

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT
RANCHI**

Suo-Moto Case No. 06 of 2020

In the matter of:

Directions given under Section 108 of the Electricity Act, 2003 by the Government of Jharkhand vide its letter no. 720/SC dated 22.04.2020 and letter no. 36/SC dated 01st April, 2020 to specify a reduced rate of Delayed payment surcharge (DPS)/late payment surcharge(LPS) for payment which becomes delayed beyond the due date during the period from 24.03.2020 to 30.06.2020 to the Generating Companies or Transmission licensee, treating the restrictions imposed by the Central and State Government to contain COVID-19 as an event of Force Majeure.

And

In the matter of:

The Commission on its own Motion
Vs

1. Jharkhand Bijli Vitran Nigam Limited, (JBVNL)
2. Damodar Valley Corporation Limited, (DVC)
3. Jamshedpur Utilities and Services Company Limited,(JUSCO)
4. Tata Steel Limited, (TSL)
5. Steel Authority of India Limited, (SAIL),Bokaro
6. All Generators Supplying Power to the above DISCOMs
7. All Transmission Licensees transmitting Power to the Above DISCOMs

.....Respondents

**CORAM: HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)
HON'BLE MR. P.K. SINGH, MEMBER (LEGAL)**

For the Respondents: Mr. SrijitChoudhary – DVC, Mr. Navin Kumar, Mr. Amitabh, Mr.Dheeraj Kumar – JBVNL, Ms. Richa Sanchita – TPCL & TVNL, Advocates, Sri Ram Singh – TVNL, Sri V.P.Singh -TSL

ORDER

Date -28th July, 2020

1. The Government of Jharkhand vide its letter No. 720/SC dated 22.04.2020 and letter no. 36/SC dated 01st April, 2020 has issued following directions under Section 108 of the Electricity Act, 2003:

- I. *JSERC may reduce rate of LPS/DPS or waive off DPS for bills raised by Generation and Transmission Companies falling under JSERC jurisdiction, whose due date of payment falls in the period 24th March, 2020 to 30th June, 2020. The reduced DPS/LPS rate can be made applicable for delayed payments on such bills till 30th June, 2020. The reduced DPS/LPS rate may not be more than the cost that Generation and Transmission companies raising such bills would have to bear due to delayed payment by DISCOMs.*
 - II. *For Generating and Transmission companies whose tariff was determined under section 63 of the Electricity Act, 2003 (through competitive bidding), distribution licensees may claim relief from its obligation regarding the rate at which DPS/LPS is to be paid, as per the force majeure provision given in respective Power Purchase Agreement (PPA).*
 - III. *JSERC may also advise Generating and Transmission companies to not take any coercive action or regulation of power supply against the delay in payments by DISCOMs.*
2. The Commission considered the above direction of the Government of Jharkhand and vide its order dated 24th April, 2020, by way of an ad-interim order, the Commission relaxed the provisions of applicable Regulations and provisionally reduced the rate of late payment surcharge to 6% per annum, for such payments which become delayed beyond the due date for the period from 24.03.2020 till 30.06.2020, payable by DISCOMs to the GENCOs and TRANSCO. Further, the Commission in the said order granted liberty to all concerned GENCOs, TRANSCO and DISCOMs to file their comments and objections, if any, by 26th May, 2020 and listed the matter for hearing on 10th June, 2020.
 3. In compliance of the order dated 24.04.2020 and order dated 25.06.2020, the Respondents-TPCL, TVNL, DVC and JBVNL has submitted their reply in this case.
 4. The Commission perused the records of the case and heard the representative of the Respondents as well as Learned Counsel for the Respondents at length through virtual hearing.
 5. The main objection/comments raised by the Learned Counsel for the Respondents- TPCL, TVNL and DVC are with regard to quantum of the rate of percentage of DPS/LPS only.
 6. Learned Counsel for the Respondent- TPCL & TVNL submitted that while adjudicating similar issue on direction of Central Government u/s 107 of the Electricity Act, 2003, the Hon'ble Central Electricity Regulatory Commission in Sou-Moto Petition 6/SM/2020, in order to strike the balance between the interests of the various stakeholders, has limited the Late Payment Surcharge at a normative rate (rounded off to 12% p.a.) at which it allows on interest on working capital to Generating Companies or Transmission Licensees in terms of its Tariff Regulations 2019. Learned Counsel further submitted that CERC has opined that it would meet the requirements of direction of Central Government which stipulates that the LPS should not be more than the cost that the Generating Companies or Transmission Licensees would have to bear because of the Delayed payment.

