



**ORDER**  
**OF**  
**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**  
**IN THE MATTER OF**  
**CASE NO. OA-351/20-21**

APPLICATION BY BRAITHWAITE & COMPANY LIMITED SEEKING DIRECTION BY THE COMMISSION UPON CESC LIMITED TO ALLOW NET METERING FOR ROOF TOP GRID CONNECTED SOLAR PLANT UNDER RESCO MODEL AND ADJUDICATION OR RESOLUTION OF DISPUTE REGARDING REGULATION OF PURCHASE AND PROCUREMENT PROCESS OF ELECTRICITY.

**PRESENT:**

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON**

**SRI DURGADAS GOSWAMI, MEMBER**

**SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 08.12.2021**



## **CASE IN BRIEF**

- 1.0 The petitioner, Braithwaite & Co Limited (in short 'BCL'), has three manufacturing units located at different places within the licensed area of CESC Limited, viz. Clive Works, Victoria Works and Angus Works. The petitioner contemplated to install roof top grid connected solar power system at their three units to a summated load of 3.7 MW (Clive work – 0.9 MW, Victoria works – 0.3 MW and Angus Works – 2.5 MW) under RESCO model in line with the extant guidelines of the Government of India related to installation capacities, due to lack of funding capacity for investing in capex model. Accordingly, Braithwaite & Co Limited approached Solar Energy Corporation of India (SECI), nodal agency of GOI for promoting, coordinating, guiding and realizing the solar energy projects all over India, who in turn included their requirement in their collective national tender for identification of a suitable vendor who would supply the solar units.
- 2.0 As per SECI guidelines, a PPA with a vendor, identified through SECI tender for installation of the solar units at their cost, for a period of 25 years has to be executed for purchase of the entire power generated by them at a rate finalized by SECI and the power in excess of instantaneous consumption shall be fed to the grid through a net metering system..
- 3.0 BCL met the CESC Limited in 2019 and informed them their plans to team up with SECI for the said installation when BCL was assured that once installation starts, net metering systems will be sanctioned by CESC Limited on receipt of intimation from BCL.
- 4.0 SECI has already identified the prospective vendors for the solar plants in their 3 units and BCL is in the process of finalizing PPAs with suitable parties. Accordingly, BCL intimated CESC Limited vide their letter dated 12<sup>th</sup> August, 2020 the status of their solar project and requested CESC Limited to initiate adequate measures for approval and installation of net metering systems in all the three units of BCL. But, CESC Limited vide their letter dated 29<sup>th</sup> August, 2020 (received by hand on 26<sup>th</sup> September, 2020) stated their inability to extend net metering arrangements for the reasons that the units are to be set up and owned by separate entities as per



RESCO Model and therefore will not qualify as captive generating plant within the meaning of the Electricity Act, 2003 (in short 'Act').

- 5.0 In view of above, BCL prayed before the Commission to declare their RESCO units at three different places within the licensed area of CESC Limited as captive generating unit for implementation of net metering by CESC Limited.
- 6.0 The Commission vide letter dated 29<sup>th</sup> January, 2021 directed BCL to buttress their case in terms of sub rule 3 of the Electricity Rules, 2005, read with section 2(8) of the Electricity Act, 2003. In reply, BCL vide their letter dated 22<sup>nd</sup> February, 2021 buttressed their case stating that they are owning more than 26% of equity of the projects and that the BCL's annual consumption of the electricity to be generated will be more than 50%.
- 7.0 On perusal of the petition along with the documents submitted by BCL, the Commission admitted the matter and decided to hear it. Accordingly, several hearings took place, the last one being held on 9<sup>th</sup> September, 2021 wherein direction was given to both BCL and CESC Limited to submit their written arguments to the Commission based on which the final order shall be passed by the Commission.

#### **SUBMISSIONS BY THE PARTIES**

- 8.0 The contention of the petition submitted by BCL is to provide net metering system by CESC Limited for roof top grid connected solar plant under RESCO model, adjudication or resolution of dispute regarding regulation of purchase and procurement process of electricity and declaration of those solar plants as captive plants in terms of sub-rule 3 of Electricity Rules, 2005 read with section 2(8) of the Electricity Act, 2003 as BCL is owning more than 26% of equity of the projects and that the BCL's annual consumption of the electricity to be generated will be more than 50%.
- 9.0 The submission of BCL are as follows:
- a) From the very beginning the petitioner BCL opted only for RESCO model for



installation of roof top grid connected solar power system at its 3 units in line with the extant guidelines of the Government of India related to installation capacities, due to lack of funding capacity for investing in capex model. Accordingly, BCL approached Solar Energy Corporation of India (SECI), nodal agency of GOI for promoting, coordinating, guiding and realizing the solar energy projects all over India. As per the guidelines of SECI, BCL can engage any of the vendors identified through SECI tender who shall install the solar units at their cost and shall operate them for a period of 25/15/10 years. The petitioner shall have to purchase the entire power generated by them at a rate finalized by SECI and the power in excess of instantaneous consumption shall be fed to the grid through a net metering system.

- b) The petitioner intimated the respondent the status of their solar project and requested the respondent CESC Limited to initiate adequate measures for approval and installation of net metering systems in all the three units of the petitioner. But, the respondent stated their inability to extend net metering arrangements for the reasons that the units are to be set up and owned by separate entities as per RESCO Model and therefore will not qualify as captive generating plant within the meaning of the Electricity Act, 2003.
- c) It is also submitted that the proposed association of RESCO & BCL qualifies as a generating company as per the definition laid down in the provisions of the Electricity Act, 2003. Therefore, the RESCO units can be declared as 'Captive Generating Unit' for implementation of net metering by the respondent.
- d) The petitioner herein does not come within the ambit of the definition of "consumer" as defined in Section 2 (15) of the Act, but ought to be considered as a "generating company" as defined in Section 2(28). In such a case, the remedy of the petitioner lies before the Commission, in terms of Section 86 of the Electricity Act, 2003 and not before the CGRF, as alleged by the respondent or at all.
- e) RESCO model means 'Renewable Energy Service Company' and it is a



company who makes investments for installation of the solar plant on the roof, maintains the plant and sells the power generated there to its partner company, which in the present case is the petitioner herein. The unit rate of energy and the period of service depend upon the agreement between RESCO and its partner company and upon the expiry of the service period the partner company becomes the owner of the entire solar plant.

- f) The concept of RESCO, read conjointly with Section 2(8) of the Electricity Act, 2003, which defines "Captive Generating Plant", does not necessarily disqualify the petitioner herein for net metering under the present regulatory dispensation put in place by this Commission.
- g) This Commission, vide an order dated March 19, 2021 in Case No. WBERC/A - 82/1 has granted time up to June 30, 2021 to the consumers to finish installation of their solar PV system and notify the same to the licensee within that date. It is also pertinent to mention herein that the Commission in aforesaid order has not disqualified and / or excluded the RESCO model from getting the benefit of net metering.
- h) It is also an admitted fact that the petitioner had made investments for the solar energy project based on Notification No. 50/WBERC dated March 22, 2013 and the First Amendment to WBERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations came into effect subsequently. This Commission in its Order dated March 19, 2021 passed in Case No. WBERC/A-82/1 has observed at Paragraph No. 5.0 that the projects where investments have been planned based on provisions prior to notification of the First Amendment Regulations the submission of consumers and solar entrepreneurs are reasonable. Under such circumstances, the petitioner herein is under a legitimate expectation that the case would be considered in such light and ruled in its favour.
- i) As far as the maintainability of the instant proceedings before the Commission, considering the fact that the petitioner is a consumer and not a licensee for which grievances between the consumer and distribution licensee are to be



decided by the Consumer Grievance Redressal Forum (CGRF) and not the Commission, is concerned, it is argued that the petitioner does not come within the ambit of the definition of 'consumer' as defined in section 2(15) of the Electricity Act, 2003, but ought to be considered as a 'generating company' as defined in section 2(28) of the Electricity Act, 2003.

- j) The petitioner denies the contention of the respondent that the adjudicatory functions of the State Commission does not extend to consumer disputes and that the disputes between the parties ought to be adjudicated and decided by the CGRF.
- k) The petitioner argues that section 82 of the Electricity Act, 2003 provides for constitution and setting up of State Commission and section 86 of the said Act enumerates the functions of the State Commission. In terms of sub-section (f) of the section 86 of the said Act, the Commission is empowered to adjudicate upon disputes between licensees and generating companies and to refer any dispute for arbitration.
- l) From a mere perusal of the provisions of law referred to hereinabove, the Commission has been empowered by the Electricity Act, 2003 to entertain, try and adjudicate the issues in disputes as are being agitated in the present case. Therefore, the remedy of the petitioner lies before the Commission in terms of section 86 of the Electricity Act, 2003 and not before the CGRF, as alleged or at all.

10.0 The submissions of CESC Limited are as follows:

- a) The petition filed by the Petitioner suffers from the vice of improper pleadings. The present petition is defective for want of proper pleadings inasmuch as the petition is vague and ambiguous. It is not clear as to what is the cause of action and the grievance of the Petitioner. While in the heading the petition mentions "Application for Net Metering for Roof Top Grid connected Solar Plant under RESCO Model, adjudication or resolution of dispute regarding regulation of purchase and procurement process of electricity", the relief sought towards



the end of the Petition is "Based on the above, our RESCO Units can be declared as "Captive Generating Unit" for implementation of Net Metering by CESC'. While on one hand, the Petitioner is purportedly filing an application for net-metering for its Roof-top Grid connected Solar Plant under RESCO model, on the other hand it is seeking declaration of its RESCO Units as a 'Captive Generating Unit' for the consequential relief of implementation of net metering by the respondent.

- b) It is submitted that Section 86(1)(f) of the Electricity Act, 2003 provides that the State Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration. It is pertinent to highlight that the adjudicatory function of the State Commission does not extend to consumer disputes. The section 42(5) of the Act provides that every distribution licensee shall necessarily establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission. The sub-sections (6) and (7) of section 42 of the Act provide that any consumer, aggrieved by non-redressal of their grievances under sub-sections (5), may make a representation before an Ombudsman to be appointed by the State Commission. The Rules, under Rule 7, also provide for provisions relating to Consumer Redressal Forum and Ombudsman. Hence, all grievances between the consumers and the distribution licensees are statutorily required to be decided by the Consumer Grievance Redressal Forums ("CGRF"), and if such order of the CGRF is deemed to be unsatisfactory, the aggrieved consumer can appeal to the Ombudsman appointed by the State Commission.
- c) The Respondent in complete compliance of Section 42(5) of the Act, and the WBERC (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers and Time and Manner of Dealing with such Grievances by the Ombudsman) Regulations, 2013, has assigned Grievance Redressal Officers for 6 Region / District and 2 Central Grievance Redressal Officers for both commercial and supply matters.



- d) The WBERC (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers and Time and Manner of Dealing with such Grievances by the Ombudsman) (First Amendment), Regulations, 2020, ("CGRF First Amendment Regulations 2020") issued on 19.05.2020, before the present petition was filed, specified that a consumer grievance of any nature, has to be necessarily raised before CGRF.
- e) The petitioner is a consumer of CESC Limited in terms of the Electricity Act, 2003 having consumer numbers 0107101700 (Victoria Works, Agreemental load - 300 KW), 0107200100 (Clive Works, Agreemental load – 900 KW) and 0108901500 (Angus Works, Agreemental load – 2500 KW).
- f) The respondent relied upon a judgement of the Hon'ble Supreme Court in Jagmittar Sain Bhagat and Ors. – vs – Director, Health Services, Haryana and Ors. (2013) 10 SCC 136 which, inter-alia, held that a court cannot derive jurisdiction where the same is not provided under the statute.
- g) Hence, it is submitted that this Commission is not the proper forum for agitating and/or seeking redressal of any grievance that the Petitioner may have with regard to net metering and that the grievances of consumers are to be raised to and redressed by the CGRF and Ombudsman.
- h) It is submitted that under the Act and the Rules, 'captive generation plant' has a very distinct legal connotation. It is submitted that the Petitioner is required to establish its case to show how it is eligible for the net metering arrangements under the Renewable Regulations as amended by the First Amendment thereof.
- i) Furthermore, as is apparent from the definition of "eligible consumer" contained in the First Amendment and as is also clear from a conjoint reading of other provisions of the Regulations to be eligible for net metering or net billing arrangement, the solar PV generating system must be self-owned by the consumer. A rooftop plant set up through a third-party vendor or through RESCO route does not qualify for net metering under the present regulatory



dispensation put in place by this Commission. In the instant case the Petitioner is admittedly installing its plant under RESCO model. It cannot, therefore, be categorized as a 'captive plant', because the ownership of the plant would be with a third party. In this view of the matter it is submitted that prayer to declare the three Solar PV Generating Systems ("SPGS") being developed under RESCO model as Captive Generating Plant of the Petitioner does not survive.

- j) It is submitted that the Petitioner cannot seek a consequential relief as a matter of course. The Petitioner is required to set up a case as to why and how it is eligible for the net-metering facility. It cannot be an automatic consequence after declaration as a captive generating plant. The Petitioner is required to establish its eligibility as per the sanctioned load, total installed capacity, threshold limit, etc. as per the prevalent law. The Petitioner has failed to satisfy, by way of its pleadings and the documents placed on record, that it satisfies the criterion as laid down in principal Renewable Regulations as modified by the Renewable Regulations First Amendment.
- k) As per the Renewable Regulations First Amendment, net metering is allowed for all agriculture consumers and all other eligible consumers having sanctioned load up to 5 kW and net billing / gross metering to eligible consumers having sanctioned load above 5 kW. The Petitioner's project, post the First Amendment, by Petitioner's own admission is much in excess of the threshold limit for net metering (i.e. up to 5 kW) as prescribed by this Commission. Hence, Petitioner's SPGS would not be eligible for net metering arrangement.
- l) This Commission vide order dated 19.03.2021, by utilizing its inherent powers, extended the benefit of net metering to all those consumers who will install their solar PV system and notify the same to the concerned licensee within 30.06.2021 ("Order dated 19.03.2021"). However, the relaxation extended by this Commission vide its Order dated 19.03.2021 would not accrue benefit of the Petitioner because Petitioner is setting up its rooftop solar PV plant



through the RESCO model, which is impermissible under the Regulations.

- m) It is submitted that the RESCO model is not recognized under the Principal Renewable Regulations, 2013 or under the First Amendment thereto. It is stated that as per the regulations framed by this Commission, rooftop solar PV generating plant under net metering arrangement is allowed for self-owned system only.
- n) With respect to roof top solar PV plants, Electricity (Rights of Consumers) Rules, 2020 ("Consumer Rules, 2020") notified by the Central Government allows for net metering for loads up to 10 kw and gross metering for load above 10 kW. The Petitioner's project's sanctioned load being way above 10 kW, would not be eligible for net metering even under the Consumer Rules, 2020.
- o) The Petitioner has specifically averred that it does not come within the definition of "consumer" as defined in Section 2(15) of the Act. As per the Petitioner, it is a "generating company" as defined in Section 2(28) of the Act. On this basis, the Petitioner has contended that the remedy of the Petitioner lies before this Commission in terms of Section 86 of the Act and not before Consumer Grievance Redressal Forum ("CGRF"). It is submitted that while the Petitioner on one hand is submitting that it is not a consumer, but a generating company under Section 2(28) of the Electricity Act, 2003, on the other hand the Petitioner is seeking to establish its case that it is eligible for net metering which option, under the West Bengal Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2013 ("Renewable Regulations 2013") and the amendment ("Renewable Regulations First Amendment") thereof., is only available to 'eligible consumers'. Hence, the Petitioner is trying to set up a new case by claiming itself to be generating company and hence amendable to the adjudicatory jurisdiction of this Hon'ble Commission under Section 86 (1) (f) of the Act. Such a conduct of the Petitioner is improper and amounts to misuse of process of law. It is submitted that the Petitioner is trying to blow hot and cold in the same breath. The Petitioner cannot be allowed to approbate and



reprobate to suit its convenience. The same is impermissible under the law.

- p) To claim any benefit under the net metering arrangement, the Petitioner is required to be an 'eligible consumer under Regulation 2.1 (xi) (A) of the Renewable Regulations First Amendment. If the Petitioner is claiming to be a generating company, then the benefit of net metering and net billing cannot be extended to it under the law.
- q) Even otherwise, being an 'eligible consumer' under the Renewable Regulations First Amendment, the Petitioner is not eligible for net metering arrangement as it does not qualify the threshold criteria for the same.
- r) It is submitted that the averment that the Petitioner has made investment for the solar energy project based on Notification No. 50/WBERC dated March 22, 2013 is false, and misconceived. The Petitioner cannot make bald statements without any documentary proof thereof. It must be put on record that it is not an admitted fact that the Petitioner made investment under the Renewable Regulations, 2013 and the First Amendment came into effect subsequently. While the Renewable Regulations First Amendment were issued on 21.12.2020, it is important to note that this Commission had invited objections/ suggestions/ comments on the 'Draft WBERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (First Amendment) Regulations, 2020' on 15.09.2020 well before the present petition filed on 09.12.2020. Thus, the Petitioner was well-aware that the Renewable Regulations are in the process of being amended and an amendment is likely to be issued to the Renewable Regulations. The Petitioner, therefore, filed the instant petition immediately before the notification of Renewable Regulations First Amendment so as to circumvent the rigors of amended regulations. This shows the malafide conduct of the Petitioner.
- s) It is for the aforementioned reasons that it is the case of the respondent, that the present petition deserves to be dismissed, both on the issue of maintainability as well as on merits.



## OBSERVATIONS OF THE COMMISSION

11.0 The Commission observes that –

- a) The contention of the petitioner as to the compliance of sub-rule 3 of the Electricity Rules, 2005 is not maintainable. The petitioner is confirming in writing that they are owning more than 26% of equity of the projects and that the petitioner's annual consumption of the electricity to be generated will be more than 50%, But is evident from the petitioner's submission that the petitioner will become owner of the entire project after expiry of the service period.
- b) From the submissions made by the respondent and the documents placed before the Commission, it revealed that all the three units of the petitioner, in question, where the solar plants are contemplated to be installed, the petitioner is the consumer of the respondent. In fact, the contention of the petitioner claiming to be generating unit is not established from the submissions made by the petitioner as well as the documents submitted therewith.
- c) The Electricity Act, 2003 does not provide any net metering facility whereas the Regulations framed by the Commission contains net metering facilities for which certain criteria is required to be fulfilled for eligibility. Under the circumstances, the petitioner was asked to clarify as to under which regulation of the Commission's extant Regulations, the petitioner is eligible for net metering facility for implementation of the project, in question, under RESCO model. The petitioner failed to bring to the notice of the Commission to any such regulation by dint of which the petitioner can claim for net metering. Rather, it is evident that the petitioner is not eligible for net metering arrangement as it does not qualify the threshold criteria required to be fulfilled for claiming net metering.

## ORDER

12.0 The contentions made in the petition are conflicting. In one point the petitioner claimed itself to be a generator to attract jurisdiction of the Commission on the other it suggested itself to be a consumer so as to get the benefit of net metering. The petition



is also not maintainable in view of the other reason that the generation capacity of the petitioner is beyond the threshold limit for net metering. The disagreement in the averments of the petition makes the same unsustainable in law and liable to be rejected with cost.

13.0 With the above observations of the Commission, the prayer of BCL for declaring BCL as a generating unit in terms of section 86(1)(f) of the Electricity Act, 2003 and adjudicate the dispute of net metering considering the fact that the dispute is between a generating unit and a licensee is dismissed. The petition of this kind is found to have been filed by the petitioner for the first time and as such the Commission is restrained itself from inflicting any cost.

14.0 Let a copy of the order be posted in the website of the Commission.

15.0 BCL, CESC and concerned entities shall download the copy of the order from the website of the Commission and shall act on it. Certified copy of this order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

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

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

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

**DATE: 08.12.2021**

**Sd/-**  
**SECRETARY**