

BEFORE THE MEGHALAYA STATE ELETRICITY REGULATORY  
COMMISSION, SHILLONG

**MSERC Case No. 6 of 2020.**

JUD Cement Ltd.,

A Company registered under the Companies Act, 1956  
Having its registered Head Office at Hanumanbux Umadutt,  
Police Bazar, Shillong, East Khasi Hills District,  
Meghalaya.

Represented by Shri. Adarshjhunjunwala,  
Chairman and Managing Director,  
S/O Late J.P. Jhunjunwala, R/O Hanumanbux Umadutt,  
Police Bazar, Shillong, East Khasi Hills District,  
Meghalaya.

... ..**Petitioner**

-Versus –

Meghalaya Power Distribution Corporation Ltd.  
Integrated Office Complex  
Lumjingshai, Short Round Road,  
Shillong-793001

... ..**Respondent**

**Coram:**

P.W.Ingty, IAS (Retd.) Chairman, MSERC

Roland Keishing, District & Sessions Judge  
(Retd), Member, MSERC

Counsel for the Petitioner : Kaustav Paul, Sr.Advocate &  
P.Shome Advocate  
Counsel for the Respondent :L.N.Mozika Sr.Advocate &  
M.L.Nongpiur Advocate.  
Date of hearing :26/08/2020.  
Date of Order :18/09/2020.

## ORDER

Dated 18<sup>th</sup> September, 2020.

This is to dispose of a Petition filed by JUD Cement Ltd., represented by Shri. Adarshjhunjunwala, Chairman and Managing Director (hereinafter referred to as the Petitioner) against the Meghalaya State Power Distribution Corporation Ltd. Shillong (hereinafter referred to as the Respondent and or MePDCL in short) under Regulation 106 and 108 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tarrif) Regulations, 2014, read with Regulation 12.7 and Regulation 12.9 of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018 praying for mitigating the effects of lockdown due to pandemic caused by Novel Covid19, corona virus.

2. The case of the Petitioner in brief is that, JUD Cement Ltd., plant situate at Wahijer, Narpuh, East Jaintia Hills District, Meghalaya and having its registered Head Office at Hanumanbux Umadutt, Police Bazar, Shillong, East Khasi Hills District, Meghalaya.

3. The Petitioner states that there was a series of litigations before the Hon'ble Meghalaya High Court, between the parties in regard to disconnection of power supply to its industrial Unit, wherein payment of Bill was also an issue vide W.P (C) No.(SH) 80 Of 2013; W.A No. 8 of 2013; W.P (C) No. 389 Of 2013; Misc Case No. 3 of 2014 and also T.S. No.3 of 2019 before the Ld. Court of Additional Deputy Commissioner, Khleihriat.

Thus, owing to various reasons, the Petitioner could not make payment of electricity dues amounting to Rupees 26 Crores. However, the Petitioner took an undertaking dated 16/05/2019 to the Respondent that payment of bills from the month of May 2019 onwards shall be paid within the due dates along with Rs.1,00,00,000/- (Rupees One Crore) only against the outstanding due till liquidation of all the outstanding dues and the same was accepted by the Respondent. Since then, the Petitioner has been making payments of bills regularly in addition to the regular monthly charges to the Respondent.

Thereafter, surprisingly on 25/03/2020 electricity connection to the premises of the Petitioner was disconnected without any notice in spite of the undertaking of the Petitioner and agreed upon by the parties.

4. Furthermore, compounded by the lockdown JUD Cement Ltd., Unit operation has been shut down in compliance with the nation-wide lockdown imposed by the Central Government due to Novel Covid19 virus pandemic.