7. Learned Counsel further submitted that the Reserve Bank of India has permitted lending institutions and banks to grant a moratorium of three months on repayment in respect of all term loans and has clarified that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Similarly, in respect of working capital facilities, the Reserve Bank of India has permitted lending institutions and banks to defer the recovery of interest on such facilities, but has clarified that accumulated accrued interest shall be payable after the deferment period. The accumulated accrued interest shall be recovered immediately after the completion of this moratorium period. The interest rate applicable will be the lending rate of the lending institutions or banks. Thus, the Generating Companies and the Transmission Licensees will have to incur the cost of interest on working capital facilities even during the deferment period.
8. On the above ground and also to maintain consonance with the Central Electricity Regulatory Commission, it was pointed out by the Learned Counsel of the Respondent-TPCL & TVNL to keep the quantum of rate of DPS/LPS to the tune of 12% per annum that translates into 1% per month.
9. Learned Counsel for the Respondent-DVC submitted that DVC is a deemed Distribution Licensee in the State of Jharkhand and the jurisdiction of determination of tariff of the Generating Stations and the T&D System of DVC fall under the jurisdiction of CERC and this Commission has the jurisdiction of determination of Distribution Tariff of DVC in respect of its distribution activity within the State of Jharkhand.
10. Learned Counsel for the Respondent-DVC further submitted that the directives of the CERC vide its order dated 03.04.2020 are applicable for the DISCOMs who are the beneficiaries of DVC's Generating Stations and T&D system and as such the order dated 24.04.2020 passed by this Commission is not applicable for the power supply from DVC's Generating Station to different DISCOMs and service of its Transmission System availed by the different DISCOMs.
11. Learned Counsel for the Respondent-JBVNL submitted that in compliance of para- 13 of the order dated 24.04.2020, JBVNL has forwarded the copy of said order to all the GENCOs which supply power to JBVNL and Intra-State Transmission Companies from which JBVNL draws power and whose Tariff are regulated by this Commission.

Commission observation and findings

12. The Commission considered the submission of the Respondents and perused the records of the case.

13. The Generating Companies whose tariff is determined by the Commission under Section 62 of the Electricity Act, 2003, the provision for payment of Late Payment Surcharge under Regulation 10.6 of JSERC (Terms and Condition for Determination of Generation Tariff) Regulations 2015 is applicable, which reads as under:

“Late Payment Surcharge

10.6 In case the payment of any bill for charges payable under these Regulations is delayed by a beneficiary beyond a period of 60 days from the date of billing a late payment surcharge at the rate of 1.25% per month, calculated on daily basis, shall be levied by the Generating Company”.

Further, Regulation 8.16 of JSERC (Terms and Condition for Determination of Transmission Tariff) Regulations, 2015 reads as under:

“Late Payment Surcharge

8.16 In case the payment of any bills for charges payable under these Regulations is delayed by a beneficiary beyond a period of 60 days from the date of billing a late payment surcharge at the rate of 1.25% per month, calculated on daily basis, shall be levied by the Transmission Licensee”.

14. The Commission is of the view that in the given situation of COVID-19 pandemic and as per the directions issued by the Government of Jharkhand under Section 108 of the Electricity Act, 2003, the Commission is required to specify a reduced rate in place of the penal rate of LPS specified under Regulation 10.6 and 8.16 of the Generation and Transmission Tariff Regulations, 2015, respectively for delayed payments falling due beyond the period of 60 days i.e. during the period from 24.03.2020 to 30.06.2020.
15. The Commission also observed that in respect of working capital facilities, the Reserve Bank Of India has permitted lending institutions and banks to defer the recovery of interest on such facilities, but has clarified that accumulated accrued interest shall be payable after the deferment period from 01.03.2020 up to 31.05.2020.
16. Thus, the Generating Companies and Transmission Companies can opt for moratorium on payment of instalments of term loan and defer the payment of interest in respect of working capital facilities during the period from March 1, 2020 up to May 31, 2020 (“deferment”), but the interest accrued is not waived. As such, the Generating Companies and Transmission Companies shall be required to continue to discharge their debt service obligations and arrange for working capital for day to day operation of their Generating Stations and Transmission assets.
17. The provision for Interest on Working Capital is provided under Regulation 7.38& 7.39 of JSERC (Terms and Condition for Determination of Generation Tariff) Regulations 2015, which reads as under:

Interest on working Capital

7.38 *Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 01.04.2016 or as on 1st April of the year during the tariff period 2016-17 to 2020-21 in which the generating station or a unit thereof, is declared under commercial operation, whichever is earlier.*

Provided that the rate of interest on working capital shall be trued up on the basis of actual bank rate as 1st April of the respective year at the time of true up for that year.

7.39 *The interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken working capital loan from any outside agency or has exceeded the working capital loan based on the normative figures.*

“Bank Rate” has been defined in Clause (8) of Regulation A2 of JSERC (Terms and Condition for Determination of Generation Tariff) Regulations 2015, which reads as under:

“8) **“Bank Rate”** means the base rate of interest as specified by the State Bank of India from time to time or any replacement thereof for the time being in effect plus 350 points.”

Same provision of Interest on Working Capital for Transmission Company is being provided under JSERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2015.

18. Therefore, the Commission is of the view that in the given situation, the provision of 2015 Tariff Regulations with regard to Interest on Working Capital be adopted as the normative rate of LPS in place of the penal rate of LPS specified under the respective Regulations and in line with CERC analysis i.e as per MCLR historical data from website of State Bank of India, one year MCLR as on 10.03.2020 is 7.75% and by adding 350 basis points, the Bank Rate as per Tariff Regulations works out to 11.25% per annum.
19. The direction under Section 108 of the Electricity Act, 2003 stipulates requirements for reduced rate of LPS and the LPS should not be more than the cost that the Generating Companies or Transmission Companies would have to bear because of the delayed payment. Given that the Commission follows normative approach for the purpose of interest on working capital irrespective of the actual loan taken by the Generating Companies or the Transmission Companies, the Commission is of the view that providing normative LPS rate would satisfy the requirements of direction under Section 108 of the Electricity Act, 2003.
20. Accordingly, in exercise of its powers under Regulation 16.4 of JSERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 and Regulation 14.4 of JSERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2015 the Commission hereby order to relax the provisions of Regulations and directs to reduce the rate of late payment surcharge to 12% per annum that translates into 1% per month, for such payments which become

delayed beyond the due date for the period from 24.03.2020 till 30.06.2020, payable by DISCOMs to the GENCOs and TRANSCOs .

21. The above final reduced rate of LPS to 12% per annum is also required to maintain consonance with the order dated 03.04.2020 of the Central Electricity Regulatory Commission as most of the DISCOMs are getting power from the Generating Companies whose Tariff are regulated by CERC.
22. Further, it is clarified that if the period of 60 days beyond the due date of the presentation of the bill by the GENCOs and TRANSCOs, falls before 24.03.2020 or after 30.06.2020, DISCOMs shall be liable to pay the LPS as per the applicable Regulations.
23. It is also clarified that the Generating Companies whose tariff has been adopted by the Commission under Section 63 of the Act, DISCOMs may claim the relief from its obligations regarding the rate at which LPS is to be paid for payments which become delayed beyond the stipulated period during the period from 24.03.2020 to 30.06.2020, as per the force majeure provisions given in the respective Power Purchase Agreements (PPAs).
24. All concerned GENCOs and TRANSCOs supplying and transmitting power to the DISCOMs of the State of Jharkhand shall not use any coercive means for recovering dues and shall continue supply/transmit power since it is an essential service as recognised by the Central Government vide its order dated 24.03.2020.
25. The Suo-Moto case is disposed off in the terms of the above orders.
26. Let an extract copy of the order be sent to the Secretary, Department of Energy, Government of Jharkhand, in reference to his letters dated 1st April 2020 & 22nd April 2020 and also be served to the Respondents.

Sd/-
Member (L)

Sd/-
Member (Engg.)