

Complaint No.1 of 2014 c/w 5 of 2013

N10/14

N48/13

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

Dated : 15th September 2016

Present :

1. Sri M.K.Shankaralinge Gowda Chairman
2. Sri H.D.Arun Kumar Member
3. Sri D.B.Manival Raju Member

Complaint No.1 of 2014 c/w Complaint No.5 of 2013

Between :

Complaint No.1 of 2014

J.K.Cement Limited,
Having its registered office at
J.K.Cement Ltd., Kamala tower,
Kanpur – 208 001
Having one of its units at Muddapur,
District Bagalkot, Karnataka
(Rep. by its unit Head Mr.Anthrikshakumar Jain)

... Complainant

(By Sri Sridhar Prabhu, Advocate)

And :

1. State of Karnataka
Department of Energy
Vikasa Soudha, Vidhana Veedhi,
Bangalore – 560 001
(Represented by its Principal Secretary).

Complaint No.1 of 2014 c/w 5 of 2013

2. Power Company of Karnataka Limited,
KPTCL Building, Kaveri Bhavan,
Bangalore – 560 009
(Represented by its Managing Director)

3. Hubli Electricity Supply Company Limited,
Navanagar, Hubli – 560 025
(Represented by its Managing Director)

4. Bangalore Electricity Supply Company Limited,
K.R.Circle, Bangalore – 560 001
(Represented by its Managing Director)

5. Mangalore Electricity Supply Company Limited,
Paradigm :Plaza, A.B.Shetty Circle,
Mangalore – 575 001
(Represented by its Managing Director)

6. Chamundeshwari Electricity Supply
Corporation Limited,
No.927, L.J.Avenue, New Kanthraj Urs Road,
Saraswathi Puram,
Mysore – 570 009.

... Respondents

(R-2 to R-6 by Just Law)

Complaint No.5 of 2013

Himatasingka Seide Limited,
10/24, Kumara Krupa Road,
High Grounds, Near Sindhi High School,
Bangalore – 560 001.

... Complainant

(Party in Person)

And :

1. The Government of Karnataka,
Represented by its Principal Secretary
Energy Department,
Vikassoudha, Bangalore – 560 001

2. Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan,
Bangalore – 560 009

3. State Load Dispatch Centre,
Anandrao Circle,
Bangalore – 560 009

4. Chamundeshwari Electricity Supply
Corporation Limited,
No.927, L.J.Avenue, New Kanthraj Urs Road,
Saraswathi Puram,
Mysore – 570 009.

... Respondents

(R-2 to R-4 by Just Law)

COMMON ORDER

1. In the above cases common questions of law and facts arise for consideration. Hence, this common order is passed.

2. In both the cases the following issues arise for consideration.

- (i) Whether security offered by the respondents is satisfactory?
- (ii) Whether the present proceedings may be dropped for the present?
- (iii) What order?

3. The facts relevant for the disposal of the above issues may be stated as follows :

- (a) That the complainants – generators, had supplied certain quantum of energy from April 2010 to June 2010 pursuant to the Government Order dated 03.04.2010 passed u/s 11 of the Electricity Act, 2003 (for short, the Act).
- (b) The complainants and other generators applied before this Commission for determination of the tariff payable to them for the energy supplied u/s 11 of the Act. Those cases were heard together and this Commission determined the price at Rs.5 per unit for the energy supplied. Against that order, the complainants have preferred appeal before the Hon'ble ATE and ultimately the matter was remanded to this Commission with certain directions to revise the price to be paid to the complainants.
- (c) Thereafter this Commission fixed the price per unit at Rs.5.72.
- (d) The present respondents being aggrieved by fixing the price at Rs.5.72 per unit have filed the review petition before this Commission and after dismissal of the review petition, have filed appeal before the Hon'ble ATE with an interim application requesting for condonation of delay in filing the appeal. However, the Hon'ble ATE rejected the request to condone the delay in filing the appeal and consequently appeal was also rejected.
- (e) The respondents have challenged the said order of the Hon'ble ATE and preferred Civil Appeal Nos.3577 – 3578 of 2015 before the Hon'ble Supreme Court of India and it seems that they have filed interim application for stay of the operation of the Order passed by this Commission enhancing the price per unit from Rs.5 to Rs.5.72. During the hearing of those applications for stay the following order has been passed.

