

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of Non-compliance of Tariff Order FY 2016-17 and further directives of MPERC in the matter relating to the subsidy (Rebate) to our Green Field Project.

ORDER

(Date of Order: 29th September'2023)

M/s. Ambica Aluminium, - Petitioner

V/s

M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., - Respondents

Shri Mahendra Kumar Jain, appeared on behalf of Petitioner.

Shri Vikas Upadhyay, Advocate and Shri Sunil Tripathi, DGM appeared on behalf of Respondent.

The Petitioner has filed the subject petition on Non-compliance of Tariff Order FY 2016-17 and further directives of MPERC in the matter relating to the subsidy (Rebate) to their Green Field Project. The petitioner in its petition has made following prayers:

- i. *To take action against the defaulters under Section 142 of the Indian Electricity Act 2003 for non-compliance of directions of MPERC.*
- ii. *To clarify that the date of commencement the agreement is 26.04.2016 i.e. in FY 2016-17, as already clarified earlier by MPERC vide letter No. MPERC/D(RE)/286 dated 20.02.2020.*
- iii. *The petitioner is fulfilling the rebate conditions of the tariff order.*
- iv. *To direct the Respondent to allow the rebate and immediately pay balance amount of Rs. 97,52,421/- of the green field new connection along with interest @ Banks lending rates from respective dates.*
- v. *To direct the respondent to provide the month wise bill after adjusting the month wise rebate & interest amount.*
- vi. *Not to insist on payment of Bills pending decision in this matter.*

2. The brief facts of the case are as under:-

- (i) The petitioner is a HT consumer under tariff category HV-3.1 who had executed an agreement with Respondent Company for his new HT connection for Contract demand of 315 kVA on 33 KV under green field project on 04th March 2016 and availed power supply for project on 26.04.16. The Commission in his tariff order for FY 2016-17 had given a rebate for new HT connection for Green Filed project under tariff category HV 3.1 of Rs 1 per unit or 20% whichever is less under clause (f) of specific terms and conditions of HV-3 as per following provisions :-

“Rebate for new HT connections: A rebate of Rs 1/Unit or 20% whichever is less is applicable in energy charges for new HV 3.1 tariff category connection for the monthly consumption recorded. Provided these connections are given to green field projects and no rebate is applicable for new connections obtain by virtue of change in ownership in existing connection.

- (ii) Respondent Discom has not provided the rebate to petitioner in spite of his repeated request and meeting all the pre requisites.
- (iii) The matter was referred to MPERC by Respondent for seeking clarification for green field project to connection served to green field project during year 2016-17. The MPERC vide letter dated 20/02/2020 has provided clarification.
- (iv) Subsequently, the petitioner has been provided the rebate for FY 2016-17 on 19/09/19. However, rebate for FY 2017-18 and onwards has not been provided in light of provisions of Retail supply tariff order for FY 2017-18 under clause (e) of specific terms and conditions for HV-3 as per the following:

Rebate for new HT connections: A rebate of Rs 1/Unit or 20% whichever would be less is applicable in energy charges for new connection for the consumption recorded. The rebate shall be allowed for a period of five years from the date of connection for such new projects for which **agreements for availing supply from licensee are finalized during FY 2016-17 and FY 2017-18.** Provided these connections are served to green field projects only and no rebate is applicable for new connections obtain by virtue of change in ownership in existing connection.

Note: the green field project shall be those projects where the consumer invests in the construction of new industry/plant from the ground up and there was no prior construction/ structure on that particular land.

- (v) Thus, being aggrieved by non-compliance of the Commission’s tariff order FY 2016-17 and further directives of MPERC in the matter relating to the subsidy (Rebate) to his Green Field Project, petitioner has filed said petition.
3. The petitioner in the subject petition has made the following broad submissions: -
- i. *MPERC vide retail Tariff Order for FY 2016-17 provided rebate on energy charges for new HT connection; "A rebate of Rs. 1 per unit or 20% whichever is less is applicable in energy charges for new HV 3.1 Tariff category connection for the monthly consumption recorded. Provided these connections are given to Green Field Projects."*
 - ii. *The petitioner had established a (new) Green Field Project in the name of M/s AMBICA ALUMINIUM at Village: Garra, Dist.: Balaghat (MP) and had requested Respondent for power supply to his Green Field Project. Respondent vide letter dated 15/02/2016 sanctioned the New HT Connection and advised for making the payments. The*

payments were made and receipts from Respondent obtained on 25/02/2016. The agreement for the power supply connection was signed on 4th day of March, 2016. Subsequently, petitioner had requested vide letter dated 26/04/2016 to Respondent for early startup of the power supply since it had already made the payment and complied other formalities. The power supply to our project was started on 26/04/2016.

