

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
**Tel. 022 22163964/65/69 Fax 22163976**  
**Email: mercindia@merc.gov.in**  
**Website: www.merc.gov.in**

**Dated: 26 November, 2020**

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

**CASE No. 220 of 2020**

**Petition of SMW ISPAT Pvt. Limited (Formerly Mahalaxmi TMT Pvt. Ltd.) for review  
of the Commission's Order dated 22 October 2020 in Case No. 175 of 2017**

**And**

**CASE No. 221 of 2020**

**Petition of BFN Forgings Pvt. Ltd. (Formerly Bebitz Flanges Works Pvt. Ltd.) for  
review of the Commission's Order dated 22 October 2020 in Case No. 175 of 2017**

**And**

**CASE No. 222 of 2020**

**Petition of Viraj Profiles Limited for review of the Commission's Order dated 22  
October 2020 in Case No. 175 of 2017**

**And**

**CASE No. 223 of 2020**

**Petition of BFN Forgings Pvt. Ltd. (Formerly Bebitz Flanges Works Pvt. Ltd.) for  
review of the Commission's Order dated 29 October 2020 in Case No. 170 of 2018**

**And**

**CASE No. 224 of 2020**

**Petition of Viraj Profiles Limited for review of the Commission's Order dated 29  
October 2020 in Case No. 170 of 2018**

SMW ISPAT Pvt. Ltd. .... Petitioner in Case No. 220 of 2020

BFN Forgings Pvt. Ltd. .... Petitioner in Case No. 221 of 2020

Viraj Profiles Limited .... Petitioner in Case No. 222 of 2020

BFN Forgings Pvt. Ltd. .... Petitioner in Case No. 223 of 2020

Viraj Profiles Limited .... Petitioner in Case No. 224 of 2020

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) ..... Respondent No. 1

Sai Wardha Power Generation Ltd. (SWPGL) ..... Respondent No. 2

The Tata Power Co. Ltd. -Distribution (TPC-D) ..... Respondent No. 3

Maharashtra State Load Dispatch Centre (MSLDC) ..... Respondent No. 4

Maharashtra State Electricity Transmission Co. Ltd. (MSETCL) ..... Respondent No. 5

Adani Electricity Mumbai Ltd.- Distribution (AEML-D) ..... Respondent No. 6

**Appearance:**

SMW ISPAT Private Ltd. (Case No. 220 of 2020)

BFN Forgings Pvt. Ltd. (Case No. 221 of 2020)

Viraj Profiles Limited (Case No. 222 of 2020)

BFN Forgings Pvt. Ltd. (Case No. 223 of 2020)

Viraj Profiles Limited (Case No. 224 of 2020)

Shri Sanjay Sen (Adv.) /  
Shri Vijay Kumar Agarwal (Adv.)

Maharashtra State Electricity Distribution Co. Ltd.	....Shri Aashish Singh (Adv.)
Sai Wardha Power Generation Ltd.	....Shri Ashwin Ramanathan (Adv.)
The Tata Power Co. Ltd. -Distribution Business	...Shri Abhishek Munot (Adv.)
Maharashtra State Load Dispatch Centre	...Shri E.T. Dhengale (Rep.)
Maharashtra State Electricity Transmission Co. Ltd.	...Shri Sunil Surywanshi (Rep.)
Adani Electricity Mumbai Ltd.- Distribution Business	..Shri Abaji Naralkar (Rep.)

