

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**WEST BENGAL**

**Petition No. OA-331/19-20**

**Date of hearing: 22<sup>nd</sup> June, 2020**

**Time of hearing: 14.00 hours**

**Coram:**

**Shri Sutirtha Bhattacharya, Chairperson**

**Shri Durgadas Goswami, Member**

**Shri Pulak Kumar Tewari, Member**

**In the matter of**

**Application by Dalmia Cement (Bharat) Limited seeking clarification on DSM mechanism under WBERC (Open Access) Regulations, 2007 as urged upon by SLDC, WBSETCL for grant of inter-state Short Term Open Access for 7 MW power from its Captive Power Plant at Rajgangpur, Odisha to their works at Godapiasal, Salboni, West Medinipur in line with the order of the Commission dated 31<sup>st</sup> October, 2019 in case no. OA-302/18-19 issued in favour of OCL Bengal Cement Works and allow applicability of the same for Dalmia Cement (Bharat) Limited which is the new name of erstwhile OCL Bengal Cement Works.**

**And**

**In the matter of**

**Dalmia Cement (Bharat) Limited  
Vill. Kulapachuria  
P.O. Beuncha, Via Godapiasal  
P.S. Salboni  
Dist. PaschimMedinipur.**

**..... Petitioner**

**And**

**State Load Despatch Centre  
West Bengal State Electricity Transmission Company Limited**



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Andul Road  
Danish Sheikh Lane  
Howrah 711 109..... Respondent

And

West Bengal State Electricity Distribution Company Limited  
Vidyut Bhavan  
Block DJ, Sector – II  
Salt Lake City  
Kolkata 700 091. .... Respondent

Representatives attended:

**Dalmia Cement (Bharat) Limited [Petitioner]**

1. Sri Manoranjan Sahoo, Deputy Executive Director
2. Sri Ahmer Ali Khan, Senior Manager, (Electrical & Instrumentation).

**West Bengal State Electricity Distribution Company Limited (WBSEDCL) [Respondent]**

1. Sri Anil Chandra Bir, Chief Engineer, Commercial
2. Sri Subrata Chowdhury, Addl. General Manager, Regulation Cell

**State Load Despatch Centre, West Bengal State Electricity Transmission Company Limited (WBSETCL) [Respondent]**

1. Sri Chinmoy Halder, Addl. Chief Engineer, SLDC
2. Sri Soumen Mondal, Divisional Engineer

### **CASE IN BRIEF**

The petition of Dalmia Cement (Bharat) Limited praying before the Commission to clarify the provision for DSM mechanism under the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 in line with the order of the Commission dated 31<sup>st</sup> October, 2019 in case no. OA-302/18-19 issued in favour of OCL Bengal Cement Works, a unit of OCL India Limited ( in short 'OCL') and allow applicability of the same for Dalmia Cement (Bharat) Limited which is the new name of erstwhile OCL Bengal Cement Works was heard by the Commission on 22<sup>nd</sup> June, 2020 as scheduled.



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### **SUBMISSION DURING HEARING**

Sri Manoranjan Sahoo, the representative of Dalmia Cement submitted that pursuant to the order dated 20<sup>th</sup> April, 2019 of the Hon'ble National Company Law Tribunal, Single Bench, Chennai in the matter of Schemes of Arrangement of Amalgamation, OCL India Limited and its associated companies have been merged with Dalmia Cement (Bharat) Limited. Accordingly, the name of the company, in question, has been changed from OCL India Limited to Dalmia Cement (Bharat) Limited. But due to some communication gap between their head office at New Delhi and the works office at /Paschim Medinipore, the information regarding the amalgamation of OCL India Limited with Dalmia Cement (Bharat) Limited (herein after to be referred as 'Dalmia Cement') could not be brought to the notice of the Commission while the hearing on the subject matter under case no. OA-302/18-19 was under process. The representative of Dalmia Cement admitted that it was a serious mistake on their part for not being able to inform the Commission in time about the said amalgamation and for wasting valuable time of the Commission too. The representative of Dalmia Cement has also begged apology and prayed before the Commission to condone their mistake and to pass an order in the name of Dalmia Cement in line with the earlier order of the Commission dated 31<sup>st</sup> October, 2019 in case no. OA-302/18-19 passed in the name of OCL India Limited.

The representative of WBSEDCL submitted that Dalmia Cement has informed the matter of amalgamation to SLDC as they are the nodal agency. But due to late receipt of the information from SLDC, WBSEDCL could not inform the Commission the matter of amalgamation in time. However, WBSEDCL has no objection in applicability of the order dated 31<sup>st</sup> October, 2019 in case no. OA-302/18-19 for Dalmia Cement which is the new name of erstwhile OCL Bengal Cement Works, if the Commission directs.