- iii. *The Power Supply was started in the FY 2016-17 (on 26/04/2016). The petitioner fulfilled all the requirements for qualifying to the rebate as indicated above. Respondent did not provide the rebate in spite of petitioner's repeated requests at various levels.*
- iv. *The matter was referred to MPERC by the Respondent apparently to delay/avoid the rebate. The MPERC vide letter dated 20/02/2020 clarified that the rebate was applicable to petitioner's project. Even so, the rebate has not been provided to petitioner's project.*
- v. *The Para No. 2(a) of page no. 1 of the agreement is reproduced here under: -
"Commencement of this agreement shall date either from the actual date on which the consumer has begun to take electrical energy under this agreement or the day immediately following the expiry of specified notice period of intimation of 90 days as per Electricity Supply Code, 2013 as in force and as amended from time to time served by the East Discom's Executive Engineer of the area on the consumer that supply of electrical energy is available under this agreement whichever is earlier."*
- vi. *In the instant case, power supply was connected on 26-04-2016, accordingly the agreement commenced from 26-04-2016 only, for this new connection (taken for green field project)*
- vii. *As per the Retail Supply tariff order of Madhya Pradesh Electricity Regulatory Commission for FY 2016-17, Petitioner's unit is eligible for rebate @ Rs. 1/unit OR 20% whichever is less as the agreement commenced in the FY 2016-17 for the new connection to green field project. The rebate clause of the Tariff order for FY 2016-17 is reproduced here under:
" A rebate of Rs. 1/unit or 20% whichever would be less is applicable in energy charges for new -HV 3.1 tariff category connection for the monthly consumption recorded. Provided these connections are given to green field projects only and no rebate is applicable for new connection obtain by virtue of change in ownership in exist connection."*
- viii. *MPERC vide their retail supply tariff order FY 2017-18 extended the rebate for a period of five year from the date of connection. The rebate has been again extended till FY 2021-22 vide MPERC Retail Tariff Order FY 2018-19.*
- ix. *Thus, the petitioner has fulfilled all the above-mentioned criteria for getting rebate and it had also received a letter from Respondent (CGM(CBC), MPPKVCL, Jabalpur) dated 28/04/2018 granting rebate as specified above.*

- x. Respondent (The Chief General Manager (CBC), MPPKVCo. Ltd. Jabalpur) vide letter No. MPPKVCo. Ltd./CBC/886 Dated 28/04/2018 addressed to Respondent (SE (O&M) Balaghat) & copy endorsed to Petitioner, had informed that during April 2016 to March 2018, a total rebate of Rs. 26,58,570/- has become due and first installment of Rs. 8,85,660/- was given in April 2018 bill and also informed that the balance rebate of Rs. 17,71,720/- will be given in the bills for May 2018 & June 2018.
- xi. The petitioner was surprised to see the electricity bill ID No. 806952722150 dated 28 May, 2018 in which an amount of Rs. 8,85,860/- (rebate for 1st installment), Rs. 1,31,744/- (rebate for the month of April 2018) and Rs. 1,66,727/- (rebate for the month of May 2018) were added for payment and they had withdrawn the rebate amount for new green field project against the total rebate given for the F.Y. 2016-17 & 2017-18, amounting to Rs. 26,57,580/-.
- xii. The petitioner approached to Respondent to grant the rebate, but Respondent had refused it by letter No. PK/CBC/2040 dated 27/06/2018 taking back legitimate rebate as allowed under Tariff order
- xiii. In response to the clarifications sought by Respondent (CGM vide letter dated 19/09/2019,) **Secretary, MPERC vide his letter No. MPERC/D(RE)/286 dated 20/02/2020 (Annex-I9) clarified that the rebate was applicable to petitioner's Electricity Connection.** Relevant extract of this letter are reproduced here under;
- "Rebate for new HT connections: A rebate of Rs. 1/- per unit or 20% whichever is less is applicable in energy charges for new HV 3.1 tariff category connection for the monthly consumption recorded. Provided these connections are given to green field projects and no rebate is applicable for new connections obtain by virtue of change in ownership in existing connection."

