



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

IN CASE NO. OA- 438/22-23

IN REGARD TO THE PETITION FILED BY M/S DALMIA CEMENT (BHARAT) LTD. UNDER SECTION 86(1)(F) OF THE ELECTRICITY ACT, 2003, SEEKING DIRECTIONS AGAINST WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) REGARDING THE LEVY OF WHEELING CHARGES FOR POWER WHEELED FROM THEIR CAPTIVE POWER PLANTS TO THEIR BENGAL CEMENT WORKS UNIT IN WEST BENGAL, IN TERMS OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (OPEN ACCESS) REGULATIONS, 2022

PRESENT:

DR. MALLELA VENKATESWARA RAO, CHAIRPERSON

DATE: 25.11.2024



Petition Filed by M/S Dalmia Cement (Bharat) Ltd. Under Section 86(1)(F) of the Electricity Act, 2003, seeking directions against West Bengal State Electricity Distribution Company Limited (WBSEDCL) regarding the levy of wheeling charges for power wheeled from their captive power plants to their Bengal Cement Works unit in West Bengal, in terms of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2022



Facts in brief:

- 1.0 M/s Dalmia Cement (Bharat) Ltd. (hereinafter referred to as "the Petitioner") filed a petition under Section 86(1)(f) of the Electricity Act, 2003, before the West Bengal Electricity Regulatory Commission (hereinafter referred to as "the Commission") on 07.12.2022 seeking direction to restrain the West Bengal State Electricity Distribution Company Limited (WBSEDCL) from levying wheeling charges for power wheeled to the petitioner's Bengal Cement Works (BCW) unit.
- 2.0 The Petitioner operates the BCW unit in Paschim Medinipur, West Bengal, and wheels power from its captive power plants in Odisha, Tamil Nadu, and Karnataka via a 132 kV Line-In Line-Out (LILO) transmission line between the Dharama and Bishnupur Sub-Stations of the West Bengal State Electricity Transmission Company Limited (WBSETCL). The Petitioner contends that WBSEDCL is unjustly levying wheeling charges for 3 MW of short-term open access power despite the Petitioner not utilizing WBSEDCL's distribution network.
- 3.0 The petition of M/s Dalmia Cement (Bharat) Ltd. filed on 07.12.2022 inter-alia states the following:
 - 3.1 The Petitioner asserts that its BCW unit is directly connected to the transmission network owned, operated, and maintained by WBSETCL and does not use any part of WBSEDCL's distribution system for wheeling power.
 - 3.2 The Petitioner submits that WBSEDCL has no role in the supply of electricity or the use of the network concerning the BCW unit's power drawal under open access mode.
 - 3.3 In its petition, the Petitioner prays for the following reliefs:
 - a) A declaration that WBSEDCL is not entitled to levy and collect wheeling charges and wheeling losses on the electricity supplied through open access to the BCW unit, and an order restraining WBSEDCL from further billing and recovering such charges.



- b) A direction to WBSEDCL to reimburse the amounts paid under protest by the Petitioner, along with interest at the rate of 14% per annum from the date of payment until reimbursement.
- 4.0 The Commission, vide letter dated 11.01.2023, advised Dalmia Cement to approach the grievance redressal forum in terms of Regulation 34.3 of the WBERC (Open Access) Regulations, 2022.
- 5.0 In reply, Dalmia Cement has submitted that the matter requires adjudication on questions of law and interpretation of the open access agreements executed by the petitioner with WBSEDCL, and as such, it cannot be submitted before the GRO or the Ombudsman. Dalmia Cement further submitted a letter dated 25.05.2023, wherein they requested an urgent listing of the petition and also mentioned that any technical or other questions would be answered by them at the time of the hearing.
- 6.0 A hearing was scheduled on 11.12.2023 at 2 PM between M/s Dalmia Cement and WBSEDCL, WBSETCL, and SLDC to examine the maintainability of the petition submitted by M/s Dalmia Cement.
- 7.0 During the hearing, the Petitioner's advocate reiterated the submissions made in the petition, emphasizing that the dispute involves complex legal issues necessitating adjudication by the Commission under Section 86(1)(f) of the Electricity Act, 2003. The Commission noted that the Petitioner may submit, in writing, reasons why the dispute should be adjudicated by the Commission and not by the Consumer Grievance Redressal Forum (CGRF), within seven days.
- 8.0 On 10th January 2024, the Petitioner submitted that:
- 8.1 The dispute involves significant questions of law and fact concerning an open access customer and the Respondents, warranting adjudication by the Commission under Section 86 and other relevant provisions of the Electricity Act, 2003.
- 8.2 The CGRF lacks jurisdiction to adjudicate tripartite disputes and is limited to disputes between consumers and distribution licensees.



8.3 Reference was made to a similar case in Maharashtra where the Appellate Tribunal for Electricity (APTEL) clarified the jurisdiction of State Electricity Regulatory Commissions in such matters.

Observations of the Commission:

9.0 The Commission has carefully considered the submissions of the Petitioner and examined the relevant provisions of the Electricity Act, 2003, and the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2022. The Commission observes that the dispute is essentially on whether the distribution system is used by the petitioner for wheeling of power from their captive power plants outside the state to their Bengal Cement Works unit in West Bengal.

10.0 Regulation 34.3 of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2022, states:

" In case of any dispute related to Open Access between a Distribution Licensee and an Open Access Customer who is connected with the Distribution Licensee as consumer and not covered by section 143 of the Act, then the aggrieved party may lodge his grievances along with all necessary documents before the CGRO of the said Licensee as specified in Grievance Redressal Regulations for redressal of his Grievance within 60 days from the date on which cause of action arises."

The Commission observes that the Petitioner claims they are not using any distribution system of WBSEDCL for open access. Therefore, the CGRO may not be the appropriate forum to adjudicate this dispute.

11.0 The Petitioner has filed the petition under Section 86(1)(f) of the Electricity Act, 2003, which empowers the State Commission to:

"Adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration."



Petition Filed by M/S Dalmia Cement (Bharat) Ltd. Under Section 86(1)(F) of the Electricity Act, 2003, seeking directions against West Bengal State Electricity Distribution Company Limited (WBSEDCL) regarding the levy of wheeling charges for power wheeled from their captive power plants to their Bengal Cement Works unit in West Bengal, in terms of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2022



The Petitioner is neither a licensee nor a generating company as per the definitions provided in the Act.

12.0 Consequently, the Commission lacks jurisdiction to adjudicate the present dispute under Section 86(1)(f) of the Electricity Act, 2003, as the parties involved do not fall within the categories specified.

Order:

13.0 In view of the foregoing observations and the provisions applicable, the Commission concludes that the present dispute cannot be adjudicate under Section 86(1)(f) of the Electricity Act, 2003. The petition filed by M/s Dalmia Cement (Bharat) Ltd. is hereby rejected.

14.0 The Petitioner is directed to file a fresh petition under the relevant section of the Electricity Act, 2003 and provisions of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2022.

15.0 With this order, the petition filed by M/s Dalmia Cement (Bharat) Ltd. stands disposed of.

16.0 A copy of the order shall be posted in the website of the Commission.

17.0 M/s Dalmia Cement (Bharat) Ltd. shall download the copy of the order from the website of the Commission and act on it. Certified copy of the 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/-
(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON**

Dated: 25.11.2024

**Sd/-
SECRETARY**