

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-391 / 21 – 22

Date of hearing: 27th April, 2022

Time of hearing: 13.00 hours

Quorum:

Shri Sutirtha Bhattacharya, Chairperson

Shri Pulak Kumar Tewari

In the matter of

Application in terms of clauses 8.3 and 8.4 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 and 2.1.3(c) of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 with a prayer to direct Damodar Valley Corporation to reduce the rate of interest on delayed payment surcharge at least @ 3% per annum.

And

In the matter of

**Impex Ferro Tech Limited
35, Chittaranjan Avenue
4th Floor, P.S. Hare Street
Kolkata 700 012**

..... Petitioner

**Damodar Valley Corporation
DVC Towers
VIP Road
Kolkata 700 054**

..... Respondent

Representatives attended:

Impex Ferro Tech Limited (IFCL) (Petitioner)]

- 1. Sri Ratnesh Kumar Rai, Advocate**
- 2. Sri Ankan Rai, Advocate**
- 3. Ms. Vipra Gang, Advocate**

Damodar Valley Corporation (DVC) [Respondent]

1. Sri Supratic Roy, Advocate
2. Sri Biswajit Mondal, Dy. Chief Engineer

CASE IN BRIEF

Impex Ferro Tech Limited (IFTL) has submitted a petition in terms of clauses 8.3 and 8.4 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 and 2.1.3(c) of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 praying before the Commission to reduce the rate of interest being charged by Damodar Valley Corporation (DVC) on delayed payment surcharge and to pass order of injunction upon DVC restraining them from insisting on payment of delayed payment surcharge @ 15% per annum. The contention of IFTL is that the respondent has been charging exorbitant rate of interest on the delayed payment surcharge and rate of delayed payment surcharge which is detrimental to the survival of the petitioner's organization. The petitioner further contended that it would virtually be impossible for the petitioner to pay the consumption dues of Rs. 51.00 crores if DVC charges delayed payment surcharge and interest thereon at such an exorbitant rate.

In the meantime, the petitioner came across an order passed by the Hon'ble High Court at Calcutta on 24th January, 2022 in several writ petitions filed by the different steel manufacturing units operating in the State of West Bengal raising the cardinal issue of payment of delay payment surcharge in respect of bills raised and due for the year 2006 -2009 and 2009 – 2013. In the said order dated 24th January, 2022, the Hon'ble High Court was pleased to direct that "DVC is not entitled to charge any delay payment surcharge for any of the defaults allegedly committed prior to the fixation of final retail tariff on June 19, 2020 and March 19, 2020 respectively for the periods 2006 – 2009 and 2009 – 2013 which were committed, if at all, in respect of the then fluid ad hoc tariffs which all merged ultimately into the final tariffs as fixed in 2020. All bills raised by the DVC on the writ petitioners on account of Delayed Payment Surcharge stand hereby cancelled and revoked."

Based on the above, IFTL submitted a supplementary petition praying before the Commission to pass necessary orders and/or direction directing DVC not to charge delayed payment surcharge to IFTL for the arrears committed by IFTL prior to the

fixation of final retail tariff on March 19, 2020 and June 19, 2020 respectively for the periods 2006 – 2009 and 2009 – 2013 and to refund the total delayed payment surcharge paid by IFTL amounting to Rs. 14.69 crores as has already been paid in terms of arrears of earlier dues prior to the fixation of final retail tariff.

Upon receipt of the petition and subsequent supplementary petition, the notice vide no. WBERC/OA-397/21-22/1719(1) dated 16th February, 2022, convening **on-line** hearing on 24th February, 2022 at 14.30 hours was issued to IFTL and DVC. But since the Form 3 submitted by both the parties are not in line with the hearing notice, the e-hearing was postponed to a later date and was re-fixed on 27th April, 2022 at 13.00 hours. The on-line hearing was held on 27th April, 2022, as scheduled.

SUBMISSION DURING HEARING

During submission by the Ld. Advocate on behalf of IFTL, the Commission enquired as to whether the petition submitted by IFTL is maintainable as per the provisions of the extant Electricity Act, 2003. In fact, in terms of section 86 (1) (f) of the Electricity Act, 2003, the Commission is empowered to adjudicate upon the disputes between the licensees and the generating companies and to refer any dispute for arbitration. It was also enquired by the Commission from IFTL to specify the section of the Electricity Act, 2003 under which they have approached the Commission to adjudicate the disputes, in question.

The representative of DVC was also given opportunity to make submission on the maintainability of the petition. But, he sought for some time to make any submission on the same.

OBSERVATIONS OF THE COMMISSION

The Commission observes that the disputes in regard to the delayed payment surcharge between the parties attract adjudication by the Grievance Redressal Forum under sections 42 (5) and 42 (6) of the Electricity Act, 2003. However, an opportunity is given to both the parties to submit their written notes on the maintainability of the petition.

ORDER

Upon hearing the parties present, the Commission directs that both the parties i.e., IFTL and DVC shall submit their written comments on the maintainability of the petition within 7 days from the date of receipt of this order, upon receipt of which, the Commission shall pass an appropriate order.

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

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

DATE: 06.05.2022

**Sd/-
SECRETARY**