5. Thus, the Petitioner pray to hold that the disconnection of electricity supply to the premises of JUD Cements Ltd, Wahijer, Narpuh, East Jaintia Hills District, Meghalaya is illegal and arbitrary; waive demand/fixed charges applicable on EHT Industry/HT Industrial/Ferro category of consumers pursuant to Tariff Orders dated 31/03/2018 and 25/03/2020, order dated 10/09/2018 and the Supply Code for the entire period of lockdown imposed by the Central Government and the State Government; direct the Respondent to bill demand charges on the members of the Petitioner only on the basis of their actual pro-rata consumption of electricity; extend the date of payment of electricity bill as specified under Chapter 8 of the MSERC Supply Code, which have been raised during the period of lockdown imposed by the Central Government and State Government, and payable by the members of the Petitioner, to one month after lifting of the lockdown; waive any late payment surcharge livable on the members of the Petitioner under Chapter 8 of the MSERC Supply Code and Tariff Orders dated 31/03/2018 and 25/03/2020, order dated 10/09/2018 for payment of electricity bills till after the lockdown is lifted and to pass any order(s) and or direction(s) which the Commission may deem fit and proper in the facts and circumstances of the case and in the interregnum pass ex-parte ad-interim order directing the Respondent to forthwith restore electricity supply to the premises of the Petitioner at JUD Cements Ltd., till the disposal of the petition.

6. Whereas, the Respondent, through its Superintending Engineer (RA) MePDCL filed Affidavit-in-opposition denying all the averments of the petition from para no. 24 till the end by asserting inter alia that section 9.2 of the MSERC Supply Code, provides for disconnection of power supply to a consumer if the consumer fails to pay the bills within the stipulated time, besides the Petitioner is a habitual defaulter.

The Respondent also submits that, Order dated 13/05/2013 passed by the Hon'ble High Court of Meghalaya in Misc Case No. 3 of 2013 arising out of W.A. Case No. 8 of 2013 gave liberty to the Respondent to disconnect power supply if any of the conditions are not fulfilled by the Petitioner. In spite of these facts, the Respondent agreed the proposal and undertaking of the Petitioner to make payment of his total outstanding dues in installments, but the Petitioner failed to abide by the same. Currently the Petitioner has an outstanding due amounting to Rs.22,82,74,596/- (Rupees Twenty two crore eighty two lakhs seventyfour thousand five hundred and ninety six) only as on 25<sup>th</sup> June 2020.

The Respondent also aver that power supply was disconnected on 22<sup>nd</sup> April, 2020 and was restored on 15<sup>th</sup> May, 2020 on receipt of communication confirming payment of the last two months bill and as such issue of disconnection and restoration of power supply has become infructuous.

7. The Respondent also submits that the grievance of the Petitioner has been taken note of but the fact remains that the Respondent has not been exempted from making payment to the Power Generation and Transmission Companies during this period of pandemic and therefore it cannot extend the same benefit to its consumers.

The Respondent then narrated the losses incurred in the last five years which is now compounded by the pandemic as normal billing and collection operation of the Discom has reduced by 70% comparing to the previous month prior to the lockdown.

8. Thus, the Respondent submits that waiving fixed charges in the present circumstances will compromise the functioning of the utility and to recover the approved ARR for FY 2020-21 will cause additional burden on the other categories of consumers whose income have also been seriously affected by the lockdown, besides waiver, if allowed may set precedence for commercial (LT, HT & ILT) consumers to claim waiver of fixed charges.

Accordingly, the Respondent suggests that the Petitioner may approach the State Government to subsidize their fixed charges payable during the lockdown period so as to ensure that the consumers and the Discom are not burdened.

The Respondent also state that, late payment surcharge, has been kept in abeyance during the period of lockdown.

Furthermore, the Respondent also pointed out that the instruction from the Ministry of Power contained in the letter dated 15<sup>th</sup> May, 2020 along with the corrigendum dated 16<sup>th</sup> May 2020 from the Ministry of Power in the matter of rebate to Distribution Companies (DISCOM) by Central Generation and Transmission Companies of Ministry for Power for the Lockdown period on account of Covid19 pandemic is under process.

Hence, the Respondent prays to reject the Petition for waiver of fixed charges; direct the Petitioner to immediately make payment of their dues without any further delay and to pass such order(s) as deem fit.

9. Before we proceed, it may be recalled that, the Petitioner prays for passing an interregnum ex-parte ad-interim order directing the Respondent to forthwith restore electricity supply to the premises of the Petitioner at JUD Cements Ltd., till the disposal of the petition.

