

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition u/s. 86(1)(E) r/w Section 151 of the Code of Civil Procedure, 1908.

Petition No. 16/2018

ORDER

(Date of hearing: 09th October, 2018)

(Date of Order: 22nd October, 2018)

The Madhya Pradesh Textile Mills Association

Jall Subhagraha, 56/1, South Tukoganj, Indore – 452 001

- **Petitioner**

Vs.

M.P. Power Management Co. Ltd.

Block No. 11, Rampur, Jabalpur – 482 008

- **Respondent No. 1**

M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd.,

Nishtha Parisar, Govindpura, Bhopal – 462 023

- **Respondent No. 2**

M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.,

Block No. 7, Shakti Bhawan, Rampur, Jabalpur – 482 008

- **Respondent No. 3**

M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.,

GPH Compound, Pologround, Indore - 452 003

- **Respondent No. 4**

2. The petitioner Madhya Pradesh Textile Mills Association has filed the instant petition under section 86(1)(e) of the Electricity Act 2003 read with Section 151 of the Code of Civil Procedure, 1908, wherein the petitioner has prayed to the Commission to declare/ clarify that the requirement of fulfilling the minimum power procurement requirement from renewable sources including cogeneration under clause 4.1 of the MPERC Regulations, 2010 is on the Company which is the Obligated Entity and not on a Unit(s) of that Company and therefore the Unit itself does not need to purchase certificates under regulation 4.3.

3. The case was listed for motion hearing on 15.05.2018, wherein the Commission observed that the petition has been in the nature of seeking clarification citing a hypothetical case. The petitioner sought adjournment to file specific cases of consumers and requested for listing of the petition in July 2018.

4. The case was next listed for motion hearing on 10.07.2018. During the hearing the petitioner again requested the Commission to fix the date of the hearing some times in August,

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2018 stating non-availability of their Advocate / Authorized representative on the date of motion hearing. Further, the Commission observed that the petitioner had not submitted requisite information as per the daily order dated 16.05.2018. The Commission vide daily order dated 11.07.2018 considered the request for adjournment and directed the petitioner to submit the required information by 20.08.2018.

5. The case was next listed for motion hearing on 28.08.2018. The petitioner vide affidavit dated 21.08.2018 had submitted some information in compliance to the Commission's daily order dated 16.05.2018. During the motion hearing, the Commission observed that the petition has been filed u/s 86(1)(e) of the Electricity Act, 2003 but the petitioner has not substantiated as to how such clarification can be issued. The petitioner sought two week's time to file additional submission in this regard. The Commission vide daily order issued on 06.09.2018 considered the petitioner's request and directed to file additional submission by 14.09.2018.

6. In response to the Commission's daily order dated 16.05.2018, the petitioner vide affidavit dated 21.08.2018 broadly submitted as under and requested the Commission to provide clarification on fulfillment of RPO of a particular unit by consuming power which is allowed towards fulfillment of RPO at a different unit of 'Company' within MP i.e. monitoring of discharge of RPO of all obligated entities in a combined way and not individually:.

- a. Vardhaman Textile Ltd. ('Company') operates three textile mills in MP i.e. Vardhama Fabrics (A unit of Vardhaman Textiles Limited), Vardhaman Yarns (A unit of Vardhaman Textiles Limited) and Anant Spinning Mills (A unit of Vardhaman Textiles Limited). All the three plants are fully owned by Vardhaman Textiles Limited. These are factories of Vardhaman Textiles Limited and do not have separate legal juristic identities. These units of Vardhaman Textiles Limited are under RPO due to captive power generation and/ or purchase of electricity through open access.
- b. One of the major reasons for seeking clarification by the petitioner for its members is that in the present global trade regime, preference is being given to manufacturers who are environment friendly, use Green Power, Organic inputs and draw recognition as responsible partners. In other words, the clarification shall provide great impetus to increasing the global level manufacturing in the State of Madhya Pradesh (MP) as also permit the Companies having their locations in MP to emerge as leaders in the global

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trade market by meeting the green energy norms. In other words it shall lead to massive global proliferation of the “Make In India” mission of the Nation.