The representative of SLDC has also confirmed their acceptability in line with WBSEDCL.

Upon hearing all the parties, Sri Durgadas Goswami, Member, WBERC opined that although Dalmia Cement has asked for unconditional apology from the Commission for not being able to inform the Commission about the amalgamation of two companies in time, but the reasons as submitted by them are not tenable. According to their submission, even after the effective date of amalgamation, more than 3 / 4 hearings took place before issuance of the final order dated 31<sup>st</sup> October, 2019 but they did not find any time to inform the Commission during this long period. This is unbecoming on their part. They deserve to be imposed punishment in terms



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of penalty or something else like that. Sri Goswami also opined that the excuse of delay in informing the Commission about the amalgamation of two companies as submitted by WBSEDCL is a lame excuse and punishment shall also be applicable to WBSEDCL. However, since all the parties concerned have no objection in the matter, the prayer of Dalmia Cement may be acceded to.

Sri Pulak Kumar Tewari, Member, WBERC opined that the petitioner has made two different prayers 1) clarification in respect of DSM and 2) to allow the applicability of the order 31.10.2019 in case no OA-302/18-19 to them, which is bad in law. Thus, the petitioner is trying to encash the order passed in favour of OCL when Dalmia cement was not in the picture. The amalgamation of the companies i.e., OCL India Limited alongwith this associated companies and Dalmia Cement was done in the financial year 2017 – 2018 and the petition in case no. OA-302/18-19 was filed before the Commission by the OCL on 7<sup>th</sup> March, 2019, which is almost one year later the amalgamation. On being queried as to why the petition was made in the name of OCL India limited knowing fully well about the amalgamation of the company, the representative of Dalmia Cement reiterated the same as has been mentioned in the preceding paragraphs. Sri Tewari opined that the petitioner has not come to the Commission in clean hand. Sri Tewari has also opined that consequential prayers can be done in same petition but two diverse and different prayers cannot be made in same petition and here prayer no. 1 and prayer no 2 are different. However, as there is no objection from other side Sri Tewari has agreed with the opinions of Sri Durgadas Goswami, Member.

Sri Sutirtha Bhattacharya, Chairperson of the Commission also opined that the petitioner has not come to the Commission in clean hand. One of their departments is not communicating to other department is none of the business of the Commission. As a corporate the petitioner failed to comply with truthful assertion. In fact, they are prosecutable under law. Having said that and having taken into record that Dalmia Cement is seeking apology, Commission will examine whether a token penalty will be imposed on Dalmia Cement for their misdemeanor for filing in affidavit. Similarly, Commission also alerts WBSEDCL to be cautious. It is simply not done that they get an order on 31.10.2019 and issuing an order on 01.11.2019. It is dereliction in application of mind. However, Chairperson urged upon Dalmia Cement to withdraw their clarificatory prayer i.e. prayer no. 1 of their petition and stick to prayer no. 2 i.e. the name change issue which the representative of Dalmia Cement agreed to.



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The Commission further observes that the order passed by the Commission dated 31.10.2019 in case no OA-302/18-19 in connection with the application filed by OCL become infructuous since the petitioner company was not in existence at the relevant point of time

### ORDER

Upon hearing both the petitioner and the respondents and the observations made the Commission passes the following order –

- a) Both Dalmia Cement and WBSEDCL are held responsible for not behaving properly before the Commission;
- b) Commission accepts the apology prayed for by Dalmia Cement before the Commission;
- c) Commission imposes a penalty of Rs 5000.00 (Rs five thousand) to Dalmia Cement for misdemeanour in filing improper affidavit before the Commission. Dalmia Cement shall deposit the penalty amount in 'CHIEF MINISTER'S RELIEF FUND' and submit the receipt to the Commission within seven days from the date of publication of this order;
- d) As Open access is a right, Dalmia Cement may approach SLDC, the nodal agency for STOA following due process as per extant provision of the Act and regulations made thereunder. SLDC and WBSEDCL shall take action on that application of Dalmia Cement within the time limit as specified in the relevant regulations in terms of the submissions made by them before the Commission during hearing.
- e) Petition is disposed off.

Sd/-  
**(PULAK KUMAR TEWARI)**  
MEMBER

Sd/-  
**(DURGADAS GOSWAMI)**  
MEMBER

Sd/-  
**(SUTIRTHA BHATTACHARYA)**  
CHAIRPERSON

**Dated: 10.07.2020**

  
**(T. K. MUKHERJEE)**  
SECRETARY



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