

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No.86 of 2016**

**Date: 27 April, 2017**

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

Petition of M/s Gopani Iron & Power (India) Pvt. Limited for quashing the impugned letter No.CE/Comm/PPP/EPA Termination/05609 dated 18.02.2016 issued by the MSEDCL qua the Petitioner and to direct the MSEDCL to enter into an EPA for a period of 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. P.H. Jambhulkar (Rep)

For Consumer Representative: : Dr. Ashok Pendse, TBIA

**Daily Order**

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

1. GIPIPL submitted that:

(i) GIPIPL had set up a Captive Power Plant (CPP) of 15 MW generating capacity Waste heat recovery boilers at Chandrapur in Maharashtra by making large investment. It has entered into a short term Energy Purchase Agreement (EPA) (dated 28 May, 2015 for FY2015-16) with MSEDCL for sale of surplus power upto a maximum of 12 MW from its CPP.

(ii) The Commission had issued a detailed Generic Order dated 8 September, 2004 in Case Nos. 55 and 56 of 2003, with regard to CPPs and specifically provided for purchase of surplus power by the Distribution Licensee. Pursuant to this Order, GIPIPL entered into various short term EPAs with MSEDCL, and for six years (since FY 2009-10) has been supplying surplus power to MSEDCL. From February, 2016, MSEDCL has terminated the EPA dated 28 May, 2015 for FY2015-16 and is not willing to buy the surplus power from GIPIPL.

- (iii) MSEDCL may be directed to sign a longer term EPA with GIPIPL since it has set up the CPP at Chandrapur subsequent to the Commission's Order dated 8 September, 2004 for promotion of CPP and Captive cogeneration.
- (iv) MSEDCL has filed its Reply only yesterday, on 26 April, 2017, and has not submitted any document with regard to its claim of present surplus power scenario. MSEDCL has also stated that it is not obligated to procure surplus power from GIPIPL.
- (v) In Case No. 16 of 2014, MSEDCL had specifically sought review to the Commission's CPP Order dated 8 September, 2004, but modified its Petition to seek only clarifications on 2 points relating to Distribution Open Access Regulations, 2014. Moreover, it had not filed any appeal before the Appellate Tribunal for Electricity (ATE) on the issue of mandatory purchase of surplus power by MSEDCL from CPPs nor is there any stay on the Commission's CPP Order. Therefore, MSEDCL is required to follow the Commission's CPP Order in Case Nos. 55 and 56 of 2003 in letter and spirit.
2. The Commission asked GIPIPL how long a Distribution Licensees should go on purchasing the power from CPP considering the promotion of CPP as well as the Distribution Licensee's commercial and financial aspects and tariff impact of the CPP power. With reference to clause 1.81 of the CPP Order dated 8 September, 2004 regarding EPA period of between 3 to 5 years, the Commission asked whether there is any obligation on a Distribution Licensee to purchase the CPP power beyond 5 years. In reply, GIPIPL stated that the clause 1.81 of the CPP Order dated 8 September, 2004 does not provide any right to MSEDCL to refuse to execute further agreement after completion of the initial EPA term.
3. The Commission asked whether clause 9.4 of the EPA between GIPIPL and MSEDCL is in line with the principles of the CPP Order. The Commission also referred to the ATE Judgment in Appeal No 210 of 2014 to both the parties in this context. The Commission observed that there should not be discriminatory treatment by a Distribution Licensee in purchasing power from different CPPs. It also asked MSEDCL to file its submission, justifying its commercial interest as well as the interest of the consumers, as to whether it is purchasing any short term power at a rate above Rs 2.75/unit which is the rate of surplus power from GIPIPL.
4. MSEDCL submitted that:
- (i) At the first hearing on 15 November, 2016, GIPIPL was directed to file its amended Petition within two weeks and MSEDCL was granted three weeks thereafter to file its Reply. However GIPIPL served its amended Petition to MSEDCL on 17 April, 2017 and hence MSEDCL could file its Reply only yesterday.
- (ii) It has complied with the Commission's CPP Order dated 8 September, 2004 and purchased power from the GIPIPL CPP for more than five years. Presently, it is in a power surplus situation, and this is likely to continue for some years. Considering this, it has stopped procurement of power from all 12 CPPs from 12 March, 2016, and as such there is no discriminatory treatment. Para 1.23 of the CPP Order dated 8 September, 2004 provides for harnessing the excess capacity of CPP power in a situation of power shortage and there is no requirement for MSEDCL to procure power from CPPs after 5 years.

5. The Commission asked MSEDCL whether the CPP Order dated 8 September, 2004 is operative only for five years and not beyond that. The Commission also observed that the power shortage scenario was not only the intent at the time of the CPP Order. The Commission directed MSEDCL to make its submission on the issue of applicability /tenure of the Order and whether clause 9.4 of the EPA between GIPIPL and MSEDCL was mandated by the CPP Order.
6. Dr. Ashok Pendse on behalf of Thane Belapur Industries Association (TBIA) stated that a Distribution Licensee has to opt for e-bidding for short term power purchase, which might be at a comparatively cheaper rate. Although ATE has provided for promotion of co-generation, it cannot be equated with promotion of Renewable energy.

GIPIPL requested the Commission to grant one week for filing its Rejoinder and MSEDCL requested two weeks for filing its additional submission. The Commission agreed.

Next date of the hearing will be intimated by the Secretariat of the Commission.

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

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