

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 112 of 2017

Dated: 5 October, 2017

CORAM:

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

In the matter of

Petition of M/s. Olam Agro India Private Ltd. (Formerly M/S. Hemarus Industries Ltd.) for payment towards power evacuation arrangement beyond the inter-connection point of its Bagasse based Co-generation Power Plant.

Olam Agro India Pvt. Ltd.

... Petitioner

V/s

- 1) Maharashtra State Electricity Transmission Co. Ltd. (MSETCL).
- 2) Maharashtra State Electricity Distribution Co.Ltd. (MSEDCL).
- 3) Maharashtra Electricity Development Agency (MEDA).

... Respondents

Appearance

For the Petitioner

: Ms. Deepa Chawan (Counsel)

For the Respondent No. 1

: 1. Shri Dhanajay Deshmukh (Adv.)
2. Ms Jyoti Chimte, (Rep.)

For the Petitioner Respondent No. 2

: Shri S.S. Rajput (Rep.)

For the Petitioner Respondent No. 3

: Nil

Authorized Consumer Representatives

: Dr. Ashok Pendse, TBIA

Daily Order

The parties were informed that the Commission has resolved that the matter will be heard and decided by a two Member Bench.

Heard the Advocates/ Representatives of Petitioner, Respondents and Authorized Consumer Representatives.

1) Counsel of Petitioner stated that :

- a) Reply from MSETCL is received on 4.9.2017 however MSEDCL has not responded yet. Therefore, the Petitioner will require some time, to file its Rejoinder.
- b) She referred the ruling in the Commission's Order dated 16.08.2002, in Case Nos. 8/9/10/15/17/18/19/20/21 of 2001 regarding Purchase of Power from Bagasse based Co-generation Projects. As per the Commission's Order, MSETCL (or MSEDCL) has to bear the entire cost of infrastructure and associated facility for evacuation of power beyond the point of energy metering.
- c) As per Government of Maharashtra (GOM) Policy dated 14.10.2008, for payment through Green Energy Fund, the amount of estimated expenditure approved by MSETCL or the actual expenditure on evacuation arrangement, whichever is less, is to be considered. In addition, capital subsidy of Rs. 1 crore will be given by MEDA.
- d) MSEDCL, vide its letter dated 13.11.2009, addressed to MSETCL, mentioned that GoM's Policy dated 14.10.2008 and corrigendum dated 03.08.2009 are not applicable to the Project of the Petitioner.
- e) On 16.10.2010, MSEDCL has executed a fresh Energy Purchase Agreement (EPA) for purchase of power from the 20 MW Bagasse based Cogeneration Project of the Petitioner, according to which the Petitioner shall bear the cost of the Generation Facility switchyard and facilities up to the interconnection point. MSEDCL/MSETCL shall be responsible for development of evacuation infrastructure beyond the interconnection point, the cost of which shall be recovered from the consumers as per the pricing framework developed by the Commission. In case, the Petitioner develops the evacuation infrastructure beyond the interconnection point under the supervision of MSEDCL / MSETCL, MSEDCL / MSETCL will refund 100% of the evacuation cost to the Generator within one year from the date of commercial operation of the Project.
- f) The Commission, vide its Order dated 23.11.2011 in Case No. 111 of 2011 (Shree Renuka Sugars Ltd. v/s MSEDCL/ MSETCL) has considered the cap on refund of evacuation expenses as per GoM Policy. However, this Order is not applicable to the Petitioner as its evacuation facilities are covered by the Commission's Order dated 16.08.2002.
- g) Vide its letter dated 29.02.2012, MSEDCL has intimated that the refund of evacuation expense shall be dealt with as per the GOM's Policies dated 14.10.2008 and 14.07.2010.
- h) Vide its letter dated 25.06.2013, MSETCL requested to furnish documents for reimbursement of cost towards power evacuation.
- i) On 17.06.2015, an Agreement has been signed between the Petitioner and MSETCL for handing over the evacuation facilities to MSETCL.
- j) The payment made to the Petitioner by MSETCL and MEDA is line with GOM's Policy wherein the liability of MSETCL and MEDA is capped at Rs. 2 Crore each. (total cap of Rs. 4.00 crore). Accordingly , the Petitioner has received payment from MSETCL and MEDA as below:

Sr. No.	Utility	Date	Amount (Rs. lakh)	No of instalments
1	MSETCL	21.08.2015	160	First to Fourth
2	MSETCL	22.04.2016	40	Fifth
3	MEDA	--	300	(Rs. 200 lakh for evacuation and Rs. 100 lakh as capital subsidy.)

- k) However, the Petitioner is entitled to 100 % reimbursement of the power evacuation cost as per the Commission's Regulation, which is more than the cap of Rs. 4 crore applied by MSETCL.
- 2) Advocate of MSETCL stated that, as per the GoM Policy, 2008 and 2010 for reimbursement of evacuation arrangement, there is cap of Rs. 4 Crore. Hence, MSETCL has paid its 50% share, i.e. Rs. 2 crore. As the GoM Policies are in force, the Petitioner is not entitled to reimbursement of 100 % expenses towards power evacuation arrangement, unless the Government Policies are set aside.
- 3) Representative of MSEDCL stated that it had submitted its Reply on 4.09.2017. MSEDCL is not concerned as evacuation of power is at 220 kV level. He also stated the MSEDCL has no objection to refund of 100% evacuation cost to the Petitioner.
- 4) To a query of the Commission, Advocate of the Petitioner stated that no Policy of the Government can be contrary to the Orders/Regulations of the Commission. No Government Policy can override the independence of the quasi-judicial body.
- 5) Dr. Ashok Pendse, of Thane Belapur Industries Association (TBIA) referred to the Judgment of the Supreme Court (PTC v/s CERC) and ATE Judgement stating that sub-ordinate legislation in the form of Regulations prevail over Government Policy.
- 6) The Commission gave the Petitioner two weeks' time to file its Rejoinder.

Case is reserved for Order.

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

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