

Sub: In the matter of clarification of clause 1.7(iii) regarding payment & clause 1.7(f) for calculation of additional security deposit amount of MPERC(Security Deposit) Rev1 Regulations 2020 (RG-17(1) of 2019 (P.No. 55 /2020)

Order

(Hearing through Video Conferencing)

Date of order: **03.05.2021**

M/s Venus Alloys (P) Ltd. Mandsaur : Petitioner

V/s

MP Paschim KVVCL, Indore (West Discom) : Respondent

Shri RC Somani appeared on behalf of the petitioner. Shri Vijay Sharma, Advocate and Shri Shri Nirmal Sharma, SE appeared on behalf of the Respondent.

2. The subject petition has been filed in the matter of clarifications of clause 1.7 (b) (iii) regarding payment and clause 1.7(f) for calculation of additional security deposit amount of MPERC (Security Deposit) Rev1 Regulations 2009 (RG-17(1) of 2009 and has prayed :
 - I. *That if consumer pays the 50 % amount of security deposit within seven days from the issue of bill and balance payment cannot be paid due to any unavoidable condition / force majeure conditions like Covid-19 and lockdown in the country. The option should not be withdrawn as balance payment to be paid along with surcharge.*
 - II. *That while review of additional security deposit as per security deposits Regulation 2009 any rebate given in tariff order which is linked to consumption etc. should be considered like rebate of Rs 1/unit or 20% whichever is less is applicable in energy charges for new connection.*
3. At the motion hearing held on 02.11.2020, the Commission heard the petitioner and admitted the petition for further deliberations .The Commission vide daily order dated 09.11.2020 directed to issue notice to respondent for submission of their reply in the matter.
4. The petitioner has broadly submitted following in the subject petition:
 - i. Petitioner is a 33 KV HT consumer with Contract Demand of 12500 KVA under tariff category HV-3.4 (Power Intensive) and running Mini Steel Plant. The petition is made

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against notice vide letter dated 18.07.2020 issued by the SE (O&M), Mandsaur for demanding of additional Security Deposit in accordance with the provision contained in the MPERC Regulation,2009

- ii. Petitioner have deposited Security Deposit amounting Rs.3,84,91,650/- equivalent to 30 days consumption in accordance with Clause 1.7(iii) Security Deposit regulation 2009 opted by it. The relevant provisions under Regulations 1.7(iii) and 1.7 (f) is reproduced below –

Regulation 1.7 (b) (iii)

“ Security Deposit equivalent to 30 days’ consumption shall be paid in the form of cash or cheque (subject to realization) or Demand Draft or Pay Order or banker’s cheque. This shall however be subject to proviso that an additional amount equivalent to 50% of the above cash Security Deposit is paid in the form of Cash or Cheque (subject to realization) or Demand Draft or Pay Order or Banker’s Cheque within 7 days of the date of issue of bill in each billing month and balance amount of current bill is paid on the due date(s) after adjusting such payment of 50 % of Security Deposit without interest. Further, if the consumer does not make the payment of 50 % Security Deposit within 7 days of the date of issue of Bill as stipulated above in any month, this option will no longer be available to that consumer and he would be required to make the payment of additional Security Deposit equivalent to 15 days’ consumption in the form of Cash or Cheque (subject to realization) or Demand Draft or Pay Order or Banker’s Cheque.

Regulations 1.7 (f)

“The amount of Security Deposit may be worked out by taking into account Fixed Charges, Energy Charges, Tariff minimum difference, Electricity Duty, Energy Development Cess, Meter Rent etc. but excluding Delayed Payment Surcharge, Load Factor/Power Factor incentives etc.

- iii. It is stated that the bill for March, 2020 (Billing period 23.02.2020 to 23.03.2020) was issued on 25.03.2020 for Rs. 3,34,14,695/- . Petitioner deposited 50% of Security deposit amount Rs.1,92,50,000/- on 30.03.2020 i.e. within 7 days from the date of issue of Bill as per clause 1.7(iii) of the Regulations.
- iv. That the balance payment of the Bill of Rs 1,41,64,695/- due on 09.04.2020 could not be paid due to circumstances beyond petitioner’s control i.e. lockdown in the country .
- v. That the balance payment Rs 1,41,64,695/- was deposited along with payment of April,2020 Bill with surcharge of Rs.1,79,418.99 for unpaid amount of March 20 bill .
- vi. The petitioner has argued that as per aforesaid Regulations 1.7 (iii) , consumers are required to pay 50% amount of security deposit within 7 days of issue of bill and there

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is no mention if any consumer failed to pay balance amount of bill up to due date company can withdraw the option and ask to pay the security deposit of 45 days .

