

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 51/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K Iyer, Member

Date of Order : 30th of March, 2017

In the matter of

Notice under Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's directions dated 30.10.2014 and 9.10.2015 in Petitions No. 134/MP/2011 and 124/RC/2015 respectively.

And

In the matter of

Shri Vijay Srivastava
Managing Director
Chhattisgarh State Power Transmission Company Ltd.
Successor Company of CSEB
Vidyutsewa Bhawan,
Daganiya, Raipur (C.G.)-492 013

....Respondent

ORDER

Bharat Aluminium Company Limited (BALCO) has filed Petition No. 134/MP/2011 seeking directions to Chhattisgarh State Electricity Transmission Company Limited to adhere to the provisions of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter 'Open Access Regulations') in the course of inter-State open access availed by BALCO in addition to the prayers related to extent of the charges paid during the period from 3.5.2010 till 31.5.2011. The Commission after due consideration of the replies filed and the submissions made

during the hearing vide order dated 30.10.2014 in Petition No. 134/MP/2011 decided the issues as under:

- (a) BALCO is an intra-State entity within in the State of Chhattisgarh. In terms of the Regulation 20 (1) of the Open Access Regulations, RLDC shall account for and include all transactions by the State utilities and intra-State entities in the day ahead net interchange schedule of the concerned regional entity. Based on the net metering at the regional periphery, RPC shall issue a composite UI account to each regional entity on weekly basis and transaction-wise UI accounting.
- (b) The dispute between BALCO and CSPTCL has arisen in the course of inter-State open access, and therefore in terms of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, the adjudication of the dispute shall be made by the Central Commission. It was directed that the entire period of dispute (3.5.2010 till 31.5.2011) shall be governed by the UI Regulations.
- (c) Any mismatch between scheduled and actual drawal at drawal point and scheduled and actual injection at injection point for the intra-State entity shall be determined by the SLDC and covered in the intra-State accounting scheme. In the absence of intra-State ABT or any specific scheme by the State Commission to handle such mismatch, it shall be regulated in terms of the mechanism provided in Regulation 20(5) of the Open Access Regulations. Since Chhattisgarh did not have intra-State ABT nor the State Commission

had specified any regulations or guidelines for dealing with the mismatch by intra-State entities, SLDC shall be required to deal with the mismatch in accordance with Regulation 20(5) of Open Access Regulations.

(d) Intra-State Open Access Regulations, 2011 came into effect from 1.5.2011 which provided that till notification of CSERC (Intra-State ABT, Unscheduled Interchange charges and related matters) Regulations, the mismatch between scheduled and actual injection at injection point and scheduled drawl and actual drawal at drawal point, would be governed by the CERC (UI Charges and related matters) Regulations, 2009.

2. The Commission vide order dated 30.10.2014 in Petition No. 134/MP/2011 issued the following directions:

“22. In view of the above, we direct CSPTCL to take necessary steps to settle the UI dues of the petitioner for the period 3.5.2010 till 31.5.2011 in the light of our observations made in this order within a period of one month from the date of issue of this order.”

3. CSPTCL neither sought review of the said order nor filed an appeal before the Appellate Tribunal for Electricity within time stipulated in Section 111 of the Electricity Act, 2003.

4. On account of the non-compliance of the order by CSPTCL, BALCO filed Petition No. 124/RC/2015 seeking direction to CSPTCL for payment of UI due for two periods i.e. from 3.5.2010 to 31.5.2011 and from 1.6.2011 to 30.9.2013. The Commission after hearing the parties, vide order dated 9.10.2015 in Petition No. 124/RC/2015 directed CSPTCL to settle the payment of UI dues for the period from 3.5.2010 till 31.5.2011

with the petitioner within a period of one month. Relevant portion of the said order dated 9.10.2015 is extracted as under:

“7. As regards the prayer for payment for the period 3.5.2010 to 31.5.2011, the respondents have in their affidavit dated 4.7.2015 sought indulgence of the Commission to comply with the order dated 30.10.2014 subject to their seeking appropriate relief with regard to the validity of the regulation. In our view, while respondents are at liberty to seek appropriate legal remedy against the order dated 30.10.2014, the respondents cannot be permitted to avoid implementation of the directions of the Commission in the absence of any stay of the operation of the said order dated 30.10.2014. We direct the respondents to settle the payment of UI dues for the period from 3.5.2010 till 31.5.2011 with the petitioner within a period of one month.”