According to the above, for the period of applicability of that tariff order, aforesaid rebate was applicable to the new connections served (green field project) during FY 2016-17.

Since the connection mentioned in the letter was served in the financial year 2016-17 i.e. after issue of the retail supply tariff order, therefore the rebate as indicated above was applicable to the consumer for the remaining period of applicability of that tariff order. Further the provisions of the Retail Supply Tariff Order for FY 2017-18 issued by the Commission on 31.03.2017 in Petition No. 71 of 2016 under clause (e) of specific terms and conditions for HV 3 category of consumers is as given below:

"Rebate for new HT connections: A rebate of Rs. 1/- per unit or 20% whichever would be less is applicable in energy charges for new connection for the consumption recorded. The rebate shall be allowed for a period of five years from the date of connection for such new projects for which

agreements for availing supply from licensee are finalized during FY 2016-17 and FY 2017-18. Provided these connections are served to green field projects only and no rebate is applicable for new connections obtain by virtue of change in ownership in existing connection".

The aforesaid conditions for applicability of the rebate was for such new projects for which agreements were finalized during FY 2016-17 and 2017-18 only and accordingly rebate would be applicable, hence it is self-explanatory and does not require any further clarification in this regard."

- xiv. *In response to the petitioner letter dated 22.04.2022, Respondent office (CGM (Commercial)) vide letter No. 280 dated 02.06.2022 informed that the subsidy has been adjusted in the monthly bill, without giving details. In fact, only a rebate of Rs. 10,21,608/- (Rs. Ten lakhs twenty-one thousand six hundred eight only) has been provided in the Bill dated 30 May, 2022 against the total due rebate of Rs. 1,05,46,608/- (Rs. One crore five lakh forty-six thousand six hundred eight only).*
- xv. *In response to letter dated 20/05/2022 from Respondent office (SE(O&M) to CGM) (Annex-19) recommending the subsidy to AMBICA ALUMINIUM, Petitioner requested Respondent office (SE (O&M)) vide letter dated 04/07/2022 providing the subsidy from date of connection (26 April 2016) to March 2022 giving details of subsidy amounting to Rs. 1,05,46,608/-.*
- xvi. *In response petitioner letter dated 04.07.2022, Respondent (SE (O&M)) vide his letter No. 1738 dated 13/09/2022 (Annex-25) informed that the adjustment of Rs. 10,21,608/- has been done in the bill dated May 2022. Respondent further informed that it is not possible to give exemption of subsidy of Rs. 1/- per unit for 5 years and advised not to make correspondence in this matter.*
- xvii. *It is thus clear from the above facts that Respondent has intentionally not complied with the orders & directives of MPERC and appropriate action is therefore requested.*
- xviii. *The petitioner has also submitted the following:*
- a) *Their unit connection was served on 26.04.2016 i.e. during FY 2016-17.*
- b) *As per clause 2(a) of the agreement the date of commencement of supply, i.e. date of connection is 26.04.2016, earlier than 90 days' notice period & falls under the year 2016-17, accordingly their project fulfills all the requirements of the green field project & is entitled for rebate on electricity as per the **MPERC Tariff Order**. "Date of commencement of supply' means the day immediately following the date of expiry of a period of one month for in case of LT consumers and three months in case of HT or EHT consumer from the date of intimation to an intending consumer of the availability of power or the date of actual availing of supply by such consumer, whichever is earlier;"*

- c) *Respondent has not complied with MPERC's retail Tariff Order FY 2016-17 and the directives issued vide letter No. MPERC/D(RE)/286 dated 20/02/2020 in this matter.*

4. At the motion hearing held on 13.06.23, the Commission admitted the petition. Petitioner was directed to serve notice to the Respondent within 7 days. The Respondent was directed to submit response within 10 days thereafter and serve copy thereof to the Petitioner simultaneously.