On hearing and on examining, this Commission passed an Order dated 19/05/2020 allowing an ex-parte ad-interim order directing the Respondent to forthwith restore electricity supply to the premises of the Petitioner at JUD Cements Ltd.

Secondly, it is admitted fact that there was litigations between the parties and that the Petitioner has some outstanding due and was agreed upon to be paid on installments by the Petitioner to the Respondent.

Therefore, we hereby make it very clear that any order that was passed consequent to the litigations between the parties which may be subsisting or otherwise between the parties shall not be an issue in the present matter. Besides any action or act of omission, commission or order that may arise between the parties under the said order/agreement shall not be the concern of this Commission nor would be covered under the present petition.

Our concern is only for the period of lockdown i.e 25<sup>th</sup> March to 30<sup>th</sup> June 2020.

10. Parties along with their respective Ld. Counsel were heard at length and perused all the materials on record. The undisputed facts are as follows;

Ministry of Home Affairs, Government of India vide Order No.40-3/2020-DM(1)(A) dated 24/03/2020 imposed lockdown in all parts of the country due to outbreak of Corona virus Didease (Covid-

19) which has been declared as a pandemic by World Health Organisation (WHO) (GoNCTD's Notification No.F.51/DGHS/PH-IV/COVID19/2020prsecyhfw/2393-2407 dated 13/03/2020),

Thus, the Government of India on 24/03/2020 announced nationwide lockdown as preventive measure to contain against the spread of Covid19 pandemic in India thereby restricting movement of the entire 1.3 billion population of India w.e.f. 25/03/2020.)

Further, Ministry of Home Affairs, Government of India vide its Order No.40-3/2020-DM(1)(A) dated 30/05/2020 stipulated for re-opening of prohibited activities in a phased manner in selected areas of the country.

Thus, the Government of India on 24/03/2020 announced nationwide lockdown as preventive measure to contain against the spread of Covid19 pandemic in India thereby restricting movement of the entire 1.3 billion population of India w.e.f. 25/03/2020.)

The unlock 1.0 phase starts from 1<sup>st</sup> June, 2020 till 30/06/2020, however closure of commercial/Industrial and other establishment continued except pharmacies, hospitals, banks and other essentials services. As such lockdown of commercial industrial continued till 30/06/2020 as per the Central Government directives.

During the lock down period, the Respondent's normal billing and collection of revenue was adversely affected.

Likewise, the Petitioner's economic activities were adversely affected.

The Respondent in his written reply at para no.12.1 duly acknowledged the grievances of the consumers and the Petitioner in particular. Besides, the Respondent has nothing to say against the averments made at para no. 1 to 23 & 33 of the petition.

11. With the above undisputed facts and circumstances, turning to the action taken by various State Discoms/Regulators, it may be noted that, Haryana ERC had directed for commercial and industrial consumers for waiver of fixed/demand charges having load of >\_ 20 kw/kVA for the month of March and April 2020 subject to the ceiling of INR 10,000 per month and monthly consumption is 50% or less than his/her average consumption in the month of Jan and Feb., 2020.

In Gujarat for commercial and industrial consumers, it has a direction for no recovery of Demand/Fixed charges for the month of

April 2020. LT industries are exempted from levying fixed charge demand charge on their April electricity bills. For HT consumers there will be no fixed charge whose power consumption during the lockdown is less than 50% of the average consumption of the previous 3 months.

In the case of Punjab, the PSERC issued notice for FC exemption for medium supply, Large Supply Industrial consumers for the next two months w.e.f 23/03/2020 and energy charges may be fixed to commensurate with FC reduction.

State of Kerala for LT, HT & EHT allow a rebate of 25% on FC applicable to Industrial/Commercial consumers for the month of March, April and May and differ the balance of 75% of the said months up to 15/06/2020 without levying interest during the deferred period.

In the State of UP, Commercial and Industrial consumers billing for the month of April shall be done on actual consumption and not on the basis of average consumption in the last 3 months.

Whereas, some of the States such as Madhya Pradesh, Himachal Pradesh, Telagana and other deferred payment of FC of LT Non-Domestic, LT Industry and HT Industry consumers.

