

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BENGALURU**

**Dated : 22<sup>nd</sup> January, 2015**

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|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri H.D. Arun Kumar        | Member   |
| 3. Sri D.B. Manival Raju      | Member   |

**Complaint No.10/2013**

**BETWEEN:**

BMM ISPAT LIMITED,  
No.114, Dhanapur Village,  
Hospet Taluk  
Ballari District

*(Represented by Shri G.B Shastri, Advocate)*

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**COMPLAINANT**

**AND**

- 1) Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi – 585 101
- 2) The Chief Engineer (Ele.),  
Corporate Planning,  
Gulbarga Electricity Supply Company Limited,  
Kalaburagi – 585 101

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**RESPONDENTS**

*[Respondents represented by M/s. Thiru & Thiru, Advocates]*

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- 1) This Complaint Petition is filed under Section 142 read with Section 146 of the Electricity Act, 2003, praying for the following:

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- (a) Initiation of appropriate enquiry and proceedings against the Respondents, jointly and severally, under Section 142 and 146 of the Electricity Act, 2003, for their willful disobedience of the Order of this Commission dated 13.1.2012 in OP No.29/2011 and OP No.31/2011 (ANNEXURE-C1 to the Complaint Petition collectively);
  - (b) Issuance of a direction under Section 129 of the Electricity Act, 2003, to secure compliance, directing the Respondents to honour the Orders (ANNEXURE-C1) of this Commission and to make the balance payment along with penal interest at the rate of 14.75% from the date on which the amount fell due under the PPA until the date the amounts re paid in full;
  - (c) Imposition of penalty on the Respondents, jointly and severally, at a sum of Rs.1,00,000/- (Rupees One Lakh only) for having contravened the Order (ANNEXURE-C1) of this Commission and also levy of penalty of Rs.6,000/- (Rupees Six Thousand only) for every day of default in payment of interest from the date of the Order dated 13.1.2012 till the payment made in full, for denigrating the direction issued by this Commission; and
  - (d) Grant of cost of this Complaint Petition and for such other reliefs.
- 2) The grounds urged by the Complainant in support of its prayers are that, the Respondent-1 has denied interest of Rs.87,92,868/- for the belated payments made by the Respondent for the power injected into the grid by the Complainant during the period from June, 2009 to November, 2009. According to the Complainant, it had submitted invoices for the energy injected during the above period at Rs.3.75 per unit and had

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claimed interest of Rs.87,92,868/- at 14.75% per annum from 9.9.2010 to 3.5.2013, calculating the delay in making payments as per ANNEXURE C-4. In the Original Petition, it had claimed interest at 18% per annum, but later reduced it to 14.75% per annum, based on the terms of the Power Purchase Agreement (PPA). Subsequent to the disposal of the Petition in CoP No.160/2012 on 28.5.2013 by the Hon'ble High Court of Karnataka (ANNEXURE – C-3), it had made a representation dated 15.7.2013 to the Respondent, calling upon to pay a sum of Rs.1,24,36,728/- towards interest (ANNEXURE C-4), but it received a response dated 4.8.2013 from the Respondent to the effect that interest of Rs.87,92,868/- was disallowed (ANNEXURE C-5).

- 3) Upon issuance of Notice, the Respondent-1 entered appearance through its Counsel. The Respondent has filed its reply dated 5.6.2014 and additional Affidavit dated 20.8.2014. It has denied the claim of the Complainant for interest, on the ground that the energy was injected into the grid without a PPA. The contention of the Respondent is that, in the Order dated 13.1.2012, there was no 'direction' by this Commission to pay the purported dues as claimed by the Complainant, but only recording of the Respondent's submission to settle the Petitioner's due claims, and that the word 'settlement' would mean ending of a dispute or a law suit. It has contended that it is erroneous to presume that the arbitrary claim for interest was admitted and agreed to be paid, as the Complainant had not furnished any basis for calculation of interest in the Original Petition or

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in the Complaint Petition. It has also contended that the term 'claim' would not cover interest, as neither any records were produced to show the calculation of interest, nor was the interest quantified. The recording of the submission by the Commission in the Order dated 13.1.2012 that the purported claim would be negotiated and settled, would not mean that the entire amount claimed plus interest are admitted to be paid. The Respondent has stated that it has paid Rs.92,99,629/- towards the amount claimed in OP No.29/2011 on 5.3.2013 and Rs.2,25,28,774/- in OP No.31/2011 on 3.5.2013, as full and final settlement of all the dues, and that it owes no further dues. The dues claimed by the Complainant in the Notice dated 30.1.2012 (ANNEXURE C-2), totaling to Rs.3,18,11,226/-, has been paid and no interest was claimed in the said Notice. In the subsequent Notice dated 6.3.2012 also, no interest was claimed. The Respondent has contended that under Section 3 of the Interest Act, 1978, the Complainant is required to issue Notice claiming interest. In the circumstances, the Respondent submits that the Complaint Petition is not maintainable and prays that the same may be dismissed.