5. At the hearing held on 18.07.23, the respondent informed that the copy of petition is received by him on 12.07.2023 and therefore requested for three weeks' time to file the reply. The Commission granted two weeks' time to respondent to file reply and directed to serve the copy thereof to the Petitioner simultaneously.

6. Vide affidavit dated 10.08.2023 the Respondent furnished their reply whereby following broad submissions were made: -

- i. *That, the present petition involves interpretation of Retail Supply tariff orders issued for FY 2016-17 and 2017-18 thus the answering respondent is not filing para wise reply however craves leave of his Hon'ble Commission to file it in case occasion so arise.*
- ii. *That, it is undisputed fact that the petitioner herein has applied for HT connection with contract of demand of 315 KVA on 33 KV supply which has been sanctioned and agreement have been executed for high tension supply between petitioner and respondent on 4th March 2016.*
- iii. *That, under this supply agreement the supply to the petitioner commenced from April 26th 2016*
- iv. *That, the Commission has notified retail supply tariff order for financial year 2016-17 and the specific terms and conditions of the tariff schedule HV- 3 Clause (f) provides for rebate to new HT connection provided these connections are given to greenfield projects.*
- v. *That, the Commission for the FY 2017-18 has prescribed a similar rebate however the terms of rebate has been changed with further stipulation for lock-in period for 5 year which has been further clarified in retail supply order for FY 2018-19 it was allowed up to FY 2021-22*
- vi. *That, on 24/03/18 the petitioner has claimed rebate under greenfield project which has been processed by the answering respondent.*
- vii. *That, the answering respondent had faced difficulty in processing the claim of petitioner therefore under clause 1.23 and 1.24 of the retail supply tariff order of 2016-17 and 2017-18 the answering respondent have sought clarification from the Commission.*
- viii. *That, the Commission has clarified the same vide letter dated 20/02/2020 and accordingly the benefit of rebate was extended to petitioner for FY 2016-17.*
- ix. *That, it is settled preposition of law that under fiscal statute, the exemptions/rebate are liable to be interpreted strictly and since the retail tariff order 2016-17 do not provide for the rebate under clause (f) of the specific terms and condition for HV-3 category connections, beyond financial year therefore the benefit has been restricted to the FY 2016-17 only.*

- x. *That, it is respectfully submitted that the benefit of clause (e) of the specific terms and conditions for HV-3 category consumers in retail supply tariff order for FY 2017-18 would not be applicable to the case of petitioner as for the said tariff order the connection of the petitioner was not new and the benefit under tariff order FY 2016-17 was restricted only for a period of 1 year.*
- xi. *That, there is nothing in the tariff order of FY 2017-18 providing for extension of the said benefit to the connection which were made in the FY 2016-17.*
- xii. *That, it is respectfully submitted that from joint reading of the tariff order for financial year 2016-17, 2017-18, 2018-19 would make it clear that the rebate was restricted for financial year 2016-17 and not extended any further. The answering respondent cannot go beyond the tariff order and grant exemption /rebate which is not provided.*
- xiii. *That, the answering respondent is bound by the tariff order the petitioner in the entire petition failed to demonstrate that the benefit of the 5 year rebate as prescribed in the tariff order of FY 2017-2018 would be applicable.*

7. At the hearing held on 16.08.2023, the matter was listed for arguments. During hearing, Petitioner as well as respondent reiterated their submissions and completed their arguments. The case was reserved for order.

Commission's observations and Findings

8. The Commission has perused the submission made by the parties. The question before the Commission for consideration is whether the petitioner meets the eligibility criteria for availing rebate under clause (e) of specific terms and conditions for HV 3 category connections for new green field project for FY 2017-18 and onwards, and whether he is eligible for aforesaid rebate implicitly by virtue of entitlement of rebate through Retail supply tariff order for FY 2016-17.

9. The petitioner in its submission stated that it had executed and signed an agreement with Respondent for new HT connection under Green field project on 04.03.2016 and availed power supply on 26.04.2016. The Commission in tariff order for FY 2016-17 had given a rebate for new HT connection for Green Filed project under tariff category HV 3.1 of Rs 1 per unit or 20% whichever is less under clause (f) of specific terms and conditions as per following provisions :-

Clause (f)

“Rebate for new HT connections: A rebate of Rs 1/Unit or 20% whichever is less is applicable in energy charges for new HV 3.1 tariff category connection for the monthly consumption recorded. Provided these connections are given to green field projects and no rebate is applicable for new connections obtained by virtue of change in ownership in existing connection.