And in some States moratorium for FC payment for next 3 billing cycles are made thereby deferring the period of recovery and some other States are yet to take a call.

12. Under the above facts and circumstances, it is very clear that all States are providing some relief to the Industrial/Commercial consumers considering the Covid19 pandemic which is unprecedented and an exceptional circumstance,

However, quantum, method and period differ from State to State in providing relief to the said Commercial and Industrial consumers.

Hence, in our considerate view, we agreed that, it would be prudent to provide some relief for the said period of lockdown to the consumers of Industrial/Commercial establishment of our State considering the extraordinary and unprecedented situation caused by the pandemic.

13. However, we find that there is no straight jacket formula that can be adopted in providing relief and at the same time equity demands that the Utility should not be placed under undue in-conveniences

while providing relief to the Petitioners such as complete waiver of demand charge during the period of nationwide Lockdown.

Hence, the quest is to find workable formula that is based on equity, Rules and Regulations even if it amount to some stretching.

14. The Regulations 8.1 (13) of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018, which provides as follows;

“When supply to a consumer is commenced in the middle of a month or date of revision of Tariff and meter reading does not happen at the same time, the Demand Charges, Minimum charges and/or any other similar fixed charges shall be levied on pro-rata basis for the number of days for which supply is given. The units to be charged under various blocks or slabs shall also be accordingly prorated. For the purpose of this sub-clause, the month shall be computed as 30 days”

The basic principle of the above provision is that, Demand charge/fixed charge shall be levied on pro-rata basis for the number of days the supply is made. It is also clear that the Units to be charged under various blocks or slabs shall also be accordingly pro-rated, meaning thereby the consumer shall pay what is consumed.

Whereas, the Respondent inspite of taking cognizance of the hardship faced by the Petitioner as stated in their written reply, the Respondent failed to suggest any relief for the Petitioner.

15. Situated thus, in our considerate view, under the extraordinary circumstances caused by the Covid19 pandemic, and by invoking the provision of Regulation 106 and 108 of the Meghalaya State Electricity Regulatory Commission (Multi Year Tarrif) Regulations, 2014, read with Regulation 12.7 and Regulation 12.9 of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018, application of pro-rata on actual consumption as provided in Regulations 8.1 (13) of the Meghalaya State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2018 as per the Tariff orders would meet the end of justice and is accordingly applied for the lockdown period i.e. w.e.f. 25/03/2020 to 30/06/2020.

Accordingly, we herein ordered as follows;

For the month of April, May and  
June 2020, Pro rata Rate



of Demand Charges per KVAH  
of Unit consumed during the month = Rate of full Demand  
per KVA as applicable  
tariff order x Contracted  
load in KVA  
Contracted load in KVA  
X 24 (hrs) x 30 (days)

(ii) No delay payment shall be levied to the Petitioner for payment of energy bill from the month of April up to June 2020 for which the Respondent has not charged as per their written reply.

(iii) The balance payment for energy bill for the month of April to June 2020 shall be cleared on or before 31-10-2020. However, the Respondent, in view of the application of pro-rata demand charges the same shall be calculated for the month of April, May and June 2020.

(iv) In view of the demand charge calculated on pro-rata basis for the month of April, May and June 2020, given in this order, their monthly bill shall be revised if necessary by the Respondent on or before 30/09/2020.

16. This order has been passed in view of the lockdown caused by the Covid19 pandemic and the measures taken by the Central and State Government and also in compliance of the Letter dated 28-03-2020 Ministry of Power and also taking into consideration of the letter dated 15<sup>th</sup> May, 2020 along with the corrigendum dated 16<sup>th</sup> May 2020 from the Ministry of Power in the matter of rebate to Distribution Companies (DISCOM) by Central Generation and Transmission Companies of Ministry for Power for the Lockdown period on account of Covid19 pandemic.

However, before we part the case, it is made clear that this order shall not set as precedent in any other circumstances.

The case is accordingly disposed off with the above directions.

Roland Keishing

P.W.Ingty