

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
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**Case No.86 of 2016**

**Date: 20 July, 2017**

**CORAM: Shri. Azeez M. Khan, Member**  
**Shri. Deepak Lad, Member**

Petition of M/s Gopani Iron & Power (India) Pvt. Limited for quashing the MSEDCL letter of termination dated 18.02.2016 and to direct the MSEDCL to enter into an EPA for 5 years at the rates mentioned in the Order dated 8 September, 2004.

M/s Gopani Iron & Power (India) Pvt. Ltd.(GIPIPL) .....Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd.(MSEDCL) .....Respondent

**Appearance:**

For the Petitioner: : Shri Subir Kumar (Adv.)

For the Respondent: : Shri. Ashish Singh , (Adv.)  
Shri. Y.K.Prasad (Rep)

For Consumer Representative: : Dr. Ashok Pendse, TBIA

**Daily Order**

Heard the Advocates of the Petitioner, Respondent and Consumer Representative.

1. Advocate of GIPIPL stated that:

(i) The Commission at para.5 of its Daily Order dated 27 April, 2017 had asked MSEDCL whether the Captive Power Plant (CPP) Order dated 8 September, 2004 in Case Nos.55 and 56 of 2003 is operative only for five years and not beyond that. In its additional submission dated 29 June, 2017, MSEDCL has not replied to the Commission's query.

(ii) GIPIPL had set up its CPP of 15 MW generating capacity Waste Heat Recovery boilers at Chandrapur in Maharashtra by making large investment. Pursuant to the Commission's CPP Order, GIPIPL entered into various short term EPAs with MSEDCL for about six years starting from 2009 till 2016. MSEDCL has stopped purchasing power since March 2016 and terminated the last EPA by giving 15 days termination notice. Thereafter, MSEDCL has not executed any EPA, which is non-compliance of the Commission's CPP Order.

(iii) Considering the nature of fossil fuel based CPPs, the Commission at para. 1.77 of the

CPP Order, had directed the Distribution Licensees to sign EPAs with CPP holders, and specifically recorded at para. 1.79 that a short tenure such as 1 year would be of concern for seeking financial assistance from lending institutions. Hence, under para. 1.81, the Commission directed the Distribution Licensee to sign an EPA for between 3 to 5 years with the CPP holders, for both firm as well as infirm power purchase. MSEDCL has signed EPAs for short term power purchase since 2009 on an annual basis and not for 3 to 5 years, which is non-compliance of para. 1.81 of the CPP Order. From various newspaper reports, it is seen that MSEDCL is short of power and seeking to buy power from various sources to mitigate the demand – supply gap and load shedding. Also, from MSEDCL’s additional submission it is observed that MSEDCL is purchasing power at a higher rate from the open market than GIPIPL’s lower rate of Rs.2.75 per unit. In the difficult times of MSEDCL, GIPIPL had supplied the power at such cheaper rate.

2. The Commission observed that the Commission in its CPP Order had not only considered the harnessing of unutilized capacity of CPP in the short term which would help in bringing down the demand–supply gap prevailing in the State at that time but also to facilitate commissioning of CPPs by industrial consumers who desired continuous, reliable and quality power for their manufacturing facilities. CPPs are primarily installed for the purpose of self–consumption, and a dispensation had been provided for sale of surplus power to the Distribution Licensees. It cannot be expected that the CPP holder demand the mandatory purchase of power by the Distribution Licensees in perpetuity.
3. The Commission further asked GIPIPL how long a Distribution Licensee should go on purchasing surplus power from CPP, and whether Distribution Licensees are under any obligation to purchase such a power from CPPs when they are themselves in a power surplus position; and why, when firm power is available as per requirement through Exchanges, MSEDCL would purchase GIPIPL’s power which is infirm in nature and is not schedulable on day ahead basis. GIPIPL could have approached the Commission in 2009 when MSEDCL had signed all EPA with it for only one year, which GIPIPL is now contending is non-compliance of the Commission’s CPP Order after signing six EPAs.
4. Advocate of MSEDCL stated that:
  - i) The CPP Order is very clear and MSEDCL has not violated but complied with it. MSEDCL has purchased power from GIPIPL for six years. The EPA was lawfully terminated by invoking Clause no. 9.4 of the EPA which was mutually agreed upon and stopped purchasing of power from March, 2016. To a query of the Commission as to whether MSEDCL has given any discriminatory treatment to different CPPs, MSEDCL stated that EPAs executed with all 12 CPP holders were terminated by giving 15 days notice, and it has stopped purchasing power from March 2016 from all CPPs.
  - ii) MSEDCL is not under any obligation to keep buying power from GIPIPL in perpetuity. It has made short term power purchases in FY 2015-16 & FY 2016-17 on day ahead basis through Exchange as per its requirement in specific time slots only in case of exigency and not continuously for a month, but on some days in a month considering the system requirement. The grievance regarding short term EPA now raised by GIPIPL in its Rejoinder is new and not raised in the Petition. It should have been raised earlier and not after availing the facility for more than six years. Hence,

now in there is no cause of action for GIPIPL, and MSEDCL is not obligated to purchase short term power from GIPIPL's CPP

5. Dr. Ashok Pendse on behalf of Thane Belapur Industries Association (TBIA) (an authorized Consumer Representative) stated that the Industrial consumers installed CPPs primarily for their self consumption and a Distribution Licensee may purchase the surplus power if any if it so desires. CPP holders cannot be thrust on it. Load shedding occurred in Maharashtra between 755 MW to 1125 MW, from 2 May to 6 May, 2017 i.e. for 5 days. When MSEDCL buys power from the Exchanges, it is the accepted position that the rate has sanctity. If MSEDCL wants to buy power from any other source, it has to opt for the competitive bidding route and cannot be selective.

**The Case is reserved for Order.**

**Sd/-**  
**(Deepak Lad)**  
**Member**

**Sd/-**  
**(Azeez M. Khan)**  
**Member**