

Sub : In the matter of transfer of the HJI connection and merger of load and premises of HJI-Division of Orient Paper Mills, Amlai in Orient Paper Mills, Amlai as per the orders/directions of MPERC dated 11.05.2012 and 04.08.2012.

ORDER

(Date of hearing: 5th February, 2013)

(Date of order: 19th February, 2013)

M/s Orient Paper Mills (OPM) Amlai, - Petitioner
Prop. Orient Paper & Industries Ltd.
PO Amlai Paper Mill, Dist. Shahdol (MP).

V/s

MP Poorv Kshetra Vidyut Vitaran Co. Ltd., - Respondent
Block No.7, Shakti Bhawan, Rampur, Jabalpur.

Shri R.K.Sanghi, Advocate and Shri R.K.Mohta, Vice President, M/s OPM appeared on behalf of the petitioner.

Shri Prakash Upadhyay, Advocate appeared on behalf of the respondent.

2. The petitioner, M/s Orient Paper Mills, Amlai had filed this petition in the matter of transfer of the HJI connection and merger of load and premises of HJI-Division of Orient Paper Mills, Amlai in Orient Paper Mills, Amlai.

3. **Facts of the case:**

- a) M/s Orient Paper Mills, Amlai (A unit of Orient Paper & Industries Limited) was an HT consumer of the respondent with a contract demand of 3000 kVA at 33 kV. The supply was being availed under HT agreement dated 08.03.1966 read with supplementary agreement dated 02.05.1995 for production of paper pulp. The tariff applicable to this connection was 33 kV Industrial Tariff (HV 3.1).
- b) M/s HJI, Division of Orient Paper Mills, Amlai (A unit of Orient Paper & Industries Limited) was another HT consumer of the respondent with a contract demand of 11000 kVA at 132 kV. The supply was being availed under HT agreement dated 22.11.2006 read with supplementary agreements dated 18.09.2009 & 22.09.2009 for chemical plant. The tariff applicable to this connection was 132 kV Power Intensive Industrial Tariff (HV 3.4).

Sub : In the matter of transfer of the HJI connection and merger of load and premises of HJI-Division of Orient Paper Mills, Amlai in Orient Paper Mills, Amlai as per the orders/directions of MPERC dated 11.05.2012 and 04.08.2012.

- c) The petitioner had sought permission for extending the supply of their captive power plant located in the premises of the petitioner to the premises of HJI. The respondent informed the petitioner that it is not possible to extend the supply of the CPP located in one premises to the other premises and for that purpose the petitioner will have to merge the load/premises of its HT connection with the HT connection of HJI and to obtain a common factory licence.
- d) The petitioner had obtained revised factory license on 17.04.2012 from the concerned Department for combined premises of OPM and HJI for the purpose of manufacturing of paper, caustic soda, chlorine, hydrochloric acid etc. Meanwhile, the petitioner and HJI filed a joint petition (Petition No. 27/2012) to the Commission to retain the existing power connections till receipt of common license and commencement of supply of CPP from OPM to HJI. By order dated 11.05.2012, the Commission directed OPM and HJI either to get disconnection of both the existing HT connections or to get an HT connection with enhanced contract demand, if needed. By letter dated 16.05.2012, the petitioner served a three months' notice to the respondent for termination of HT agreement dated 02.05.1995 in respect of power supply at 33 KV for contract demand of 3000 kVA. The respondent considered the request of the petitioner according to which the power supply to the petitioner was to be permanently disconnected on 31.08.2012.
- e) A provisional order under Section 126 of the Electricity Act, 2003 was issued by the respondent to the petitioner on 28.05.2012 by treating the power supply to HJI as unauthorized use. Subsequently, the final order was issued on 16.06.2012 for the period from 17.04.2012 to 06.06.2012. Another provisional assessment order was also issued by the respondent under Section 126 of the Act on 28.07.2012 on account of continued unauthorized use of power supply beyond 06.06.2012 for a period upto 25.07.2012. This provisional order has not yet been finalized by the respondent.
- f) The petitioner again filed a fresh petition no. 47/2012 with the request to the Commission to direct the respondent to comply with the Commission's order dated 11.05.2012 and to withdraw the impugned communications dated 28.05.2012 and 05.06.2012. The Commission passed an order on 04.08.2012 with the directions to the respondent that :

Sub : In the matter of transfer of the HJI connection and merger of load and premises of HJI-Division of Orient Paper Mills, Amlai in Orient Paper Mills, Amlai as per the orders/directions of MPERC dated 11.05.2012 and 04.08.2012.

