

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 86 of 2019 & MA No. 10 of 2019 in Case No. 86 of 2019

Dated: 15 July 2019

**CORAM: I.M. Bohari, Member
Mukesh Khullar, Member**

(Case No. 86 of 2019)

Petition of M/s. Global Energy Pvt. Ltd. for surrender of Trading Licence No.1 of 2018 granted vide Order dated 27 April, 2018 in Case No. 132 of 2015

And

(MA No. 10 of 2019)

Miscellaneous Application of M/s. POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. seeking intervention and impleadment in Case No. 86 of 2019

M/s. Global Energy Pvt. Ltd.

..... Petitioner in Case No. 86 of 2019

V/s.

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| 1. Morries Energy Ltd. | : Impleaded Respondent No. 1 |
| 2. Modern Indian Ltd. | : Impleaded Respondent No. 2 |
| 3. Oberoi Mall | : Impleaded Respondent No. 3 |
| 4. Saidpur Jute Co. Ltd. | : Impleaded Respondent No. 4 |
| 5. Triven Sangam Holdings and Trading Co. Pvt Ltd. | : Impleaded Respondent No. 5 |
| 6. Indapur Dairy and Milk Products Ltd. | : Impleaded Respondent No. 6 |
| 7. Jubilant Life Sciences | : Impleaded Respondent No. 7 |
| 8. Dhariwal Industries | : Impleaded Respondent No. 8 |
| 9. Palm Grove Beach Hotels | : Impleaded Respondent No. 9 |
| 10. Nirani Sugars Ltd. | : Impleaded Respondent No. 10 |

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| 11. Unique Estate Development Co. Ltd. | : Impleaded Respondent No. 11 |
| 12. Chalet Hotel (JW Marriott Hotel) | : Impleaded Respondent No. 12 |
| 13. Chalet Hotel
(Renaissance Convention Centre and Marriott Executive Appt.) | : Impleaded Respondent No. 13 |
| 14. Epcos India Pvt. Ltd. | : Impleaded Respondent No. 14 |
| 15. Foundation Brake Manufacturing Pvt. Ltd. | : Impleaded Respondent No. 15 |
| 16. Sahyadri Industries Ltd. | : Impleaded Respondent No. 16 |
| 17. Maharashtra State Electricity Distribution Co. Ltd. | : Impleaded Respondent No. 17 |

1. POSCO Maharashtra Steel Pvt. Ltd.
2. Siddhayu Ayurvedic Research Foundation Pvt. Ltd.... Intervenors

Appearance:

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| For the Petitioner | : Shri Matrugupta Mishra (Adv.)
Shri Sumanta Ghosh (Adv.) |
| For the Respondent No. 1 | : Shri. Tanuj Garg (Rep.) |
| For the Respondent No. 2 | : Shri B.L. Sharma (Rep.) |
| For the Respondent No. 3 | : Smt. Nidhima Sareen (Rep.) |
| For the Respondent No. 6 | : Shri Sumant Patole (Adv.) |
| For the Respondent No. 8 | : Shri Ashish Singh (Adv.) |
| For the Respondent No. 12 and 13 | : Shri Nooruddin Dhillia (Adv.) |
| For the Respondent No. 17 and
for the Intervener No. 1 and 2 | : Shri Ashish Singh (Adv.) |

Daily Order

1. Heard the Advocates for the Petitioner, Impleaded Respondents and Applicants for Intervention in Case No. 86 of 2019.
2. GEPL reiterated its objections as made out in its replies to the suo moto impleadment of various Parties as well to the Application filed by POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. seeking impleadment in the matter and stated that:
 - 2.1 These Parties do not have the locus standi to intervene in the present proceeding. The impleadment of a Party has to be decided as per the Order 1 Rule 10 of the Code of Civil Procedure, 1908.

- 2.2 The Application for Trading Licence surrender has been voluntarily filed under Section 19(2) of Electricity Act 2003(EA) which is completely independent of Section 19(1) of EA.
 - 2.3 GEPL's Licence surrender would be subjected to the terms and conditions if the Commission deems it fit to impose.
 - 2.4 Parties cannot be impleaded on the ground of public interest when scope of the proceedings is limited to surrender of Licence which does not affect the public at large.
 - 2.5 The Commission, in its Order dated 8 February 2017 in Case No. 89 of 2015 has allowed the Licence surrender Application where there was no pending liability towards any party on account of the Trading transactions undertaken under the Trading Licence. GEPL is squarely meeting the same criteria.
 - 2.6 Appeal pending before ATE against the Commission's Order setting up an enquiry committee, is an independent proceeding and has nothing to do with the outcome of the present Petition.
 - 2.7 No review has been filed by any Party for recalling the Commission's Notification dated 20 May, 2019 and the same could not be recalled simply on the oral arguments made in this proceeding.
3. In reply to GEPL's objection to the suo moto impleadment of various Parties as well to the intervention Application:
 - 3.1 Chalet Hotel (JW Marriott Hotel and Renaissance Convention Centre and Marriott Executive Apt.) stated that the Licence surrender Application filed by GEPL is not maintainable as GEPL has not filed any appeal challenging the Commission's Order for suo moto impleadment of various Parties. As per the EA, the Licence surrender has to be in public interest. The Commission has correctly impleaded the Parties and these impleaded Parties would assist the Commission in formation of the opinion as regards to the public interest involved in the matter. It is not the case of re-agitation of issues by the impleaded Parties as contended by GEPL. The impleaded Parties can neither raise their objection to GEPL's Licence surrender before the Arbitrators nor can they seek the Commission's direction in present proceeding for releasing the payment by GEPL. MA of POSCO and Siddhayu and GEPL's objections to suo moto impleadment should be decided first by the Commission.
 - 3.2 Advocate for MSEDCL and Intervenors stated that they are not contesting their individual disputes before the Commission. Rather, they are opposing the acceptance

