

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 72 of 2020

Case of Riddhi Siddhi Gluco Biols Limited against Maharashtra State Electricity Distribution Company Limited on Non-Compliance of Order in Case No. 28 of 2018 and Contempt.

Riddhi Siddhi Gluco Biols Ltd.Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd.Respondent No. 1
Chief Engineer (Power Purchase) (MSEDCL)Respondent No. 2
Chief Engineer (Commercial) (MSEDCL)Respondent No. 3
Superintending Engineer O&M – Satara (MSEDCL)Respondent No. 4

Appearance

For the Petitioner : Shri. Roshan Tanna (Adv.)
For the Respondent No. 1 : Shri. Ashish Singh (Adv.)

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

ORDER

Date: 17 August 2020

1. Riddhi Siddhi Gluco Biols Ltd. (**RSGBL**) has filed this Case dated 6 March 2020 against Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**), Chief Engineer (Power Purchase) (MSEDCL), Chief Engineer (Commercial) and Superintending Engineer O&M – Satara (MSEDCL) on Non-Compliance of the Commission's Common Order dated 28 September 2018 (RSGBL has wrongly mentioned as 1 October 2018) in Case No. 28 of 2018 and Contempt under Section 142, 146 & 149 of the Electricity Act, 2003 (**EA**).
2. **Main Prayers of RSGBL are as follows:**

- a) *Direct the Respondent to pay the principal outstanding amounts alongwith applicable DPC and interest (as reflected at Exhibit – B (Rs. 51,84,540)) till date, immediately, as per the Order dated 1st October 2018 passed by this Hon’ble Commission in Case No. 28 of 2018;*
- b) *Initiate appropriate action against the Respondents under Section 142, 146 and 149 of the Electricity Act, 2003 for deliberate and willful non-compliance of the Order dated 1st October 2018 passed by this Hon’ble Commission in Case No. 28 of 2018;*

3. RSGBL in its Petition has stated as under:

3.1 As directed by this Commission in Order dated 28 September 2018 in Case No. 28 of 2018, parties carried out reconciliation of amount/s on 15 October 2018. Despite clear direction in the said Order, RSGBL has not received the entire outstanding dues from MSEDCL and accordingly Section 142, 146 and 149 of EA is being invoked.

3.2 Period and amount of Dispute is as tabulated below:

Sr. No	Particulars	Claimed as per Petition
1	Outstanding Delayed Payment Charge (DPC) amount (Rs. in lakh)	51.85
2	Period of DPC	2011-12 to 2018-19
3	Total outstanding amount (Rs. In Lakh)	51.85

4. MSEDCL in its reply dated 28 April 2020 has stated that:

4.1 MSEDCL has reconciled the outstanding dues on 15 October 2018 and compliance report in respect of the same submitted to the Commission vide letter dated 29 January 2019.

4.2 MSEDCL has already paid all outstanding principal amount till generation month of November 2018. From December 2018 to January 2020, RSGBL has not generated any wind energy. Hence, outstanding principal amount is NIL.

4.3 Regarding the issue of payment of penal interest at 1.25% per month on DPS amount, MSEDCL has filed the appeal before APTEL against MERC Order dated 2 August 2019 in Case No 105 of 2019 of M/s Rajlaxmi Mineral Ltd and appeal is still pending before tribunal for final judgement.

4.4 The delay in payment of wind generators is basically due to low recovery (around 7%) from agriculture consumers, arrears of government departments for supply of electricity to public water works and streetlight consumers category etc. The Commission allowed provision for bad debts of 1.5% of receivables in MERC MYT Regulations. Thus, if there are no funds available with MSEDCL, because of delayed ARR, outstanding from Government and agricultural arrears, it may not be always possible to make timely payments to the wind generators.

5. At the hearing held on 31 July 2020, the Advocate of the Petitioner reiterated its submission and also insisted that this case be kept open till MSEDCL pays all outstanding amount. The

Representative of MSEDCL reiterated submission made in its reply and further stated that as part of financial support requested from Financial Institutions on account of financial crunch due to Covid-19, it has included outstanding payments of RE generators. The outstanding dues of RE generators will be directly paid by these Financial Institute from amount approved to the MSEDCL. The Commission directed MSEDCL to submit its written submission within two days mentioning the details of outstanding payments and when was the payment proposed to be cleared.