- i. The surrender of 33 KV connection by the petitioner be regularized as per provisions of HT agreement executed and MP Electricity Supply Code, 2004.
 - ii. The remaining existing connection be got transferred to the merged entity i.e. M/s OPM after following due procedure as per HT agreement and the MP Electricity Supply Code, 2004.
- g) After termination of supply at 33 KV on 31.08.2012, a temporary supply of 3000 kVA at 33 KV over and above 11000 kVA was served to the petitioner for the period from 01.09.2012 to 30.09.2012 on the insistence of the petitioner. The supply at 132 KV could not be disconnected as there was a stay on such action by the District Court, Jabalpur on the application of the petitioner for arbitration in the matter. The District Court dismissed the case of the petitioner vide its order dated 15.09.2012. The petitioner submitted application for transfer of connection of HJI in the name of OPM alongwith merger of the premises of both the connections on 16.08.2012 read with letters dated 27.08.2012, 28.08.2012 and 29.08.2012. The respondent vide its letter dated 30.08.2012 conveyed approval to the merger of load / premises on some terms and conditions including payment of supply affording charges for 11000 kVA at the rate of Rs. 750 per kVA. The petitioner represented against the said terms and conditions to the respondent. The respondent rejected the representation on 18.09.2012. The petitioner executed the supplementary agreement and submitted it on 29.09.2012. However, the petitioner was aggrieved with the said terms and conditions of the aforesaid sanction conveyed by the respondent vide letter dated 30.08.2012. Hence, this petition.
- h) The petitioner had filed this petition with the following prayer to the Commission :
 - i. To direct the respondent to act as per the orders dated 11.05.2012 and 04.08.2012 passed by the Commission and to treat the existing connection of HJI as transferred to OPM and not as a new connection of OPM;
 - ii. To direct the respondent to refrain from levying any supply affording charges and hold that the supply affording charges are not leviable on transfer of HT connection in the name of Orient Paper Mills (merged entity);
 - iii. To direct the respondent to refrain from levying any extra demand on the basis of HV 3.1. category tariff on the consumption by HJI-Division of Orient Paper Mills, Amlai from 17.04.2012 to

Sub : In the matter of transfer of the HJI connection and merger of load and premises of HJI-Division of Orient Paper Mills, Amlai in Orient Paper Mills, Amlai as per the orders/directions of MPERC dated 11.05.2012 and 04.08.2012.

30.09.2012 and hold that till the power consumed by two different factories can be ascertained by two different meter readings and separate billing of the respective factories and there is no interconnection between the two connections, the charges for power consumption should be calculated based on the same tariff as was applicable.

- iv. To direct that the agreement be amended to the extent of modifying the period of notice from three months to one month as provided in the Madhya Pradesh Electricity Supply Code, 2004.

4. The matter was heard on 05.02.2013. The respondent made a written submission. The petitioner submitted a rejoinder to the reply given by the respondent. The respondent further submitted reply to the said rejoinder.

5. During the hearing on 05.02.2013, Counsel for the petitioner reiterated the contents of the petition. He further requested the Commission to direct the respondent to dispose of the application submitted by the petitioner regarding standby supply within the stipulated time. He also submitted that the case registered under Section 126 of the Act is still not withdrawn by the respondent.

6. During the hearing, Counsel for the respondent stated that :

- a) The respondent does not dispute the legal position that the supply affording charges are not applicable in case of transfer of name.
- b) Since the activities of the petitioner are mixed activities, therefore it does not qualify HV 3.4 category tariff and demand of HV 3.1 category tariff from the petitioner is just and proper as per prevailing tariff order. He also submitted that the consumption in the merged premises from 17.04.2012 to 31.08.2012 was metered at two separate points at the insistence of the petitioner and therefore, billing may be done at HV 3.1 tariff for the total consumption of both the connections.

