

**MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION
SHILLONG**

APPLICATION DATED 22/11/2018

IN Case No. 9A/2017 of 2018

In The Matter Of: -

Application under Section 142 & Section 146 of the Electricity Act, 2003, for violation by MePDCL of the orders of the Meghalaya State Electricity Regulatory Commission dated 10.09.2018 and 14.11.2018

AND

In The Matter Of: -

M/s R.N.B Carbides & Ferro Alloys (P) Ltd. & Ors

-Versus-

MePDCL & Ors.

Coram:

Shri. WMS Pariat, IAS (Retd.), Chairman

Date of Order: 22.11.2018

ORDER

1. Seen separate applications under Section 142 read with Section 146 of the Electricity Act, 2003 filed by M/s Pioneer Carbides (P) Ltd, M/s RNB Carbides & Ferro Alloy (P) Ltd., M/s Khasi Alloys (P) Ltd., and M/s Nalari Ferro Alloys (P) Ltd, all claiming to be members of Byrnihat Industries Association (hereinafter referred to as BIA). Since the subject matter of all the applications is the same i.e., violation of this Commission's orders dated 10.09.2018

and 14.11.2018 passed in Case No. 9A/2017 of 2018 by the Distribution Licensee i.e., MePDCL by raising bills for the month of October, 2018 in contravention/ violation of the orders passed by this Commission, the said applications are taken up jointly for consideration and this common order is hereby passed.

2. It is to be noted that this Commission vide order dated 10.09.2018 had fixed a separate tariff category known as HTSS (Ferro Alloy) category to be included in the tariff category prevailing in the order dated 31.03.2018 which was to be applicable for both in EHT and HT levels with energy charges at the rate of Rs. 4.36 KWh (EHT) and Rs. 4.46 KWh (HT) category respectively . Thereafter MePDCL vide letter no. MePDCL/SE/RA/71C/Pt IV/ 2018-19/66 dated 25.09.2018 submitted a request for an opportunity to be heard before implementing the order of separate tariff category and in furtherance of the same this Commission had scheduled a hearing on 11.10.2018. On the said date the Ld. Advocate appearing for the MePDCL had also raised an issue of jurisdiction and in furtherance of the same filed formal applications i.e., (a) a review petition seeking review of the order dated 10.09.2018 and (b) an application challenging jurisdiction of this Commission. The same on being taken up , opportunity was accorded to BIA to file response which was accordingly done and further time was also granted to MePDCL to file a rejoinder to the objection filed by BIA on the issue of jurisdiction which has been filed on 19.11.2018.

3. In the hearing scheduled on 14.11.2018, it was brought to the notice of this Commission by BIA that on 30.11.2018, MePDCL through the Superintendent Engineer (RA) had filed an application therein stating as follows:

“4. That as per the aforesaid order dated 22.10.2018, passed by this Hon’ble Commission, (MSERC), it is understood after both the above mentioned paras that the BIA has been directed to submit their reply/ response on both the applications submitted by MePDCL and the next date of hearing on this subject-matter would be 14.11.2018 and no action will be taken till the next date of hearing.

5. In view of the above, it may be brought to your kind notice that pending hearing and decision on the review petition, MePDCL is continuing to raise the bills to the Ferro Alloy consumer as per tariff order dated 31.03.2018, since the new tariff order is under consideration in the review petition and depending on the final outcome of the review petition, necessary adjustment would be made accordingly."

4. It is pertinent to mention herein that this Commission issued clarification vide MSERC/MeECL/COR/2018/234 dated 20.09.2018 had categorically made it clear that the new tariff in respect of Ferro Alloy Industries was to come in effect with effect from 1.10.2018, and that power supplied till the 30/9/18 will be at the previous rates.

5. Both the Secretary of BIA as well as the Ld. Advocate appearing for BIA, Mr. K. Paul had vehemently argued on 14.11.18 that filing of the instant application by MePDCL tantamounts to willful violation of the orders passed by this Commission and it was prayed that proceedings under Section 142 of the Electricity Act may be drawn up against MePDCL and the erring officers. The Ld Advocate for the MePDCL as well as the officers present on the hearing on 14.11.2018 had also indicated that in view of the clear order dated 10.09.2018 and the clarification dated 20.09.2018 issued by this Commission coupled with the fact that there was no effective order passed in the review application filed by MePDCL staying the operation of the earlier order dated 10.09.2018, had in fact countenanced the fact that bills have to be raised by MePDCL as per the new rate with effect from 1.10.2018.

6. This Commission vide order dated 14.11.2018 while taking a serious view of the petition supported by an affidavit filed by the MePDCL as aforesaid, refrained at that stage from initiating proceedings under section 142 of the Electricity Act, 2003 but again reiterated that the bills to be raised by MePDCL was to be as per the new tariff category i.e. HTSS (Ferro Alloy) at the rate of Rs. 4.36/- for (EHT) and Rs. 4.46/- for (HT) category. The relevant part of the order reads as follows: " However, it is hereby reiterated that bills to be raised

by MePDCL wef 01.10.2018 in respect of Ferro Alloys units would be as per the new tariff i.e. @ 4.36/- (132 KV) and Rs 4.46/- (33 KV) respectively "

7. Now by way of the instant applications it is brought to the notice of this Commission that the MePDCL as well as the other Respondents inspite of being aware of the orders dated 10.09.2018, the clarification dated 20.09.2018 as well as the last order dated 14.11.2018, have now raised bills (Annexure 4 to the respective petitions) for the month of October 2018 in respect of the respective units under the old rates and have in fact refused to acknowledge and act in consonance with the directions passed repeatedly by this Commission. It is most unfortunate that the MePDCL and its officers are acting in a manner unbecoming of responsible public servants who instead of complying with the directions of this Commission (which is established under Statute and also duly entrusted with adjudicatory functions) , are in fact by their actions not only wilfully and consciously defying the orders passed by this Commission, but also belittling the stature of this Commission. This action is not acceptable, given that Rule of Law being paramount is the touchstone under the Constitution of India. No authority can be permitted to defy the lawful orders passed by an Authority established under the law.

8. This Commission is of the view that the actions of the MePDCL and other Respondents in the present applications unfortunately has to be viewed as a direct challenge to the orders passed by this Commission and that , inspite of the repeatedly lenient view being taken by this Commission, the said Respondents have acted in a manner absolutely unbecoming of public servants, who are under obligation to adhere to and comply with the Rule of Law.

9. Having noted thus, this Commission is therefore of the view that the Respondents have acted in willful violation of the orders passed by this Commission by their action of raising Bills for the month of October, 2018 as per the old rates and not as per the new tariff order

dated 10.09.2018, thereby attracting proceedings under section 142 and 146 of the Electricity Act, 2003. As such show cause notice is hereby issued to the respective Respondents in the present applications as to why they should not be punished for willful and deliberate violation of the lawful orders/directions passed by this Commission dated 10.09.2018 and 14.11.2018. The show cause/reply is to be filed positively within a week from today i.e. within 28.11.2018 failing which appropriate orders inflicting penalties under law shall be imposed.

10. It is hereby further directed, in consonance with the orders as issued by this Commission, that the Bills for the month of October, 2018 in respect of the respective Petitioners be amended/corrected/modified in consonance with the orders of this Commission dated 10.09.2018 and 14.11.2018 within a period of 3 (three) days from today by the Respondents, under intimation to this Commission.

Fix 29.11.2018 for show cause, hearing and orders.

Sd/

WMS Pariat, IAS (Retd)
Chairman, MSERC

Dated : Shillong
22.11.2018