5. During the next hearing held on 24.11.2020, the respondent intimated that the petitioner had served a copy of the petition just two days back and hence sought fifteen days' time for submission of its reply. The Commission accepted the prayer made by the respondent and granted fifteen days' time for submission of reply. Subsequently, respondent has submitted their response and the same is presented below –

i. *That As per, " MPERC(Security Deposit) (Revision-I) Regulation 2009, the licensee is allowed to collect Security Deposit and Additional Security Deposit from its consumers, as prescribed in the regulation. The EHT/HT consumer may opt any one of the option mentioned in clause 1.7 (b) of above regulation. The petitioner has opted option of clause 1.7 (b) (iii), which is reproduced below:-*

“Security Deposit equivalent to 30 days' consumption shall be paid in form of cash or cheque (subject to realization or demand draft or pay order or banker's cheque. This shall however be subject to proviso that an additional amount equivalent to 50% of the above cash Security Deposit is paid in the form of Cash or Cheque (subject or realization) or Demand Draft or Pay Order or Banker's Cheque within 7 days of the date of issue of bill in each billing month and balance amount of current bill is paid on the due date(s) after adjusting such payment of 50% of Security Deposit without interest. Further, if the consumer does not make the payment of 50% Security Deposit within 7 days of the date of issue of Bill as stipulated above in any month, this option will no longer be available to that consumer and he would be required to make the payment of additional Security Deposit equivalent to 15 days' consumption in the form of Cash or Cheque (subject to realization) or Demand Draft or Pay Order or Banker's Cheque.

As evident from above clause, the consumer opting Security Deposit for 30 day has to fulfil following two conditions :-

(a) To deposit additional amount equivalent to 50% of the Security Deposited (of 30 days) in the form of Cash or Cheque (subject or realization) or Demand Draft or Pay Order or Banker's Cheque within 7 days of the date of issue of bill in each billing month.

b) And balance amount of current bill is paid on the due date(s) after adjusting such payment of 50% of Security Deposit without interest.

Non fulfilment of any of the above condition shall be considered as violation of the clause.

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ii. *That the petitioner was allowed to opt option of "Security Deposit of 30 days' as per clause 1.7(b) (iii) of above regulation RG17(1) of 2009. The consumer fulfilled the conditions of the clause till month of Feb'20. The bill Rs. 3,34,14,695/-for month of March 2020 (to be paid in April '20) was served to the petitioner on 25th March 2020 and the petitioner paid 50 % of security deposit (held with company i.e 50 % of Rs. 3,84,91,650/-) i.e Rs. 1,92,50,000/- on 30th March 2020. The balance amount of the monthly was supposed to be deposited by due date 9th April2020, but the petitioner failed to deposit the balance amount of Rs. 1,41,64,695/- by due date and deposited Rs. 1,00,00,000/- on 29th April'20 and remaining on later dates.*

iii. *That from above instances, it is clear that the consumer could not fulfilled the complete condition of clause 1.7(b) (iii) of regulation RG17(1) 2009 and was under 'default' condition, whatever may be the reason. The Default condition is defined in clause 1.4 in the said regulation as :*

"1.4 " Default" means failure to make payment by the due dates of Energy Bill. "

In such conditions, the option of 1.7(b) (iii) could not be applicable to the petitioner as per clause 1.7(d), which is reproduced as below :-

" The above options b(ii) and (iii) shall not be applicable to the consumers under default condition. These consumers shall have to tender Security Deposit in Cash only."

Therefore , the facility of 30 days' security deposit was withdrawn and petitioner was requested to deposit the revised security deposit according to clause 1.7 (b) (1) i.e. equivalent to consumption of 45 days.

iv. *That, in light of the above facts, the consumer has not fulfilled the condition of regulation and therefore cannot be granted facility of 30 days' Security Deposit facility as per clause 1.7(b) (iii). Hence the prayer of petitioner is not tenable.*

v. *That the petitioner has sought inclusion of rebates given in tariff order like rebate of Rs1/- or 20% whichever is less , in calculation of Security Deposit. The calculation of Security Deposit is done in accordance to clause 1.7(f) of MPERC(Security Deposit) (Revision-I) Regulation 2009 (RG-17(1) of2009}, which is reproduced as below:-*

"The amount of Security Deposit may be out by taking into account Fixed Charges, Energy Charges, Tariff minimum difference, electricity Duty, Energy Development Cess, Meter Rent etc. but excluding delayed payment Surcharge, Load Factor/Power Factor incentives etc."

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vi. The petitioner has himself admitted that the rebate of Rs 1/unit or 20% in tariff order was issued from 2016- 17 and the Security Deposit Regulation 2009 was notified on 21st 2009, and at that time such rebates were not in consideration. Therefore, it is clear that the licensee by itself can not deviate from provision of regulation. In light of this, the prayer of petitioner is not tenable.

6. During the hearing held on 05.01.2021, the Commission heard the final arguments put forth by the petitioner & the respondent. The Commission vide daily order dated 20.01.21 reserved the case for final order.

7. The Commission observed that pursuant to Regulation 1.7 (b) (iii) of the Security Deposit Regulations the petitioner has availed the option whereby the security deposit including Additional Security Deposit from EHT /HT consumer shall be accepted equivalent to 30 days' consumption in the form of cash or cheque (subject to realization) or Demand Draft or Pay Order or banker's cheque subject to proviso that an additional amount equivalent to 50% of the above cash Security Deposit is paid in the form of Cash or Cheque (subject to realization) or Demand Draft or Pay Order or Banker's Cheque within 7 days of the date of issue of bill in each billing month and balance amount of current bill is paid on the due date(s) after adjusting such payment of 50 % of Security Deposit without interest. It is also stated in said Regulation that if the consumer does not make the payment of 50 % Security Deposit within 7 days of the date of issue of Bill as stipulated above in any month, this option will no longer be available to that consumer and he would be required to make the payment of additional Security Deposit equivalent to 15 days' consumption in the form of Cash or Cheque (subject to realization) or Demand Draft or Pay Order or Banker's Cheque.

The Commission noted that although the petitioner has met the former condition by depositing the 50% of additional amount equivalent to 50% of the Security Deposit within 7 days of the date of issue of Bill, he failed to comply the later by not depositing the balance amount of current bill on the due date(s) after adjusting such payment of 50 % of Security Deposit without interest. As per the Regulations, both the conditions are required to be met for availing the aforesaid options and by not complying the later condition, the petitioner is not eligible to avail the option of "Security Deposit of 30 days' as per clause 1.7(b) (iii) of above regulation.

Petitioner in its second prayer has requested that while review of additional security deposit as per security deposits Regulation 2009 any rebate given in tariff order which is linked to consumption etc. should be considered like rebate of Rs 1/unit or 20% whichever is less is applicable in energy charges for new connection.

In this regard, Regulation 1.7 (f) of said Regulations provides that the amount of Security Deposit may be worked out by taking into account Fixed Charges, Energy Charges, Tariff minimum difference, Electricity Duty, Energy Development Cess, Meter Rent etc. but excluding Delayed Payment Surcharge, Load Factor/Power Factor incentives etc.

-MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

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The Commission noted that petitioner's prayer for considering rebate linked to consumption for working out security deposit is not provided in Regulation. Further, this Regulation excludes the incentives applicable at the time of notification, from the security deposit calculations.

The Commission observed that the provisions on which clarifications have been sought are explicitly clear and therefore, it finds no merit in the prayers made by the Petitioner. With the aforesaid observations and findings, the prayer is disallowed and the subject petition is dismissed.

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**(Shashi Bhushan Pathak)
Member (Law)**

-sd-

**(Mukul Dhariwal)
Member**

- sd-

**(S.P.S. Parihar)
Chairman**