Sub : In the matter of transfer of the HJI connection and merger of load and premises of HJI-Division of Orient Paper Mills, Amlai in Orient Paper Mills, Amlai as per the orders/directions of MPERC dated 11.05.2012 and 04.08.2012.

- c) The HT agreement dated 02.05.1995 in respect of M/s OPM is a statutory agreement executed prior to coming into effect of the MP Electricity Supply Code, 2004. This agreement was saved under Section 185 of the Electricity Act, 2003. In the case of M/s Jaiprakash Associates Ltd., Rewa vs. MP Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur (Writ Appeal No. 1166 of 2008), the Hon'ble High Court of MP Jabalpur decided that termination of agreement was to be done in accordance with the provisions contained in the earlier agreement which was executed prior to coming into effect of the MP Electricity Supply Code, 2004.

7. On hearing the petitioner & the respondent and considering their written submissions, the Commission is of the view that :

- a) Since the existing HT connections of OPM and HJI were only merged and no new connection was served to the petitioner, supply affording charges are not required to be levied post such merger. This was also agreed to by the Counsel for the respondent during the course of hearing on 05.02.2013.
- b) The respondent had registered the case for the period from 17.04.2012 to 06.06.2012 under Section 126 of the Act during the pendency of the case in the Commission. The Commission noted that another provisional assessment order was issued on 28.07.2012 for the period beyond 06.06.2012 and upto 25.07.2012. In its order dated 04.08.2012 the Commission held that its order dated 11.05.2012 had been completely misconstrued by the respondent who had raised the claim of unauthorized use of electricity even for the period the matter was under adjudication with the Commission. However, the matter regarding

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unauthorized use of electricity under Section 126 of the Act shall be dealt with by the appellate authority referred to in Section 127 of the Act. The petitioner may approach the appropriate authority for the same.

- c) Since the agreement in respect of HT connection to OPM was terminated on 31.08.2012 and the connection was allowed temporary power from 01.09.2012 to 30.09.2012, the merger of OPM and HJI became operative beyond 30.09.2012. Also, these HT connections were allowed to avail separate HT supplies upto 30.09.2012 (as per respective agreements) the billing for the period upto 30.09.2012 may be done to HJI and OPM separately as per applicable rates of permanent and temporary supply based on the consumption recorded and in terms of the prevailing tariff order. Regarding billing for the period beyond 30.09.2012 the Commission does not find any ground for billing separately to the petitioner at HV 3.4 tariff to HJI and at HV 3.1 tariff to OPM based on the consumption recorded beyond 30.09.2012 merely on the plea that both these units are having separate meters. Therefore, higher tariff i.e. HV 3.1 tariff shall be applicable for mixed load of OPM and HJI.
- d) The period of notice from three months was already provided in the HT agreement dated 02.05.1995 in respect of M/s OPM prior to coming into effect of the MP Electricity Supply Code, 2004 and the agreement was saved under Section 185 of the Electricity Act, 2003. The Commission, after going through the judgment of the Hon'ble High Court of MP, Jabalpur in case of M/s Jaiprakash Associates Ltd., Rewa v/s MP Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur, is in agreement with the respondent that the period of notice of termination of agreement may be considered as three months only.

Sub : In the matter of transfer of the HJI connection and merger of load and premises of HJI-Division of Orient Paper Mills, Amlai in Orient Paper Mills, Amlai as per the orders/directions of MPERC dated 11.05.2012 and 04.08.2012.

- e) The application for standby power may be disposed of by the respondent within the stipulated time as per the provisions contained in the MPERC (Power purchase and other matters with respect to conventional fuel based Captive Power Plants) (Revision-I) Regulations, 2009.

Ordered accordingly,

sd/-

(Alok Gupta)
Member

sd/-

(A.B.Bajpai)
Member

sd/-

(Rakesh Sahni)
Chairman

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A hearing was held on 05.02.2013. Accordingly, a draft order is placed on the file for favour of kind perusal and approval please.

Director (L&R)

Member (G)

Member (B)

Chairman