### **Daily Order**

1. Heard the Advocates/representatives of the Petitioners and Respondents.
2. Advocate appearing on behalf of the Petitioner in Case No. 224 of 2020 has stated that:
  - i. Although there have been various Appeals filed before the Hon'ble Appellate Tribunal for Electricity (ATE) challenging the same impugned Orders which are being sought to be reviewed under present Review Petitions, Viraj Profiles Ltd. is not a Party to any of these Appeals.
  - ii. In terms of Rule 2 of Order 47 of CPC, a Party who is not appealing from a decree on Order may apply for a review of Judgment notwithstanding the pendency of an Appeal by some other Party except where the ground of such Appeal is common to the Applicant and the Appellant, or when, being Respondent, he can present to the Appellate Court the case on which he applies for the review.
  - iii. The issue related to consideration of incorrect consumption data for Viraj Profiles Ltd. for arriving at the CPP status determination of SWPGL for FY 2017-18 cannot be raised by the Appellants before the Hon'ble ATE. The relief being sought by Viraj Profiles Ltd. against this issue, being the review issue can only be granted by the Commission as the Hon'ble ATE cannot go into data verification, can only set principles and remand the matter back to Commission for re-determination of the issue.
  - iv. The revised consumption of Viraj Profiles Ltd. would affect the CPP status of SWPGL.
3. Advocate appearing on behalf of the Petitioners in Case No. 220, 221, 222 and 223 of 2020 has stated that:
  - i. The data considered in the impugned Orders is different from the data, based on which the bills were issued by MSEDCL. Hence, data reconciliation needs to be undertaken.
  - ii. The Petitioners in these four review Petitions have not received any notices for

Appeals filed before the Hon'ble ATE.

- iii. A little time is left for filing the Appeals and the Commission should give interim protections to the review Petitioners.
  - iv. In Case No. 133 of 2018, review filed by MSEDCL was allowed in spite of the fact that there was Appeal filed on the impugned Order.
4. Advocate appearing for MSEDCL objects to the Petitions stating that:
- i. Order 47 Rule 1(2) bars the present Review Petitions in light of the Appeals pending before the Hon'ble ATE wherein identical issues are being agitated. The Petition of Viraj Profiles Ltd. is identical to the Appeals filed before the Hon'ble ATE except the issue raised regarding incorrect consumption data. However, on this issue also, no case has been made out as Viraj Profiles Ltd. did not question the data submitted by SWPGL in the original proceedings. The Petitioners' challenge for SWPGL's data and their request for reconciliation of data is not admissible for review.
  - ii. The Petitioners should satisfy that even after due diligence, the consumption data could not be submitted by them in the original proceeding.
  - iii. The consumption data and calculation methodology being claimed now could have been raised in the original proceeding which would have enabled MSEDCL and other Respondents to file their respective submission. Also, the data/calculations being presented by the Petitioners are without any basis. The review is not maintainable, and the Petitions should be dismissed with cost.
  - iv. There are five review Petitions out of which three review Petitions are against the Order dated 22 October 2020 pertaining to CPP status determination for FY 2016-17 and two Review Petitions are with respect to the Order dated 29 October 2020 which was passed in the matter of CPP status determination for FY 2017-18. The data reconciliation issue is allegedly being raised in review Petition in Case No. 224 of 2020 and rest of the review Petitions are not sustainable under review jurisdiction. The Case No. 224 of 2020 should be treated separately from the rest of the review Petitions.
  - v. The Case No.133 of 2018 had been filed by MSEDCL based on data considered in the original proceeding. In present review Petitions, all the way, new data is being presented for seeking review of the impugned Orders.
5. Advocate for SWPGL states that errors in the impugned Orders being pointed out by the Review Petitioners may be examined by the Commission and they have no submission in the present proceedings.
6. Advocate appearing on behalf of TPC-D also objects to the review sought by the Petitioners and further states that:
- i. The impugned Orders have been passed based on the data submitted by the Petitioner SWPGL and this data was never disputed by Viraj Profiles or the

other Review Petitioners. The impugned Orders are correct and neither there is any error apparent on the face of record nor there is any new evidence which warrants review of the impugned Orders.

- ii. The Petitioners have prayed for setting aside the impugned Orders which are the same reliefs sought before the Hon'ble ATE and hence, the Petitions, being the Appeals in disguise of the review, do not qualify under review jurisdiction. Further, an interim relief has already been granted by the Hon'ble ATE.
  - iii. The scope of the present proceeding is limited and any new principle cannot be raised with the objective of re-opening the matters.
  - iv. The calculations/data being presented now is without any supporting and backup documents. With submission of purportedly correct data/calculations, the review Petitioners are seeking re-opening on the matters which is not allowed under the law. The review is not maintainable and the Petitions need to be dismissed.
7. The representative of MSLDC also denied the contentions raised by the Petitioners and objected to the Petitions.
  8. The representatives of AEML-D and MSETCL states that they have no submission to make in the proceeding.
  9. In its rejoinder, Advocate for Viraj Profiles in Case No. 224 of 2020 states that:
    - i. Pendency of Appeals before the Hon'ble ATE cannot come in way of deciding the review Petitions. As laid down by the Hon'ble Supreme Court, even a mistake/ misconception of fact or law by a Court or even by an Advocate can be a subject matter of review under Order 47 Rule 1.
    - ii. The only objection of the Respondents is that Viraj Profiles did not bring the correct data/facts in the original proceeding. But the data being submitted in present review Petitions is the factual data.
  10. Having heard the Parties, the Commission notes that multiple grounds have been raised seeking review of the impugned Orders and some of these grounds are also being agitated before the Hon'ble ATE by parties other than the review petitioners. The Hon'ble ATE is already seized of these matters. The Commission also notes that vide its Order dated 24 November 2020, the Hon'ble ATE has directed the Distribution Licensees not to take any coercive action against the Appellants therein. **The Commission is of the view that with such directions, the Review Petitioners have already been protected and they have already been granted an interim relief sought in the review Petitioners.** The Respondents in this Review Petition have also accepted that they will not take any coercive action as mandated by the Hon'ble ATE.
  11. As regards Viraj Profiles, it is the contention of the Review Petitioners that the impugned Order in Case No. 170 of 2018 has been based on incorrect data and the review Petitioner has come up with correct data in review Petition in Case No. 224 of 2020. It is also claim of other Review Petitioners that data considered in the impugned

Orders is different from the data, based on which the bills were issued by MSEDCL and hence, data reconciliation needs to be undertaken. It is the also claim of review Petitioners that if this data is considered for evaluation of CPP status of SWPGL in impugned Orders (Orders in Case No. 175 of 2017 and Case No. 170 of 2018), the criteria laid down under Electricity Rules, 2005 would get fulfilled. This will also make most of the Appeals before the Hon'ble ATE redundant.

12. **The Commission notes that during the impugned proceedings, the data submitted by SWPGL was not questioned by any Party. The Review Petitioners have now come with a new data/calculation. The Commission is of the view that it might be a matter of data asymmetry or an issue related to data representation which can be resolved by the Parties with mutual discussion between them.**
13. **Accordingly, the Commission directs MSEDCL, TPC-D, AEML-D, SWPGL, MSLDC, MSETCL and all CPP Users (Parties in Case No. 175 of 2017 and Case No. 170 of 2018) to sit together for reconciliation of data in impugned Orders for FY 2017-18 and FY 2016-17, share each other's data and come up with the correct data which could be then compared with the data considered in the impugned Orders. The Parties are directed to complete the data reconciliation activity and submit a report to the Commission within two months. The present Review Petitions would be taken up thereafter.**
14. **The Commission expects that the directions at Para 13 above will be taken by all concerned in the correct perspective and that they will work towards achieving the common reconciled statement. This data reconciliation will not only help the Commission to decide the further course of action but would also bring in clarity for all the stake holders. The Commission directs that MSEDCL and TPC-D will take lead to co-ordinate with all concerned in an effort to ensure that a common set of data is submitted to the Commission within a period of two months from the date of this Order.**
15. **The Commission hereby clarifies that the underlying principles/methodology adopted in the impugned Orders cannot be changed and the Parties need to work jointly only on the data inconsistency part, if there is any, by examining their respective records.**
16. **The Commission hereby also directs that all the decision of the Hon'ble ATE in the Appeals filed against the impugned Orders of the Commission shall be binding on the Review Petitioners also.**
17. **No coercive action shall be taken against the Review Petitioners for 3 months or till further decision of the Commission, whichever is earlier.**

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

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