- 4) In response to the Objections and Affidavit filed by the Respondent, the Complainant has filed written response on 18.9.2014, stating that an undertaking to settle dues claimed means payment of such amounts as would settle all dues claimed, and irrespective of whether the Complainant had made a claim for interest or not, the default in making payments is a sufficient ground to pay interest. It has also stated that the

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issuance of Notice is not mandatory under Section 3 of the Interest Act, 1978, if the claim is in relation to any debt or damages, upon which interest is payable as of right, by virtue of any agreement.

- 5) We have heard the learned counsel for both parties and perused the records. We have also perused the records in OP Nos.29/2011 and 31/2011. The Commission's Order dated 13.1.2012 reads as follows:

*"Case called. Counsel for both parties present. Counsel for Respondents submits that the dues claimed by the Petitioner will be settled within a week. Counsel for Petitioner prays that the Respondent's submission may be recorded and the matter disposed of.*

*Disposed of as above."*

- 6) The learned counsel for the Complainant vehemently argued that the Commission had disposed of the Original Petition by recording the 'undertaking' of the counsel for the Respondent on 13.1.2012. Accordingly the dues claimed by the Complainant/Petitioner were required to be settled within a week, and for non-payment of dues within that period, interest was payable from the date of the Petition. He argued that, 'the dues claimed by the Petitioner will be settled within a week' means that all such dues claimed in the Petition would be paid. He reiterated that irrespective of whether interest is claimed or not, as per Section 3 of the Interest Act, 1978, issuance of Notice is not necessary for

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- any debt or damages, upon which interest is payable as of right by virtue of any agreement. He has relied upon the Judgments of the Hon'ble Supreme Court, reported in **AIR 1992 SC 1537** (*Smt.Ram Pyari and others – Vs- Jagdish Lal*), and **AIR 1979 SC 2285** (*Firm Ganpat Ram Rajkumar –Vs- Kalu Ram and others*), and the Hon'ble ATE in **Appeal Nos.70 and 110 of 2008** (*Ispat Industries Limited –Vs- Maharashtra Electricity Regulatory Commission and another*).
- 7) During arguments, the learned counsel for the Respondent reiterated the contentions made in the written reply and the Affidavit submitted by the Respondent. He argued that the Commission's Order did not amount to a 'direction' under section 142 of the EA, 2003. He submitted that the interest dues were not quantified in OP No.29/2011 or in any letters addressed by the Complainant before filing the Original Petition or in the subsequent correspondences. Hence, it amounts to waiver of interest. According to him, 'settlement' means negotiations, and it should not be construed as an admission to pay interest at 18% per annum claimed by the Complainant without any basis. He has cited the decisions reported in **AIR 1977 KAR 14** (*The Karnataka Bank Ltd. –Vs- Gajanan Shankararao Kulkarni and another*), and **AIR 1925 NAG 245** (*Krishna Bai –Vs- Kesheorao*).
- 8) The only point which we need to decide in this Complaint Petition is, whether the disposal of the Original Petition by recording the submission of the learned counsel for the Respondent would amount to an Order or

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- direction, and whether the Respondent is liable for penal action under Section 142 of the Electricity Act, 2003, for the alleged breach of such Order.
- 9) In OP No. 29/2011, the Complainant had sought payment of Rs.92,84,829/- for 24,93,421 units of energy supplied by it, with interest at 18% per annum, which admittedly, was the excess energy supplied during the period from December, 2009 to July, 2010, beyond the quantum agreed in the PPAs dated 10.12.2009 and 19.6.2010. The Respondent has paid Rs.92,99,629/- towards the claims made in OP No.29/2011.
- 10) In OP No. 31/11, the Complainant had sought payment of Rs.2,25,26,397/- for 60,07,039 units of energy supplied by it with interest at 18% per annum, which admittedly, was the energy supplied during the period from June, 2009 to November, 2009, when there was no PPA between the parties. The Respondent has paid Rs.2,25,28,774/- towards the claims made in OP No.31/2011.
- 11) it is pertinent to note that in the Order dated 13.1.2012, without going into the merits of the cases, the Commission had recorded the submission of the learned counsel for the Respondents, that the dues claimed by the Complainant/Petitioner would be settled within a week from the date of the Order, and accordingly disposed of the cases.

- 12) Admittedly, the energy injected into the grid by the Complainant in the two cases was either the energy beyond the quantum agreed in the PPAs or energy injected during the period when there existed no PPA between the parties. Strictly speaking, for such energy (unscheduled injection of power), the generating company is not entitled to payments, as a matter of right. If such injection of energy is permitted, it may affect the grid discipline. The Complainant cannot, as a matter of right, claim payment for such energy supplied. The Commission has, in the past, decided several cases, directing the Electricity Supply Companies (ESCOMs) to pay the generating companies for the power injected into the grid without a Contract, at applicable generic tariff for the type of the Project, solely on the principles contained in Section 70 of the Indian Contract Act, 1872, relying on the decision of Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No.92 of 2007 and Appeal No.138 of 2007, dated December 19, 2008 (*Jocil Ltd -Vs- Transmission Corporation of Andhra Pradesh Ltd and others*). In such cases, the Commission had not granted any payment of interest. In OP Nos.29/2011 and 31/1011 relating to the Complainant in this case, the Respondent had filed objections denying liability to pay for the energy supplied. However, when the Respondent's counsel offered to settle the payments, the Commission recorded the submission of the learned counsel, giving the parties an opportunity to settle the dispute about dues amongst themselves, without actually going into the merits of the claims of dues. While passing such an Order, the Commission had in



