



**ORDER  
OF THE  
WEST BENGAL ELECTRICITY REGULATORY COMMISSION  
IN CASE NO. OA-391/21-22**

**IN REGARD TO THE 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**

**PRESENT:**

**SRI MALLELA VENKATESWARA RAO, CHAIRPERSON  
SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 15.12.2022**





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



### Case in Brief

1. 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.
2. In the meantime, the petitioner came across an order passed by the Hon'ble High Court at Calcutta on 24<sup>th</sup> 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 24<sup>th</sup> 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.
3. 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.

4. Upon receipt of the petition and subsequent supplementary petition, the notice vide no. WBERC/OA-397/21-22/1719(1) dated 16<sup>th</sup> February, 2022, convening **on-line** hearing on 24<sup>th</sup> February, 2022 at 14.30 hours was issued to IFTL and DVC. But since the Form 3 submitted by both the parties were not in line with the hearing notice, the e-hearing was postponed to a later date and was re-fixed on 27<sup>th</sup> April, 2022 at 13.00 hours. The on-line hearing was held on 27<sup>th</sup> April, 2022, as scheduled.
5. During the hearing, before submission of both the parties, 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. DVC was also given opportunity to make submission on the maintainability of the petition. But, none of the parties could answer instantly to the query raised by the Commission in regard to maintainability of the petition. The Commission was of the opinion 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.
6. In view of the above, the Commission vide its daily order dated 06.05.2022 directed both the parties to 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.
7. Accordingly, IFTL has submitted their written arguments on the maintainability of the petition whereas DVC has refrained from submitting any written comment.
8. However, in the meantime, there has been a change in the Chairmanship of this Commission and new Chairperson Dr. Mallela Venkateswara Rao has joined the Commission. In view of above, in order to hear the parties once again by the new Chairperson of the Commission, a further e-hearing was held on 21<sup>st</sup> September, 2022 at 16.00 hours where the representatives from both the parties were present.





9. After hearing the parties, the Commission in its daily order dated 14.10.2022 directed DVC once again to submit their written arguments within 7 days from the date of receipt of this order upon receipt of which the Commission will pass the final order. However, no reply in this regard has been received from DVC.
10. IFTL's comments are, inter-alia, as follows:
- a) DVC (Respondent)] were charging Delayed Payment Surcharge (DPS) upon the outstanding bills of the petitioner at an excessive rate of 15% per annum. Being aggrieved by such action of the respondent, the petitioner filed an application before the Commission praying to direct the respondent for reducing the rate of DPS charged on outstanding bills from 15% to 3 % per annum. In the meantime, an order dated 24.01.2022 was passed by the Hon'ble Justice, Sabyasachi Bhattacharya, wherein the Hon'ble High Court of Calcutta held that since the WBERC Tariff Regulations for the period of 2006- 2009 and 2009-2013 has been settled by the Hon'ble Commission only in year 2020, therefore the Respondent cannot claim DPS for the period of 2006-09 & 2009-13. Consequently, after being aware of the said order the petitioner filed a supplementary affidavit before the Commission, revoking the prayer of the main application and further praying to direct DVC not to charge DPS from the applicant for the arrears committed by the application prior to fixation of final retail tariff for the period 2006 to 2009 & 2009 – 2013.
  - b) The present case of the petitioner falls within the ambit of "determination and fixation of tariff for the supply of electricity", which falls under the jurisdiction of Commission. Section 86(1) sub clause (a) and (b) of the Electricity Act, 2002 states that the Commission shall be responsible for determination of tariff or quantification of amount which shall be payable within the state. Since, the tariff rates are fixed by the Commission, therefore the Respondent has no role to charge DPS at any rate which are not fixed by the Commission. Reliance in this regard is placed upon the judgement passed by the Hon'ble Supreme Court of India reported in (2004) 1 sec 195 (BSES Ltd. Vs. Tata Power Co. Ltd.), wherein it has been held that the expression "determine the tariff for electricity, wholesale, bulk, grid or retail" as used in sub-clause (a) and (c) of Section 22(1) includes determination or quantification of amount which shall be payable. The relevant extract of the said judgement is placed herein below:





".....18. regulate power purchase..... including the price at which the power shall be procured from the generating companies...." as used in Sub-clause (c) of Sub-Section (1) of Section 22. Therefore, the determination or quantification of the amount falls within the jurisdiction of the State Commission."