- c. The ‘Company’ intends to use maximum possible Green power for their production for exports. As export orders vary from month to month and from unit to unit depending upon the nature of product to be exported, flexibility in consumption of Green power will help ‘Company’ to maintain its position as a Green producer as well as obtain more business for its units in the state of MP and earn precious foreign exchange for country. Further, flexibility will also ensure that Green power is not wasted away in times of exigencies like planned and unplanned plant shutdowns or cut-back in production due to market reasons in any plant.
- d. As the three units are part of the same ‘Company’, the entire investment in proposed Solar and Wind projects shall be made by the ‘Company’.
- e. Currently, ‘Company’ operates a power plant by the name of ‘Vardhaman Fabrics – Power Division’. The entire power generated by this plant is being consumed by ‘Vardhaman Fabrics’ and not being wheeled to any of the other 2 units in M.P. The consumption of this power is allowed to be considered towards fulfillment of RPO.
- f. All liabilities including those of RPO related to all the units finally rest with the ‘Company’. Therefore, the ‘Company’ believes that the liability of RPO should be combined at Company level and should not be seen unit wise. This shall also be in accordance with the regulations framed by the Hon’ble Commission.
- g. By consolidating the RPO at ‘Company’ level instead of units level in the state of MP, on one hand, the intent and purpose of ensuring energy mix which has a minimum specified component of renewable energy will be met without any compromise, on the other hand, such consolidation will permit optimal utilization of resources, eliminate avoidable energy losses and permit the industries in Madhya Pradesh to enhance exports and its competitiveness.
- h. The ‘Company’ is considering to achieve a large portion of RPO compliance of all the three units of the ‘Company’ in MP through investment in renewable energy. The ‘Company’ and other members shall have to arrange funds for undertaking such an

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investment and will be able to take final view of the said proposal on receiving the clarity on policy framework and regulatory aspects.

7. In response to the daily order dated 06.09.2018, the petitioner vide letter dated 17.09.2018 submitted as below:

- (i) The instant petition raises an important question of law as it seeks clarification/ adjudication on the issue of applicability of Renewable Purchase Obligations of the members of the petitioner association in light of the peculiar facts as stated herein below.
- (ii) On the last hearing the Commission raised an issue if the Electricity Regulatory Commission has the power to clarify its regulations etc.
- (iii) In this regard there is no dispute (lis) between the parties and the petitioner is only seeking clarification in terms of the submissions made in the petition and the additional affidavit.
- (iv) The petitioner seeks to rely on the case of “NSDL Vs. SEBI” reported in 2017(5) SCC 517 in particular paras 11 to 20..
- (v) In light of the provisions of the Electricity Act, 2003 and the judgments of the Hon’ble Supreme Court as submitted herein the Ld. MPERC being a Quasi-Judicial body has the power to issue clarifications in the absence of there being any lis between the parties. It is therefore submitted that this Hon’ble Commission may be pleased to admit the petition also allow the petition and grant the clarifications.

8. With regard to applicability of Section 86(1)(e) of the Electricity Act, 2003 in respect of seeking the clarification from the Commission it may be noted that Section 86(1)(e) provides:

The State Commission shall discharge the following functions, namely: -

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(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such

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sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

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9. Having heard the petitioner and on considering the submissions made by the petitioner during the motion hearings held on various occasions, the Commission has observed that Regulation 3(xi) of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision – I) Regulations, 2010 provides as under:

“‘Obligated Entity’ means the entity such as the Distribution Licensees, Captive Consumers and Open Access Consumer who are mandated to fulfill Renewable Purchase Obligation under these Regulations;”

As each unit of the Vardhaman Group is a separate consumer under the provisions of aforesaid Regulations and “Obligated Entity” comprises of captive consumers and open access consumers and not the company, therefore, the Renewal Purchase Obligation is to be met by each unit in the instant case.

10. In view of the above, Petition No. 16/2018 stands disposed of.

Ordered accordingly.

(Anil Kumar Jha)
Member

(Mukul Dhariwal)
Member

(Dr Dev Raj Birdi)
Chairman