of Licence surrender request of GEPL, pending the enquiry initiated by the Commission. Out of the fifty parties with whom GEPL has contracts, twenty-one Parties are before the Commission raising the irregularities committed by GEPL. Hence, the issue raised by the impleaded Parties amounts to public interest. When grant of Trading Licence is through a “Public Consultation Process” then surrender of Trading License also has to be through a “Public Consultation Process”. The Commission should recall its Notification dated 20 May, 2019 else the MA of POSCO and Siddhayu would become infructuous. GEPL’s illegal conduct is not limited to the State of Maharashtra but is also spread across the nation, there are many other Parties with identical issues of non-payment to generators, overbilling to buyers etc. Same is evident from the recent Order passed by CERC initiating the enquiry of GEPL. Hence, the issue involves a public interest.

4. The Commission notes that GEPL contends that suo moto impleaded Parties and intervention Applicants do not have locus standi and its Licence surrender application should be considered as voluntary surrender under Section 19(2) of EA and it does not affect public at large as scope of proceeding is limited to surrender of the Licence. In counter, intervention Applicants and impleaded Parties contend that Licence surrender application has to be in public interest and they are not re-agitating individual disputes before the Commission.
5. The Commission further notes that GEPL has claimed that it does not have any outstanding liability towards any party on account of any trading in electricity undertaken using the Trading Licence which is being proposed by GEPL for surrender/revocation. However, the Commission, through its Order dated 15 October, 2018 has ordered an independent enquiry in order to look into the truth of allegations for payment defaults to generators and MSEDCL, overbilling to consumers, illegal revocation of bank guarantees etc. against GEPL and has constituted one member enquiry committee for the purpose. The Enquiry Committee has through Public Notice invited written comments/objections from the interested parties. Pursuant to the Public Notice, the Committee had received complaints from 16 parties against GEPL. Under these circumstances, the Commission thought it appropriate to implead all these Parties and MSEDCL in the present Licence surrender/revocation Application of GEPL so as to hear them before deciding the surrender application of GEPL.
6. The Commission notes that in Case of Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay (1992), the Supreme Court held that:
A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

7. Considering the facts and circumstances of the Case, the Commission is of the view that impleadment of these Parties is necessary to decide the question as to whether or not to allow the Licence surrender Application of GEPL and if same is to be allowed, what could be the conditions for such Licence surrender/revocation under Section 19(2) of EA. Accordingly, GEPL's objection on the suo moto impleadment of Seventeen Parties vide Notice dated 25 April, 2019 in Case No. 86 of 2019 is rejected and the Miscellaneous Application No. 10 of 2019 in Case No. 86 of 2019 is allowed.
8. Further, considering allegations/complaints from various Parties, enquiry already initiated against GEPL, recent CERC Order in respect of GEPL's Inter-State Trading Licence enquiry, the Commission is of the view that there is merit in the submissions of MSEDCL that surrender /revocation of the Licence under Section 19 (2) of EA also has to be through a "Public Consultation Process". Regulation 33 of the MERC (Conduct of Business) Regulations 2004 empowers the Commission to issue directions to serve notice of the Petition to the affected Parties and also the Commission may direct the publication of Petition inviting public comments on the issue involved. Although, the MERC (Trading Licence Conditions) Regulations 2004 and its amendments in 2006 and 2017 do not specify the procedure to be adopted when the Licensee makes an application for surrender/revocation of Licence, the Commission is of the considered view that it would be appropriate to follow the procedure as stipulated under CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) (First Amendment) Regulations, 2012. Accordingly, in line with CERC's approach, the Commission directs as follows:
 - 8.1 GEPL shall post its complete Trading Licence surrender application on its website and shall keep the application uploaded on its website till its disposal by the Commission.
 - 8.2 GEPL shall publish a notice seeking comments/objections on its Application for surrender/revocation in two (2) daily newspaper in English Language and two (2) daily newspapers in the Marathi Language having wide circulations in the State of Maharashtra. The Public notice shall provide a minimum period of three weeks for submission of comments/objections by the Public with copy to the Commission.
 - 8.3 Thereafter, GEPL, on affidavit, shall submit its replies on the comments/objections within one-week of the receipt of the comments/objections to the Commission, with a copy to concerned Objector.
 - 8.4 M/s. POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. and other impleaded Parties, who are yet to file their replies on

GEPL's surrender/revocation application, may also file their comments/objections within three weeks.

8.5 GEPL shall carryout the above activities within a period of 2 months and submit its compliance to the Commission.

9. **Next date of hearing will be communicated by the Secretariat of the Commission after the compliance of above from the all the concerned Parties.**

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I.M. Bohari)
Member**