- c) It is pertinent to note that in the present case the issue for consideration before the Commission is regarding the determination and fixation of tariff rates which exclusively falls within the jurisdiction of this Regulatory Commission, since no other forum is authorized to deal with the determination of tariff rates. It is to be noted that the petition filed by the petitioner does not fall within the ambit of the clause (f) of the Section 86 of the said Act, as the same stipulates about the dispute between the licensee and generating companies, since there is no dispute between the parties herein relates to tariff determination. However, the point for consideration before the Commission is fixation of Tariff rates which is included under Section 86(a) and 86(b) of the said Act since the Respondent is charging the DPS from the petitioner prior to the fixation of tariff by the commission for the period 2006 -2009 and 2009- 2013 and also charging interest at an excessive rate of 15% on the said DPS which is not fixed by this Commission. Hence, the same is completely illegal, bad in law and perverse.
- d) The petitioner submits that the allegations raised by the petitioner in the said petition against the respondent does not fall within the purview of the definition of the "consumer dispute" which needs to be redressed by the Consumer Forum or different redressal forums. Reliance in this regard is placed upon the Section 2(1)(d) of the Consumer Act, 1986 which reads as under:

"Consumer Dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint."

- e) However, in the instant case the respondent is not denying the fact that an excessive rate of interest is being charged on the DPS for the outstanding bills of the petitioner. In fact, they themselves have raised the bills for the arrears made during the period 2006-2009 & 2009-2013, and therefore, it is not a consumer dispute but an issue of regulation and/or fixation of tariff rates on the basis of which DPS and interest thereupon have been charged





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



illegally.

- f) However, in the instant case the respondent is not denying the fact that an excessive rate of interest is being charged on the DPS for the outstanding bills of the petitioner. In fact, they themselves have raised the bills remain unpaid during the period 2006-2009 & 2009-2013, and therefore, it is not a consumer dispute but an issue of regulation and/or fixation of tariff rates on the basis of which DPS and interest thereupon have been charged illegally.
- g) It is to be considered that how the DPS and interest thereupon can be charged by the Respondent at a rate which was never fixed by the Commission. The determination of rate is exclusively under the jurisdiction of Commission and can never be determined and/or charged by the Respondent.
- h) The Respondents cannot change anything for the use of electricity which is either not determined by the Commission and/or not covered under the purview of the Electricity Act, 2013. The Hon'ble High Court of Calcutta has also directed that the arrears for the period 2006-2009 & 2009-2013 shall not be charged since tariff rates for the aforesaid period has been determined in year 2020 only.
- i) In view of the aforesaid, it is clearly evident that the petition filed by the petitioner is maintainable since the issue of consideration in the said petition exclusively falls within the jurisdiction of the Commission.

#### OBSERVATIONS OF THE COMMISSION

11. The Commission observes that –

- a) The contention of the petitioner as to the maintainability of the petition considering the fact that the dispute falls under the jurisdiction of Commission in terms of section 86(1) sub clause (a) and (b) of the Electricity Act, 2003 which empower the Commission for "determination and fixation of tariff for the supply of electricity", is not found tenable as the dispute is related to billing dispute and not a tariff determination.
- b) 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.





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- c) Since it is a billing dispute in regard to the delayed payment surcharge between a consumer and a licensee, it attracts adjudication by the Grievance Redressal Forum under sections 42 (5) and 42 (6) of the Electricity Act, 2003.
- d) The contention of the respondent i.e., DVC in regard to the maintainability of the petition is not available and thus not considered.

### ORDER

12. In view of the observations made hereinabove by the Commission, the petition is disposed off with a liberty to approach the Grievance Redressal Forum under section 42 (5) and 42 (6) of the Electricity Act, 2003 and the West Bengal Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievance of Consumers and Time and Manner of Dealing with such Grievances by the Ombudsman) Regulations, 2013 made by the Commission thereunder.
13. A copy of the order be served upon both Impex Ferro Tech Limited and Damodar Valley Corporation.

Sd/-  
(PULAK KUMAR TEWARI)  
MEMBER

Sd/-  
(MALLELA VENKATESWARA RAO)  
CHAIRPERSON

Date: 15.12.2022

Sd/-  
SECRETARY