“Learned Counsel for the petitioners states, that the entire amount will be secured by the petitioners by appropriate security to the satisfaction of Karnataka Regulatory commission, within four weeks. Learned Counsel for the respondents undertakes not to pursue the execution proceedings, in the meantime”

(f) In pursuance of the above order of the Hon’ble Supreme Court, the respondents have executed corporate guarantee for the sum payable by them in pursuance of the order of this Commission enhancing the price by 72 paise per unit.

4. The complainants opposed the sufficiency of security offered by the respondents and contended that the same should be rejected. On the other hand the respondents contended that the security furnished is sufficient and the same can be accepted. Further, the respondents submitted that for the present these complaints may be dismissed.

5. After considering the rival contentions and the relevant documents produced by the parties, our findings on the above issues are as follows.

Issue No.(i)

6. The complainants have contended that the debtors themselves undertaking to pay their debts and executing deeds of corporate guarantee to that effect, would not have any element of security offered by them. According to the learned Counsel security means collateral security or pledge to guarantee the fulfilment of the payment obligation. He contended that in

these cases the debtors themselves have executed the bond undertaking to pay the amount due by them without furnishing any collateral security either in the property form or any third party surety.

7. Though the arguments submitted by the Counsel for the complainants appears to be attractive, the same cannot be accepted on the facts and in the circumstances of the case and the nature of bond executed by the respondents. The respondents are electricity supply companies owned by the Government of Karnataka and their financial position is good enough to service the present debts payable to the complainants.

8. Whenever the payment of money is more assured or more readily recoverable as distinguished from mere assurance by the debtor, it can be said that the payment is secured. The security need not be confined to any kind of assurances like charge on specific property or a bank guarantee, etc. The following passage of Hon'ble Kerala High Court may be noted in this regard.

“The word ‘security’ is a word of general import meaning nothing more than an assurance. Anything that makes money more assured in its payment or more readily recoverable and may range from mere personal bond or promissory note or guarantee or even a pledge of something of no intrinsic value, to a mortgage of property from out of which the money can be realized” (AIR 1963 Kerala 128 Palai Central Bank – vs – Jacob.P.Chcrian).

9. In the present case each of the respondents has undertaken to pay the debts due to the complainants subject to the outcome of proceedings in Civil Appeal Nos.3577-78/2015 pending before the Hon'ble Supreme Court of India. Further, they have undertaken to pay the debts on a simple demand from the complainants without any demur and without requiring the complainants to invoke any legal remedy that may be available to them. They have also undertaken other relevant covenants in the security bond submitted by them. In view of the said unconditional assurances given by the respondents to pay the amount due, subject to the result of the civil appeals pending before the Hon'ble Supreme Court, we think the security offered by the respondents in the form of corporate guarantee has to be accepted. Hence issue No.(i) is held in the affirmative.

Issue No.(ii)

10. These cases are filed u/s 142 of the Electricity Act for non-compliance of the order passed by this Commission. Admittedly, the respondents have not paid only the differential 72 paise per unit towards the energy supplied by the complainants. The matter is pending before the Hon'ble Supreme Court and stay is in operation, and the respondents have executed corporate guarantees. Therefore, we think there is no necessity to keep pending these proceedings till the disposal of the cases before the Hon'ble Supreme Court. It is made clear that the complainants are at liberty to file fresh complainants if required. Hence issue No.(ii) is answered in the affirmative. .

Hence, we proceed to pass the following Order.

ORDER

- (i) The deed of corporate guarantees executed by the respondents are accepted.
- (ii) Both the complaints are disposed off giving liberty to file fresh complaints if required.
- (iii) Original Order be kept in Complaint No.1 of 2014 and copy of it be kept in Complaint No.5 of 2013.

Sd/-
(M.K.Shankaralinge Gowda)
Chairman

Sd/-
(H.D.Arun Kumar)
Member

Sd/-
(D.B.Manival Raju)
Member