application filed by the Petitioner-M/s. SMC Power Generation Ltd. under Section 142 of the Electricity Act, 2003 seeking for a direction to the Respondents-the Executive Engineer (Electrical), Jharsuguda Electrical Division, Jharsuguda, TPWODL and others to comply with the directions issued by the Learned GRF, Burla vide their order dated 13.03.2013 passed in Case No.80 of 2012-13 and other reliefs.

2. The Respondents-TPWODL have challenged the maintainability of the present proceeding on the ground that the dispute forming subject matter of the Case No.80 of 2012-13 before the Learned GRF, Burla has already been settled by the parties namely the Respondents-TPWODL and the Petitioner-M/s. SMC Power Generation Ltd., who took over M/s. Concast Steel and Power Ltd. ("Concast"), the Complainant before the Learned GRF, Burla in Case No.80 of 2012-13.
3. In the context, it may be mentioned that challenging the maintainability of the present proceeding, the Respondents-TPWODL approached the Hon'ble High Court of Orissa in

W.P.(C) No.40783 of 2023 and the same has been disposed of vide the order dated 19.12.2023 of the Hon'ble Court, which is reproduced here below:

- “1. Mr. Tripathy, learned advocate appears on behalf of petitioners and submits, impugned is notice to show-cause dated 7th October, 2023 issued by Odisha Electricity Regulatory Commission (OERC). He submits, the notice was issued under section 142 in Electricity Act, 2003. It could not have been issued as his client is not guilty of violation of any order or direction made by the commission. Hence, he seeks interference on having served copy to opposite party no.1-caveator.*
- 2. Mr. Pangari, learned senior advocate appears on behalf of opposite party no.1. He submits, petitioners have already filed preliminary submission before the OERC pursuant to issuance of the show-cause notice. He hands up copy of the preliminary submission as well as orders dated 7th November and 12th December, 2023. He points out from latter order, the case stands fixed to 26th December, 2023 for filing reply by petitioners. As such, no interference at this stage against issuance of show cause notice is warranted.*
- 3. Petitioners have opportunity to file their reply. In it they can take all points that they are advised to take. The direction for filing the reply was made on 12th December, 2023. We expect petitioners will file their reply as directed by the commission.*
- 4. We record submission of Mr. Tripathy that when the commission hears the matter on the date directed or thereafter, it should first deal with the objection on maintainability.*
- 5. The writ petition is disposed of.”*

4. In course of the present proceeding, we have heard the Learned Counsel appearing for the Petitioner-M/s. SMC Power Generation Ltd. and the Authorised Representative of the TPWODL, with reference to their petitions and written submissions, as the case may be.
5. Since the dispute raised now by the Petitioner has chequered history, for sake of better appreciation of the facts and circumstances, the factual sequence is set forth here below:
 - (i) One M/s. SPS Steel & Power Ltd. was operating an industry under the operational area of the Distribution Licensee (earlier WESCO Ltd. and presently TPWODL). The industry was energised through 220 KV feeder from Budhipadar Grid Sub-Station of OPTCL in November, 2007. The industry was being billed on the basis of energy consumption recorded in their Apex Meter No.APM-02391 of OPTCL from the date of energisation.

- (ii) The Distribution Licensee (erstwhile WESCO Ltd.) had installed a static meter (parallel meter) for audit purpose, vide Meter No.16725, in the control panel of SPS feeder-I at 220 KV Grid Sub-Station at Budhipadar which was working as a back up meter to the apex meter. The billing was raised on the basis of the apex meter.
- (iii) Following an amalgamation of SPS and Pawansut Sponge Pvt. Ltd., the name of the company “SPS Steel and Power Ltd.”, was changed to M/s. Concast Steel and Power Ltd. on 13.03.2011 (the consumer remaining same vide PSA dated 30.05.2012). Subsequently, the service connection was transferred in the name of M/s. Concast with effect from 30.05.2012 after due intimation by M/s. Concast, to the then Distribution Licensee.
- (iv) The Concast, vide letter No.SPS/WESCO/E&I/802 dated 07.05.2012, claimed the incentives against TOD facility for the first time since November, 2007. According to the Respondents, subsequently, M/s. Concast gave its willingness to get the TOD benefit from April, 2012 onwards on the basis of WESCO meter (consumer meter had no TOD recording facility). Thereafter, M/s. Concast claimed TOD benefit for the past period with effect from January, 2008 to March, 2012.
- (v) When the TOD benefit was not extended to the consumer, M/s. Concast filed a Case bearing No.80 of 2012-13 before the Learned GRF, Burla dated 21.11.2012 to allow them the TOD benefit with effect from January, 2008 to March, 2012.
- (vi) The Respondents Utility denied the claim of the said consumer- M/s. Concast on the ground that there was no mechanism to record/assess the TOD consumption as the meter did not have the features of TOD recording.
- (vii) The Learned GRF, Burla, vide order dated 13.03.2013, directed the Respondent-Licensee to pay the TOD benefit on the observations as referred herein below:

“1. According to Tariff Orders TOD benefit is to be given to the consumers having static meters provided that reading being taken jointly by both the parties and in this case joint reading is available.

2. It was wrong to pray to this Forum by the licensee to order for withdrawal of TOD benefit. So TOD benefit must be given to the consumer

Revise the bill accordingly with effect from January, 2008.”

- (viii) Aforesaid order passed by the Learned GRF was again challenged in a Review Application before the Learned GRF registered as GRF Case No.15 of 2013-14 arising out of GRF Case No.80/2012-13 and the same was also dismissed, vide order dated 05.07.2013 by the Learned GRF, Burla.
- (ix) The Distribution Licensee challenged the order dated 13.03.2013 of the Learned GRF, Burla before the Hon'ble High Court of Orissa in W.P.(C) No.22111 of 2013 and the Hon'ble High Court stayed the said order of the Learned GRF.
- (x) Power supply of M/s. Concast was disconnected on 01.01.2017 due to non-payment of dues.
- (xi) M/s. Concast, vide letter dated 17.02.2017, requested for surrender of power supply connection and for refund of available security deposit.
- (xii) The Distribution Licensee, vide letter dated 14.02.2017, terminated the PSA with effect from 01.03.2017 informing M/s. Concast that pending arrear amount would be adjusted against the available security deposit.
- (xiii) M/s. Concast, vide letter dated 03.05.2017 and 22.06.2017, again requested the Licensee for refund of security deposit along with interest.
- (xiv) Distribution Licensee, vide its letter dated 07.07.2017, declined to accede to such urge of the M/s. Concast to refund the security deposit due to pendency of the writ application before the Hon'ble High Court in W.P.(C) No.22111 of 2013 as against the order dated 13.03.2013 of the Learned GRF, Burla referred to above.
- (xv) Being aggrieved, M/s, Concast approached the Hon'ble High Court of Orissa, vide W. P.(C) No. 14523 of 2017, seeking for relief of refund of security money. The prayer of the M/s. Concast in the said writ petition W. P.(C) No.14523 of 2017 is reproduced hereunder:

"a) Why the balance security deposits of Rs.5,51,92,000 with interest after the termination of the agreement shall not be released in favour of the Petitioner company.

b) Why the letter dated 07.07.2017 under Annexure-3 shall not be quashed being improper and issued without due application of mind.

c) Why the contents of the letter relating to the issue in the pending case shall not be termed as 'unconnected' to the issue of repayment of the balance amount of security deposit."

(xvi) M/s. Concast went into CIRP, vide order dated 07.11.2017, under IBC. Due to non-receipt of resolution plan, M/s. Concast subsequently went into liquidation. E-auction was held and the Petitioner-M/s. SMC Power Generation Limited became successful purchaser and LOI was issued on 06.01.2020.

(xvii) The Petitioner-M/s. SMC Power Generation Limited, vide letter dated 02.03.2020, applied for fresh power supply.

(xviii) The writ petition in W. P.(C) No. 14523 of 2017 was disposed of by the Hon'ble High Court, vide their order dated 27.09.2022, which is reproduced here below:

"1. From the order dated 24.07.2017, it is seen that the security amount which was to be refunded to the Petitioner was withheld on the plea that W. P ©. No.22111 of 2013 filed by Western Electricity Supply Company of Odisha (WESCO) (now the Tata Western Odisha Power Distribution Co. Ltd.-TPWODL) is still pending in this Court.

2. It is seen that W. P (C). No.22111 of 2013 now stands disposed of as having become infructuous by an order dated 16.08.2022.

3. In that view of the matter, there is no impediment in the refund amount being released to the Petitioner. Accordingly, the writ petition is disposed of with a direction to TPWODL to refund the security amount to the Petitioner within a period of eight weeks from today."

6. It is pertinent to mention that although it is an admitted fact that the present Petitioner M/s. SMC Power Generation Limited took over and entered into the shoe of M/s. Concast w.e.f. 15.02.2020 and the Petitioner-SMC approached the Distribution Licensee, vide letter dated 02.03.2020, for fresh supply of electricity informing about purchase of subject premises, but the said Petitioner-SMC Power Generation Ltd. did not substitute or implead itself as a party in the aforesaid Writ Petition which were pending by the date it took over M/s. Concast Ltd. nor did he raise any claim regarding extension of TOD benefit in its favour with refence to the order dated 13.03.2013 of the Learned GRF, Burla.

7. The Petitioner-M/s. SMC Power Generation Ltd., vide its letter dated 02.03.2020, applied for fresh power supply. In order to enable the Petitioner-M/s. SMC for fresh supply, the arrear dues of Rs.2,51,34,290/- was adjusted against available Security Deposit (SD) of Rs.5,51,92,000/- and interest on SD of Rs.31,96,752/- totalling to Rs.5,83,88,752/-. Accordingly, balance amount of Rs.3,32,54,462/- was refunded to M/s. SMC, vide Office Order dated 17.12.2020. M/s. SMC accepted the said amount, vide UBI Cheque No.040056 dated 31.12.2020, without any protest or reservation.

Accordingly, the Petitioner-M/s. SMC got the initial power supply, vide agreement dated 16.07.2021 (for 5000 KVA, temporary purpose) and PSA dated 04.09.2021 (enhanced to 25000 KVA), for which the Petitioner-SMC deposited the required security deposit.

8. According to the Respondent-Distribution Licensee, the aforesaid amount of Rs. 3,32,54,462/- was refunded to the Petitioner-SMC on taking into consideration the amount of security deposit made by the erstwhile consumer M/s. Concast and also after adjusting the amount under dispute forming the subject matter of GRF Case No.80/2012-13.
9. It is the contention of the Respondent-Licensee that in view of the aforesaid changed circumstances and resolution of the dispute through adjustment of claims/counter claims, it sought for withdrawal of W.P.(C) No.22111 of 2013 and accordingly the Hon'ble High Court disposed of the writ petition in W.P.(C) No.22111 of 2013 as being infructuous vide the order dated 16.08.2022. The erstwhile consumer M/s. Concast Ltd., the Complainant before the Learned GRF in Case No.80/2012-13 is not now before this Commission in the present case inasmuch as, there is no dispute that the present petitioner has already entered into the shoe of M/s. Concast Ltd. As indicated above, the present Petitioner-M/s. SMC Power Generation Ltd. did not intervene or implead itself in any of the Writ Applications before the Hon'ble High Court of Orissa as referred to above. The erstwhile consumer M/s. Concast Ltd. did not raise any claim regarding TOD benefit in Writ Petition in W.P.(C) No.14523 of 2017. In the aftermath of taking a new energy connection from the Respondents-TPWODL, the present Petitioner SMC also did not raise any such claim before any such forum claiming the relief on account of TOD benefit and for the first time, that too belatedly, filed the present case before the Commission on 06.10.2023.
10. To reiterate, the Hon'ble High Court of Orissa, vide order dated 27.09.2022, passed in W.P.(C) No.14523 of 2017 directed for return of security deposit to the Petitioner of the said case namely, Santosh Kumar Sahoo, Manager Marketing, Concast Steel and Power Ltd. and undisputedly, by the date of such order, the question of refund of security deposit had already been resolved with refund of Rs.3,32,54,462/- by the Distribution Licensee-TPWODL to the subrogated consumer i.e. the present Petitioner M/s. SMC Power Generation Ltd.. With due respect to the order of Hon'ble High Court of Orissa, it may be stated here that since the Petitioner M/s. Concast Ltd. in W.P.(C) No.14523 of 2017 raised no issue regarding TOD benefit in that writ petition before the Hon'ble High Court and since no claim in that regard was made, the Hon'ble High Court directed for

refund of security deposit, vide the order dated 27.09.2022, keeping in view the sole claim in that respect made by the Petitioner-M/s. Concast Ltd.

11. Having regard to the facts and materials as made available on record, the Commission is of considered view that the issue raised by the Petitioner-M/s. SMC Power Generation Ltd. in the present case does not survive to be entertained much less maintained before this Commission, inasmuch as, the Commission is of the considered view that the dispute in question stood resolved while the Petitioner-M/s. SMC Power Generation Ltd. on having entered into the shoe of M/s. Concast Steel and Power Ltd., sought for and got a new power connection from the Respondent-TPWODL and got refund of Rs.3,32,54,462/- from the Respondent-TPWODL.
12. Hence, the present petition being devoid of merit, stands dismissed.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Officiating Chairperson