

# **WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

## **WEST BENGAL**

**Petition No. C-15/993**

**Date of hearing: 9<sup>th</sup> December, 2021**

**Time of hearing: 15.30 hours**

**Quorum:**

**Shri Sutirtha Bhattacharya, Chairperson**

**Shri Durgadas Goswami, Member**

**Shri Pulak Kumar Tewari, Member**

**In the matter of**

**Applications by Surya Alloy Industries Limited, seeking intervention of the Commission in the matter of Arbitrary and unjustified demand on account of additional energy charges during restricted drawal period for the months between June 2015 to July, 2018.**

**And**

**In the matter of**

**Surya Alloy Industries Limited & Anr.  
1/1 Camac Street  
Kolkata 700 016**

**..... Petitioner**

**And**

**Damodar Valley Corporation  
DVC Towers  
CIT Road  
Kolkata 700 064**

**..... Respondent**

**Representatives attended:**

**Surya Alloy Industries Limited & Anr. (SAIL) [Petitioner]**

- 1. Sri Surajit Nath Mitra, Advocate,**
- 2. Sri Siddharth Shroff, Advocate,**
- 3. Sri Tanoy Chakraborty, Advocate.**

**Damodar Valley Corporation (DVC) [Respondent]**

1. Sri Joydip Kar, Senior Advocate,
2. Sri Prasun Mukherjee, Advocate,
3. Sri Pratik Biswas, Executive Engineer.

**CASE IN BRIEF**

Surya Alloy Industries Limited (SAIL) & Anr. filed a petition before the Hon'ble High Court at Calcutta in WPA No. 3077 of 2019 with CAN 2 of 2021 challenging the validity of regulation 4.4 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 as also the demand of additional energy charge on account of restricted drawal as contained in the bills for the months of June, 2015 till December, 2018. The Hon'ble Justice Arindam Mukherjee passed an order dated 12<sup>th</sup> February, 2021 in the said writ petition stating, interalia, that –

“So far as the demand for additional energy charges is concerned, the matter is required to be decided by West Bengal Electricity Regulatory Commission (in short “WBERC”) inasmuch as WBERC has decided the similar issue in respect of three months, being August, September and October, 2018 by its order dated 11<sup>th</sup> December, 2020.

The petitioners are, therefore, permitted to approach WBERC within 1<sup>st</sup> March, 2021 regarding their grievance as to the demand of additional energy charge on account of restricted drawal as contained in the bills for the months of June 2015 to December, 2018.

In the event the petitioners approach WBERC within the timeframe provided, WBERC shall, after hearing the parties, pass a reasoned order on the issues that may be raised before it within a period of six months from the date of being so approached.”

Accordingly, SAIL has submitted the petition vide dated 26<sup>th</sup> February, 2021 (i.e., within the timeframe as allowed by the Hon'ble Justice Arindam Mukherjee in his order dated 12<sup>th</sup> February, 2021) seeking intervention of the Commission as to resolution of the

arbitrary and unjustified demand on account of additional energy charges during the restricted drawal period for the months between June, 2015 and July, 2018.

Although, in terms of the order passed by the Hon'ble Justice Arindam Mukherjee in his order dated 12<sup>th</sup> February, 2021, the petition ought to have been disposed off by the Commission within six months from the date of submission of the petition by the petitioner, but due to Covid – 19 restrictions and making prayer for time by DVC, the order of the Hon'ble Justice Arindam Mukherjee could not be complied with inspite of best endeavor on the part of the Commission. However, the reason for deviation from the order of Hon'ble Justice Arindam Mukherjee is slated chronologically as below:

- a) The Commission fixed a hearing date on 23.08.2021 in terms of the Court Order, although the petition of SAIL was found lacking in following the format for application as laid down in the WBERC Regulations.
- b) During the hearing, it was found that SAIL had not served the copy of the petition to the respondent DVC. So, SAIL was directed to serve a copy of the petition to DVC.
- c) The Commission heard the matter again on 25.08.2021 and DVC was directed to file the reply to the petition of SAIL within a fortnight but this time DVC prayed for extra 7 days' time and duly filed the reply by 13.09.2021.
- d) SAIL also submitted reply to the reply of DVC on 24.09.2021.
- e) The Commission heard the case again on 09.12.2021.

However, the Commission took several hearings of the parties involved, and during the last hearing held on 25<sup>th</sup> August, 2021, the Commission directed that –

- a) DVC shall submit their reply to the petition dated 26<sup>th</sup> February, 2021 submitted by the petitioner, to the Commission within 14 days from the date of receipt of the petition, with a copy to the petitioner;
- b) The petitioner shall submit rejoinder, if any, to the reply of the respondent, to the Commission within 3 days from the date of receipt of reply from the respondent, with a copy to the respondent;

- c) Upon receipt of the affidavit in reply and rejoinder, if any, the next date of hearing will be fixed.

Both DVC and SAIL have submitted the reply and affidavit-in-reply respectively within the due date and after going through the same the Commission held a further online hearing on 9<sup>th</sup> December 2021, when the representatives from both the parties were present.

### **SUBMISSIONS DURING HEARING**

At the outset, the Ld. Advocate, represented on behalf of DVC, submitted that DVC needs time to give reply to certain new documents that have been submitted by the petitioner in the affidavit-in-reply and prayed before the Commission to allow them two weeks' time to submit their reply. On being asked by the Commission as to what new documents that have been submitted by the petitioner in their affidavit-in-reply which prompted DVC to seek for time for submission of sur-rejoinder, the Ld. Advocate of DVC replied that the documents at page 18 (information under Right to Information Act, 2005 sought from Power System Operation Corporation Limited), page 19 (reply from Power System Operation Corporation Limited's reply) and pages 22 and 23 (calculation of additional energy charges) etc. of the affidavit-in-reply are new in nature and need to be contested by DVC. The Ld. Advocate of DVC also submitted that DVC could have replied to those points in the form of sur-rejoinder before the date of hearing, but they waited for direction in this regard from the Commission.

### **OBSERVATIONS OF THE COMMISSION**

The Commission observes that the new documents provided by the petitioner in the affidavit-in-reply are factual information provided by the third party which needs to be examined and replied by the respondent.

### **ORDER**

Upon hearing the parties involved and based on the above observation, the Commission directs that –

1. DVC shall submit their sur-rejoinder to the affidavit-in-reply dated 24<sup>th</sup> September, 2021 submitted by the petitioner, to the Commission within 14 days from the date of receipt of the petition, with a copy to the petitioner;
2. The next date of hearing is fixed on 31st January, 2022.

Sd/-  
(PULAK KUMAR TEWARI)  
MEMBER

Sd/-  
(DURGADAS GOSWAMI)  
MEMBER

Sd/-  
(SUTIRTHA BHATTACHARYA)  
CHAIRPERSON

**DATE: 21.01.2022**

Sd/-  
SECRETARY