5. As CSPTCL did not implement the directions of the Commission, BALCO filed Petition No. 51/MP/2016 seeking initiation of action against CSPTCL under Section 142 of the Act for non-compliance of the Commission's directions in order dated 30.10.2014 and 9.10.2015.

6. Matter was heard on 26.4.2016 and notice was issued to CSPTCL to file its reply. During the next hearing on 24.8.2016, learned counsel for CSPTCL committed that CSPTCL would make the payment towards UI dues within four weeks in terms of the directions of the Commission in Petition No. 134/MP/2011. Learned counsel for CSPTCL further submitted that CSPTCL has filed an appeal before the Appellate Tribunal for Electricity which is listed for hearing and if CSPTCL fails to succeed in the appeal, then the Commission's order for the entire period would be covered in the petition would be implemented. The submissions of the learned counsel for CSPTCL were duly recorded in the Record of Proceedings.

7. In the next hearing on 6.10.2016, learned counsel for BALCO submitted that despite the commitment made by CSPTCL during last hearing, no payment has been

made by CSPTCL so far. He further informed that CSPTCL misled the Commission about the listing of the appeal before the Appellate Tribunal for Electricity whereas no such appeal has been listed so far. In response, learned counsel for CSPTCL requested for three weeks time to comply with the Commission`s direction which was granted. The commitment of the learned counsel for CSPTCL was recorded in the Record of Proceedings.

8. During the hearing on 15.11.2016, learned counsel for CSPTCL argued that the order dated 30.10.2014 has been issued based on the misrepresentation of facts by BALCO and therefore, the order dated 30.10.2014 needs to be revisited.

9. The Commission after considering the positions taken by the CSPTCL before the Commission at various stages of the proceedings is prima facie of the view that the CSPTCL has been avoiding implementation of the directions of the Commission on one pretext or another. Though the order in Petition No. 134/MP/2011 has been issued on 30.10.2014, CSPTCL has not complied with the order which makes its liable for action under Section 142 of the Act for the following reasons:

- (a) The order dated 30.10.2014 in Petition No. 134/MP/2011 was issued after considering the pleadings of the parties and the submissions made during the hearing. CSPTCL had the opportunity to refute the claims of BALCO on the ground of misrepresentation of the facts as now being alleged. However, no such submission was made during any stage of the proceedings in the Petition No. 134/MP/2011.

(b) After the order dated 30.10.2014 was issued, CSPTCL had the legal remedy to seek rectification of the order by filing Review Petition, if in view of CSPTCL the order was based on misrepresentation of facts. CSPTCL had also the statutory remedy available to it to file an appeal within the stipulated period. CSPTCL has not utilized the remedies available to it and allowed the order to attain finality.

(c) Learned counsel for CSPTCL submitted during the hearing of the Commission that order dated 30.10.2014 in Petition No. 134/MP/2011 would be implemented. Despite the said commitment given in the open court, the learned counsel appearing for CSPTCL sought to challenge the order dated 30.10.2014 on merit which is not permissible in a proceedings filed by BALCO alleging non-compliance of the said order.

(d) The entire conduct of CSPTCL shows that there is no sincerity and commitment on the part of CSPTCL to comply with the order of the Commission dated 30.10.2014. Therefore, a case for non-compliance of the directions of the Commission contained in the order dated 30.10.2014 in Petition No. 134/MP/2011 has been made out.

10. In view of the above, the Commission is satisfied that CSPTCL has failed to comply with the orders of the Commission dated 30.10.2014 in Petition No. 134/MP/2011 and order dated 9.10.2015 in Petition No. 124/RC/2015. Accordingly, we issue a show cause notice to the MD, CSPTCL under Section 142 of the Act and direct him to show cause, latest by 21.4.2017, as to why appropriate penalty under Section 142 of the Act should not be imposed on him for non-compliance of our directions in

orders dated 30.10.2014 and 9.10.2015 in Petition Nos. 134/MP/2011 and 124/RC/2015 respectively.

11. The Commission will take further view in the matter after receipt of the reply to the show cause notice.

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd-
(Gireesh B. Pradhan)
Chairperson