10. The petitioner submitted that he had been denied the rebate for new connection by Respondent for FY 2016-17 and onwards. However, after repetitive persuasion made by the petitioner, Respondent vide letter dated 20/02/2020 had sought clarification from the Commission regarding green field rebate to connections served to green field projects during the year 2016-17. The Commission vide letter dated 20/02/2020 has given following clarification –

“Sub: Clarification for Green Field rebate to connection severed to green field projects during the year 2016-17.

Kindly refer to above cited letter vide which clarification in the subject matter was sought. In this regard, please refer to the Retail supply tariff order for FY 2016-17 issued by the Commission on 15.4.2016 in the petition no: 73 of 2015 filed by the Discoms of the State. With regard to rebate for new HT connections, the provision in clause (f) of the specific terms and conditions for HV-3 category consumers is as given below:

(f) "Rebate for new HT connections: A rebate of Rs. 1/Unit or 20% whichever is less is applicable in energy charges for new HV 3.1 tariff category connection for the monthly consumption recorded. Provided these connections are given to green field projects and no rebate is applicable for new connections obtained by virtue of change in ownership in existing connection”.

According to the above, for the period of applicability of that tariff order, aforesaid rebate was applicable to the new connections served (green field project) during FY 2016-17.

Since the connection mentioned in the letter was served in the financial year 2016-17 i.e after issue of the retail supply tariff order, therefore the rebate as indicated above was applicable to the consumer for the remaining period of applicability of that tariff order. Further, the provisions of the Retail Supply Tariff order for FY 2017-18 issued by the Commission on 31.3.2017 in Petition No. 71 of 2016 under clause (e) of specific terms and conditions for HV-3 category of consumers is as given below:

“(e) Rebate for new HT connections: A rebate of Rs 1/Unit or 20% whichever would be less is applicable in energy charges for new connection for the consumption recorded. The rebate shall be allowed for a period of five years from the date of connection for such new projects for which agreement for availing supply from licensee are finalized during FY 2016-17 and FY 2017-18. Provided these connections are served to green field projects only and no rebate is applicable for new connections obtain by virtue of change in ownership in existing connection”.

The aforesaid conditions for applicability of the rebate was for such new project for which agreements were finalized during FY 2016-17 & 2017-18 only and accordingly would be applicable hence it is self-explanatory and does not require any further clarification in this regard.”

11. Subsequently, the petitioner had been allowed the rebate for FY 2016-17 by the Respondent only on 19.09.19. However, rebate for FY 2017-18 and onwards has not been provided in light of provisions of Retail supply tariff order for FY 2017-18 under clause (e) of specific terms and conditions for HV3 category consumers. Referring to para 2 (a) of Agreement, petitioner stated that in the instant case, power supply was connected on 26-04-2016 and accordingly the agreement commenced from 26-04-2016 only, for this new connection. *The Para No. 2 (a) of page no. 1 of the agreement Is reproduced*

hereunder:-

"Commencement of this agreement shall date either from the actual date on which the consumer has begun to take electrical energy under this agreement or the day immediately following the expiry of specified notice period of intimation of 90 days as per electricity supply Code, 2013 as in force and as amended from time to time served by the East Discom's Executive Engineer of the area on the consumer that supply of electrical energy is available under this agreement whichever is earlier."

12. The Respondent in its submission stated that benefit of clause (e) of the specific terms and conditions for HV-3 category consumers in Retail supply tariff order for FY 2017-18 would not be applicable to the case of petitioner as, for the said tariff order the connection of the petitioner was not new and the benefit under tariff order FY 2016-17 was restricted only for a period of 1 year. It was stated that joint reading of the tariff order for financial year 2016-17, 2017-18, 2018-19 would make it clear that the rebate was restricted for financial year 2016-17 and not extended any further. The answering respondent cannot go beyond the tariff order and grant exemption /rebate which is not provided.