mind, only the dues which were legitimate and not arbitrary claims. The Order passed by the Commission disposing of the Original Petitions by recording the submission cannot be construed as a 'direction' or 'Order' by the Commission to pay all the amounts claimed. In other words, it is not a 'direction' or an 'Order' to perform some act by the Respondent, to which it had not acceded to. Even if the submission for settling the claim of dues is taken as an 'undertaking' by a party, as recorded in a proceeding of hearing and disposing of the dispute, non-settlement of the claim to the full satisfaction of the other party does not qualify to be a breach of an Order or direction to attract the penal provisions of Section 142 of the Electricity Act, 2003, as the Commission notes that, there was no Contract to govern the supply of energy or payments therefor, and it is only that a submission was made by the Respondent's counsel that the dues claimed would be settled.

- 13) We note that when a settlement is offered, the interpretation of its intent should be in favour of the party offering the settlement, as held by the Hon'ble Supreme Court in its Judgment reported in **(2004) 1 SCC 483** (*Rekha Mukherjee -Vs- Ashish kumar Das and another*), wherein Paragraph-16 of the Judgment reads as follows:

*"An undertaking of this nature furthermore must be construed in favour of the person giving such undertaking. It should not be stretched too far. A party giving an undertaking is bound thereby but by reason thereof, the*

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*same cannot be given a meaning whereby the scope and extent thereof is enlarged."*

- 14) We note that the Complainant had not claimed interest in its letters dated 30.1.2012 and 6.3.2012. For the first time, interest was claimed in the letter dated 14.3.2012 without any calculations. In the letter dated 15.7.2013, interest was claimed for 2 years 7 months and 23 days, for the period from 9.9.2010 (15 days from the date of invoice) to 3.5.2013 (date of payment). The Respondent has denied the claim of interest of Rs.87,92,868/-, vide its letter dated 14.8.2013, on the ground that the energy was injected to the grid without any valid PPA. We note that the interest was claimed at 18% per annum in OP No.29/2011 without any basis / calculation / quantification. In the Complaint Petition, it is stated that interest claims are reduced to 14.75% per annum, as per Article 6.3 of the PPA. In OP No.29/2011, the claims related to energy supplied over and above the quantum mentioned in the PPAs dated 10.12.2009 and 19.6.2010. In OP No.31/2011, there was no PPA when the Complainant injected energy into the grid, but relying on a PPA of a later date, claims for payment and interest were made. Article 6.3 of the PPAs provides for penal interest at the rate of SBI Medium Term lending rate per annum, for payments not made by the Respondent (GESCOM) when it became due. We note that when the quantum of energy supplied by the Complainant is more than the quantum mentioned in the PPAs, the terms of the PPAs, particularly the term relating to 'payment of interest' or 'due date of payment', which

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- apply to the agreed quantum, will not apply to such excess energy. In the circumstances, we are unable to accept that interest has to be paid as per the PPAs. In this case, the Respondent has made payment for the excess energy as noted by the Hon'ble High Court in its order dated 28.5.2013. The matter has to end there.
- 15) We have perused the Judgments quoted by the learned counsel for the Complainant. We feel that the Judgments reported in in **AIR 1992 SC 1537** (*Smt.Ram Pyari and others –Vs- Jagdish Lal*), and **AIR 1979 SC 2285** (*Firm Ganpat Ram Rajkumar –Vs- Kalu Ram and others*), relate to the effect of breach of undertaking to mislead the Court and consequent action for contempt. These decisions do not apply to the facts of the present case.
- 16) We have also perused Section 3 of the Interest Act, 1978 and the decisions cited by both the parties. In the decision cited by the Respondents relating to payment of interest, reported in **AIR 1977 KAR 14** (*The Karnataka Bank Ltd. –Vs- Gajanan Shankararao Kulkarni and another*), interest has been disallowed, as no demand was made. So also, in the case reported in **AIR 1925 NAG 245** (*Krishna Bai –Vs- Kesheorao*), interest has been disallowed, as no written Notice was served as required under the Interest Act. In **Appeal Nos.70 and 110 of 2008** (*Ispat Industries Limited –Vs- Maharashtra Electricity Regulatory Commission and another*), cited by the Complainant, the Hon'ble ATE has considered several case laws on payment of interest, and held that a

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person deprived of the use of money, to which he is legitimately entitled, has to be compensated. In this case, admittedly, the Respondent has made payments for the energy injected into the grid, without having an agreement or contract with the generating company for such supply, as noted in the preceding paragraphs. This would be sufficient compensation for the generating company, viz., the Complainant.

- 17) For the foregoing reasons, we pass the following :

**ORDER**

The Complaint Petition is dismissed.

Sd/-

(M.R. SREENIVASA MURTHY)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER