

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 205 of 2017

Dated: 10 January, 2018

**CORAM: Shri Anand B. Kulkarni, Chairperson
Shri Deepak Lad, Member**

**In the matter of
Petition of Maharashtra State Electricity Distribution Co. Ltd. seeking a review of Daily
Order dated 14 December, 2017 passed by the Commission**

Maharashtra State Electricity Distribution Company Limited (MSEDCL)Petitioner

V/s

OPGS Power Gujarat Private Ltd. (OPGS) Respondent

Appearance:

For the Petitioner : Shri. Ashish Singh (Adv.)

For the Respondent : Shri Hemant Singh(Adv.)

Authorized Consumer Representatives : Dr. Ashok Pendse (TBIA)

Daily Order

Heard the Advocate for the Petitioner and Respondent.

1. Advocate of MSEDCL stated that:

(i) It has filed the Review Petition on following issues:

(a) Jurisdiction: Direction of “No coercive action” for one month to MSEDCL lacks proper jurisdiction of the Commission.

(b) Balance of Convenience: Blanket stay/no coercive order for one month in favor of OPGS that too in view of the fact that OPGS till date has not approached the relevant Commission for declaration of its CPP status for FY 2015-2016 & FY 2016-2017 is against the principles of equity. It has taken

benefits of Cross Subsidy Surcharge (CSS) and Additional Surcharge (ASC) for last two years and the same is being sought for FY2017-18 also. Hence the Balance of convenience goes in favour of MSEDCL as it has to be revenue neutral.

- (ii) The Commission enquired the status of ATE appeal to Commission's Order dated 29 December, 2017 in Case No. 180 of 2017 which has been heard by ATE on 9 January 2018. In reply, MSEDCL stated OPGS is permitted to file a review Petition before the Commission and extended the interim protection granted to it by the Commission for a further period of two weeks and all the contentions with are left open for both the parties. MSEDCL also stated that in view of ATE judgement it cannot argue on jurisdiction issue.
- (iii) Till date, OPGS is simply filing Petition on other grounds except for determination of its CPP status.
- (iv) OPGS has not disclosed that its Open Access consumer i.e Vishakha Industries has challenged MSEDCL's bills towards CSS and ASC before High Court, Bombay (Nagpur Bench) and obtained the stay with a condition to deposit 30% of the amount.
- (v) Appellate Tribunal for Electricity (ATE) in Appeal No.116 of 2009 and IA No. 218 and 219 of 2009 dated 18 May, 2010 (in the matter of Hira Ferro Alloys Ltd.) has ruled that the State Commission has the jurisdiction to declare the CPP status.
- (vi) In case the Commission is inclined to grant relief, it may impose conditions.

2. Advocate of OPGS stated that:

- (i) As the Commission has issued final Order in Case 180 of 2017, the review Petition for the Daily Order in the same Case becomes infructuous.
- (ii) M/s Vishakha Industries is not now an Open Access consumer of OPGS and has challenged the bills on its own.
- (iii) It is a Group Captive arrangement and the Commission can frame issues on deciding its Captive status if required. It is not facing any problem elsewhere.

In view of ATE Judgement dated 9th January, 2018 in this matter, the Commission will decide further course of action.

**Sd/-
Deepak Lad
Member**

**Sd/-
(Anand B. Kulkarni)
Chairperson**