13. Under the provisions of the Retail Supply Tariff order for FY 2017-18 under clause (e) of specific terms and conditions for HV-3 category of consumers, the Commission allowed rebate for new HT connections for a period of five years from the date of connection for such new projects **for which agreement for availing supply from licensee are finalized during FY 2016-17 and FY 2017-18**, provided these connections were served to green field projects only and no rebate is applicable for new connections obtain by virtue of change in ownership in existing connection. In the instant case, the petitioner's agreement was signed and executed on 04.03.2016 and power supply commenced on 26.04.2016.

14. As regard agreement for power supply for HT connection, the relevant provisions under clause 7.17 of Madhya Pradesh Supply Code, 2013/ 2021 are as under :-

Agreement:

*7.17 An agreement, in the standard format, shall be executed by the applicant on the stamp paper of a prescribed value, for getting a new connection and for change in the agreed parameters like contract demand etc. In case of any special circumstances, special clauses may be added to the agreement, if agreed to between the licensee and the consumer, provided such clauses do not contravene the provisions of the Electricity Act, 2003 (36 of 2003), and other rules and regulations/ codes in force. These special clauses shall form a part of the agreement. **A copy of the agreement shall be given to the consumer after finalization.** The plan (map) agreed upon and signed by both the consumer and the licensee shall form a part of the agreement.*

(Emphasis supplied)

15. Clause 2(a) and (b) of standard agreement format for EHT/ HT power supply (Annexure 4/5) of the Electricity Supply Code 2013/ 2021 are reproduced as under:

2.(a) Commencement of this Agreement shall date either from the actual date on which the Consumer has begun to take electrical energy under this Agreement or the day

immediately following the expiry of specified notice period of intimation of days as per Electricity Supply Code, 2021 as in force and as amended from time to time served by theDiscom's Executive Engineer of the area on the Consumer that Supply of electrical energy is available under this Agreement, whichever is earlier.

- (b) Subject to the foregoing sub-clause (a) the Consumer shall commence to take electrical energy under the conditions of this Agreement within the specified notice period from the date of notice of the intimation referred to in sub-clause (a) foregoing; and shall further complete the electrification of his premises within a reasonable time. In the event of non availing the supply by the consumer as per the above terms, he/it shall be liable to pay minimum charges as specified in the tariff as in force from time to time.

16. In the instant case, petitioner has executed its agreement with Respondent on 04.03.2016 and a copy of the same was also provided to the Petitioner vide letter no. 8195 dtd. 04.03.2016. On the other hand power supply commenced on 26.04.2016, which is the date of commencement of agreement in this case. The petitioner has availed the aforesaid rebate for FY 2016-17 pursuant to the Commission's clarification dated 20/02/2020 and hence there is no dispute regarding rebate for FY 2016-17. As regard granting rebate for FY 2017-18 and thereafter, the eligibility criteria, inter-alia, includes that **“the rebate shall be allowed for a period of five years from the date of connection for such new projects for which agreement for availing supply from licensee are finalized during FY 2016-17 and FY 2017-18”**. The Clause 7.17 of Supply Code stipulates that **“.....A copy of the agreement shall be given to the consumer after finalization,”** which infers that activity of finalization of agreement precedes commencement of power supply. In the context of tariff orders and provisions of supply code in vogue, the phrases **“finalization of agreement”** and **“commencement of agreement”** were construed differently and distinctively and were not alike as claimed by the petitioner in its petition. Finalization of agreement occurs as soon as both the parties agree to terms and conditions therein and sign the agreement. As such **‘finalization of agreement’** is not the same as **‘commencement of agreement’** unless it is specifically so mentioned in the agreement itself.

17. It is pertinent to mention that said rebate specified in Retail supply tariff order for FY 2016-17 along with associated terms and conditions was limited to FY 2016-17 as also specified in clarification issued by the Commission. The date of finalization of agreement in this case was 04.03.2016, which was prior to FY 2016-17 (1st April 2016 to 31st March 2017). Therefore, petitioner is not found eligible for availing rebate under clause (e) of specific terms and conditions for HV 3 category connections for new green field project for FY 2017-18 and onward period as per prevailing tariff orders. Accordingly, the petition is dismissed and disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman