

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : In the matter of temporary reduction in Contract Demand in terms of Regulation 11.2 read with Regulation 11.10 of the Madhya Pradesh Electricity Supply Code, 2004 alongwith Clause 22(a) of the HT Agreement dated March 18, 2012.

Petition No. 89/2012

ORDER

(Date of hearing 5th February, 2013)

(Date of order 8th February, 2013)

M/s Prism Cement Ltd., - Petitioner
Village Mankahari, Post Office Bathia,
Tehsil Rampur Baghelan,
Dist. Satna (MP) - 485001.

V/s

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

Shri R.S.Pandey, AVP (Legal), Shri Manish Singh, Sr. GM (E&I) and Shri Arvind Singh, Asst. Manager appeared on behalf of the petitioner.

Smt. S.Dixit, EE appeared on behalf of the respondent.

2. The petitioner, M/s Prism Cement Ltd. has filed this petition in the matter of temporary reduction in contract demand in terms of Regulation 11.2 read with Regulation 11.10 of the Madhya Pradesh Electricity Supply Code, 2004 alongwith Clause 22(a) of the HT Agreement dated March 18, 2012.

3. Facts of the case

(a) The petitioner has an HT connection for 40 MVA at 132 KV. On 02.03.2012, the Deputy Director, Industrial Health & Safety, Satna ordered shut down of Unit-II of the industry on account of failure of the CF silo of this unit. This fact was consequently communicated by the petitioner to the respondent on 03.03.2012. The petitioner also indicated in his communication that the load requirement would, during the period of shutdown, be about 22 MVA instead of 40 MVA. On 09.03.2012, the

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petitioner formally requested reduction of contract demand from 40 MVA to 22 MVA until the resumption of operation in the plant. This was followed up by another letter dated 19.03.2012 after discussions in this regard had been held between the petitioner and the respondent on 16.03.2012. The respondent informed the petitioner on 29.03.2012 that since temporary reduction in contract demand cannot be allowed for more than six months during the initial period of any HT agreement, his request could not be considered until resumption of plant activities. The respondent advised the petitioner to approach the respondent again after such resumption of plant activities. The Deputy Director, Industrial Health & Safety, Satna subsequently permitted resumption of plant activities on 03.07.2012. Accordingly, the plant was restarted on 06.07.2012. The petitioner sought temporary reduction for the period from 02.03.2012 to 10.07.2012. This request of the petitioner was finally rejected by the respondent vide its letter dated 17.11.2012. Hence this petition.

4. The petitioner's request to the respondent was made under Regulations 11.2 and 11.10 of the M.P. Electricity Supply Code, 2004. The respondent's view is that the present case is not covered under Regulation 11.2 and therefore Regulation 11.10 does not apply.

5. The case was heard on 05.02.2013. Counsel for the petitioner argued that the case at hand gets covered by the Regulation 11.2 and 11.10 since the accident was beyond the control of the petitioner. In this regard, Counsel referred to the judgments issued by Hon'ble Supreme Court in respect of M/s Dhanrajamal Govindram Vs Shamji Kalidas and Co. and Northern India Iron & Steel Co. Vs State of Haryana wherein it was laid down that the term 'Force Majeure' can be interpreted widely. Counsel also argued that the Regulation 11.10 also applies since the accident was an unforeseen circumstance. The respondent on the other hand stood by the written

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submissions on its behalf. In the written submissions the respondent has mainly argued that since the instant event does not get covered under Regulation 11.2, Regulation 11.10 cannot apply.

6. The Commission has considered the arguments put forth by the rival parties. The Commission does not find correct the petitioner's argument that the accident in the CF silo of Unit II could be included under 'Force Majeure' conditions. This is so because what events would get covered under 'Force Majeure' is clearly defined under Regulation 11.1. To this extent, the Commission agrees with the respondent.

7. The respondent has, however, misconstrued the applicability of Regulation 11.10. A careful reading of this Regulation would reveal that the issues covered under this Regulation do not have to relate to those under Regulation 11.2. The two Regulations 11.2 and 11.10 operate independently and any effort at establishing a contingent nexus between the two would be fallacious.

8. The accident in question undoubtedly qualifies as an unforeseen situation and necessitates application of Regulation 11.10. It was incumbent on the respondent to consider the petitioner's request within the meaning of Regulation 11.10 when the initial request was made on 09.03.2012 or after discussions on 16.03.2012 or on the request of the petitioner on 19.03.2012. Indeed, the letter dated 29.03.2012 was misdirected. It is true that there is a limit of six months on the period for which temporary reduction can be sought during the initial agreement period. Therefore, the reduction as requested could have been granted right away making clear that the maximum permissible limit would be six months. In the event, it turned out, that the period was shorter than six months.

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9. The point need not be belaboured further. The Commission directs the respondent to take action under Regulations 11.10 and 11.11 of the M.P. Electricity Supply Code, 2004 and decide the matter within 15 days.

Ordered accordingly,

sd/-
(Alok Gupta)
Member

sd/-
(A.B.Bajpai)
Member

sd/-
(Rakesh Sahni)
Chairman