6. MSEDCL in its additional submission dated 5 August 2020 has stated that:

- 6.1 As per MSEDCL record the outstanding DPC is Rs.0.51 Crs and same will be paid as per availability of fund
 - 6.2 In pre-Covid-19 period when MSEDCL revenue was in the range of Rs 4500-5000 Cr per month, the revenue dropped to around 2000-2500 Cr per month during this lockdown period, hence MSEDCL was not in position to make timely payment to its generator.
 - 6.3 MSEDCL has approached various Financial Institutions for borrowing money in order to repay the outstanding payments of various Renewable energy generators. MSEDCL has applied for loans and it is expected that it will be sanctioned by Financial Institutions in a month's time. As and when the amount is availed from financial institutions, the same will be paid directly to Petitioner for clearing its outstanding payment.
7. Further, the Commission sought additional information from MSEDCL regarding latest details of outstanding Principal amount, DPC and Interest on DPC for various wind generators. MSEDCL vide its email dated 8 August 2020 submitted that outstanding DPC amount is Rs. 0.51 Cr. for period of May 2011 to November 2018.

Commission's Analysis and Ruling:

8. The Commission notes that the Petitioner had previously approached Commission in Case No. 28 of 2018, seeking direction to MSEDCL for settling its outstanding amount. Now the Petitioner has filed this Case alleging non-compliance of the Order dated 28 September 2018 in Case No. 28 of 2018. The Order dated 26 September 2019 issued by the Commission was in fact on the Petition filed by the Petitioner seeking initiation of contempt proceedings. The Commission in the said Order ruled as under:

“1. MSEDCL is directed to release the agreed/admitted payments to the Petitioner on account of the principal amount and interest upon the principal amount (i.e. DPC) as per the plan submitted to the Commission. Reconciliation shall be completed within two weeks from the date of this order and a reconciled Report of outstanding dues shall be submitted to the Commission within two days thereafter. Further, MSEDCL should note that if it deviated from its commitment given in the plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any DPC. MSEDCL is directed to submit its Compliance Report as cited earlier in this Order to the Office of the Commission

2. Petitioner request regarding waiver of petition fee is rejected. Parties to bear their own costs of Petition

The Petition in Case No. 28 of 2018 stands disposed of accordingly”

9. The Petitioner in the present Case has contended that despite reconciling the due amount, MSEDCL has failed to comply with Commission’s above directives for payment of outstanding DPC amount.
10. Amount claimed by the Petitioner and payments to be made as per MSEDCL is summarized in table below:

Sr. No	Particulars	Claimed as per Petition	MSEDCL’s submission
1	Outstanding DPC amount (Rs. Lakh)	51.85	51
2	Period of DPC	2011-12 to 2018-19	May 2011 to Nov. 2018
3	Total outstanding amount (Rs. Lakh)	51.85	51

The Commission notes that still there is difference in amount of DPC submitted by both parties. Hence, the Commission directs both parties to reconcile the amount. MSEDCL shall ensure that the said reconciliation gets completed within 2 weeks and thereafter within a week inform date by which all outstanding amount would be paid.

11. The Commission notes that although MSEDCL has filed appeal against its Order granting interest on DPC, no stay has been granted by the Hon’ble APTEL. Hence, MSEDCL is duty bound to comply with that order of the Commission. Hence, during the process of reconciliation of the amount as stated above, interest on DPC shall also be included.
12. On the issue of payment of outstanding amount, the Commission notes the financial difficulties pointed out by MSEDCL due to reduction in the revenue collection on account of Covid-19 and its submission that while approaching Financial Institutions for loans to mitigate financial crunch arisen due to Covid-19, it has included outstanding payments of RE generators in that and once the amount is sanctioned by Financial Institutions (which is expected within a month), RE Generators will be paid directly by Financial Institutions without routing such amount through MSEDCL.
13. In view of the above submission made by MSEDCL the Commission opines that the delay in payment of dues is neither willful nor deliberate. Further, MSEDCL has informed about it approaching the Financial Institutions to clear the outstanding amount of RE generators including present Petitioner and hence the Commission thinks it fit to provide one more opportunity to MSEDCL to clear the dues of Petitioners and hence is not inclined to invoke any action against MSEDCL under Section 142, 146 and 149 of the EA 2003. Instead of penalizing MSEDCL, Petitioner will be better served if outstanding amount is paid to it as committed by MSEDCL.

14. As regards request of Petitioner to keep the case pending until the entire amount is cleared, the Commission notes that it is not the MSEDCL but the Financial Institutions which would be directly making payment of the outstanding amount of all the generators and other parties. Therefore, keeping the case pending won't serve any purpose.
15. Hence, the following Order:

ORDER

1. The Case No. 72 of 2020 is partly allowed.
2. Maharashtra State Electricity Distribution Company Limited is directed to reconcile the outstanding amount with the Petitioner within two week from the date of this Order and thereafter Maharashtra State Electricity Distribution Company Limited shall inform within a week the date by which outstanding amount will be paid.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

