



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: Smt. UDAYA GOURI

Friday the Nineteenth Day of June 2020

Appeal No. 44 of 2019-20

Preferred against Order dt:25.02.2020 of CGRF in
CG No. 566/2019-20 of Vikarabad Circle

Between

Sri. Bharat Kumar, (Managing Director), M/s. Sugna Metals Limited,
Represented by Ms. Nishtha, #1-8-673, Azamabad, Hyderabad 500 020.
Cell: 9848044005, 7036205211.

... Appellant

AND

1. The DE/OP/Vikarabad/TSSPDCL/Hyderabad.
2. The SAO/OP/Vikarabad/TSSPDCL/Hyderabad
3. The SE/OP/Vikarabad Circle/TSSPDCL/Hyderabad

... Respondents

The above appeal filed on 04.03.2020, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 10.06.2020 at Hyderabad in the presence of Kum. Nishtha - On behalf of the Appellant Company and Sri. M. Madhav - SAO/OP/Vikarabad for the Respondents and having considered the record and submissions of both parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a company registered under Companies Act in name and style of M/s Sugna Metals Limited and having H.T connection No VKB 1247 with contracted maximum Demand of 30999KVA with the respondents.

Written submissions of the Appellant

The Respondent No. 2 has claimed an excess amount of Rs. 1,12,959/- towards ACD surcharge in December' 2019 billing month. Aggrieved by the same the Appellant approached before the CGRF C.G.No 566/2019-20/Vikarabad circle on 23.01.2020.

That the appellant filed its deposition dated 11.2.2020 before CGRF.

The CGRF passed the award dated 25.2.2020 in C.G No 566/2019-20/vikarabad circle and rejected and complaint without applying its legal mind properly on the clause 3 (a) (b) of regulation 6 of 2004 dated 17.5.2004 and without considering the facts placed by the appellant.

Under Sub Clause 3.35 of Regulation 3 of 2015

- A. To set aside the award dt.25.02.2020 passed in CG No.566 of 2019-20/Vikarabad Circle by the CGRF.
- B. To withdraw/set aside the claim of Rs 1,12,959/- excess claimed in December'2019 bill dt.26.12.2019 towards ACD surcharge immediately.
- C. Any other order or orders as may deem fit and proper by the Hon'ble Vidyut Ombudsman for the State of Telangana under the circumstances of the case in the interest of justice and fair play.

2. Written submissions of the Respondents

The Respondents through the Respondent No.2 submitted their written submissions vide LR.NO.SE/OP/RRC(S)/SAO/JAO/HT/D.NO.3214/19,DT21.03.2020 stating as follows:-

The ACD notice was issued in respect of SC.No VKB 1247 of M/s Suguna Metals(P) Ltd. with a request to pay the said notice on or before 31.5.2019. Six installments were sanctioned each installment of Rs.75,30,621/- for a total amount of Rs 4,51,83,73/- from 1st June 2019 to 31st october 2019.

The consumer has paid the said ACD in six installments and the last installment was paid on 01.11.2019. The ACD surcharge was levied from 07/2019 to 12/2019 for the period of 01.06.2019 to 31.10.2109. As on the said period the ACD

was not received totally. Acd surcharge was levied on the balance amount 18% per annum as per sub clause (3) (b) of regulation 6 of 2004.

The extracts of the clause are given hereunder”.

The consumer shall pay the additional security deposit within thirty days from date of service of the demand notice issued by the licensee.

If there is any delay in payment, the consumer shall pay surcharge thereon at 18% per annum or at such rates as may be fixed by the commission from time to time, without prejudice to the licensee right to disconnect supply of electricity, as per this regulation. $Rs\ 4,51,83,730 \times 18\% / 100 \times 1 / 12 = Rs.6,77,756/-$ surcharge was levied in the month of July -19 bill. Towards ACD surcharge was levied for the period from 01.05.2019 to 31.05.2019.

ACD surcharge calculation for the month of November,2019 is given below:-

$Rs\ 75,30,622 \times 18\% / 100 \times 1 / 12 = Rs\ 1,12,959/-$ surcharge for the month of November-2019.

The surcharge claimed in December'2019 bill of Rs 1,12,959/- towards ACD surcharge for the period from 01.10.2019 to 30.10.2019.

In view of the facts explained above, it is requested to drop the grievance of the complainant.

3. REJOINDER FILLED BY APPELLANT:

The Respondent No.2 categorically admitted that the Appellant has paid the last installment on 1.11.2019 in Para No.2. Further in Para No.2 admitted that the surcharge is claimed from 1.06.2019 to 30.10.2019. In para No.5 the Respondent No.2 given the calculation of surcharge of Rs 1,12,959/- claimed in December'2019 bill. As the last installment paid on 1.11.2019 from 2.11.2019 no ACD amount is due and no ACD surcharge will attract.

In para No.5 the Respondent No.2 in heading informed the surcharge is pertaining to November'2019, in calculation made in second line i.e. $Rs\ 75,30,662/- \times 18\% / 100 / 1 / 12 = Rs\ 1,12,959/-$ informed that the surcharge for the month of November'2019 and in third line informed that the ACD surcharge for the period 1.10.2019 to 31.10.2019.

As there was no ACD amount due from 02.11.2019 the claim of Rs 1,12,959/- for November'2019 month in December'2019 bill is wrong, illegal and liable to be set aside. However, actual surcharge payable is furnished at Page No.21 of the main Appeal.

Hence the Appellant prayed to this Hon'ble Authority to allow the Appeal as prayed for.

4. Reply of the Respondents

That a typographical error has happened, where in the period of calculating interest is preponed one month which has to be corrected as shown below:-

ACD surcharge calculation for the month of November,2019 is given below:-

Rs $75,30,622 \times 18\% / 100 \times 1 / 12$ = Rs 1,12,959/- surcharge for the month of November-2019.

The surcharge claimed in December'2019 bill of Rs 1,12,959/- towards ACD surcharge for the period from 01.11.2019 to 30.11.2019.

In view of the facts explained above, it is requested to drop the grievance of the complainant.

Heard both sides.

Issues

5. In the face of the averments by both sides, the following issues are framed:-

1. Whether the Appellant is entitled to set aside the claim of Rs 1,12,959/- claimed in the bill for the month of December'2019 towards ACD surcharge by the Respondents?
2. To what relief.

Issue No. 1

6. The Appellant M/s Suguna Metals Limited bearing HT SC No VKB-1247, CMD of 30999 KVA, filed this appeal towards withdrawal of ACD surcharge of Rs 1,12,959/- alleged to be excess claimed by the respondents for November,2019 levied in the billing month of December'2019. The admitted facts are that the SE/OP/Vikarabad

Circle vide Lr.No SE/OP/SAO/AAO/JAO/HT/ACD/D.No 288 Dt.01.05.2019, issued demand notice for making payment of Additional Consumption Deposit (ACD) of Rs 4,51,83,730/- based on the Clause 6 of Regulation no 6 of 2004. The dispute raised by the appellant is that the demanded amount was excess claimed to an extent of Rs 1,12,959/- even after payment of total amount of ACD. The Respondent submitted that the demand notice towards ACD dated 01.05.2019, was issued to the appellant with request to pay the ACD charges of Rs 4,51,83,730/- on or before 31.05.2019. Subsequently based on the request made by the appellant for payment of the demanded ACD amount in installments (12), the CGM commercial vide Lr.No CGM(comml)/SE(C)/DE(C)/ADE-III/D.No 814 /19-20 Dated 01.06.2019, accorded approval for 6 instalments @ Rs 75,30,621/- per month, from 01.6.2019 to 31.10.2019, along with surcharge payable on the balance amount @ 18% p.a as per sub clause 3(b) of Regulation 6 of 2004.

The calculation of monthly surcharge on the belated payment of ACD submitted by the Respondents is reproduced hereunder:-

TABLE-1

ACD SURCHARGE CALCULATION OF VKB 1247 M/s Suguna Metals Limited		Surcharge Levied Bill Month	DPS Levied in Bill
Due Date As Per Installments	Amounts		
01-06-2019	Rs 4,51,83,730		
30-06-2019	Rs 4,51,83,730	26/07/2019	Rs 6,77,756/-
31-07-2019	Rs 3,76,53,108	26/08/2019	Rs 5,64,797/-
31-08-2019	Rs 3,01,22,486	26/09/2019	Rs 3,38,878/-
31-09-2019	Rs 2,25,91,864	26/10/2019	Rs 3,38,878/-
31-10-2019	Rs 1,50,61,242	26/11/2019	Rs 2,25,919/-
30-11-2019	Rs 75,30,622	26/12/2019	Rs 1,12,959/-
		TOTAL	2259186

The following is the calculation sheet submitted by the Appellant towards ACD surcharge and evaluated an amount of Rs 6,42,167/- was excess claimed :-

TABLE- 2

DETAILS OF ACD SURCHARGE PAYABLE
FINANCIAL YEAR 2019-20

SL. NO.	DATE OF RECEIPT OF NOTICE	DUE DATE FOR PAYMENT	AMOUNT DUE RS.	DATE OF PAYMENT	AMOUNT PAID RS.	BALANCE RS.	NO. OF DAYS DELAY	RATE OF INTEREST 18% P.A.	ACD SURCHARGE PAYABLE RS.	ACD SURCHARGE CLAIMED IN RS.	CLAIMED IN BILLING MONTH	DIFFERENCE EXCESS CLAIMED RS.
(1)	(2)	(3)	(4)	(5)	(6)	(7) (4-6)	(8) (5-3)	(9)	(10) (4X9/365X8)	(11)	(12)	(13) (11-10)
1	18.5.2019	18.6.2019	45183730	29.6.2019	7530622	37653108	13	18%	289671	677756	July, 2019	388085
2		29.6.2019	37653108	4.7.2019	7530622	30122486	6	18%	111412			
3		4.7.2019	30122486	31.7.2019	7530622	22591864	27	18%	401083	564797	August, 2019	52302
4		31.7.2019	22591864	2.9.2019	7530622	15061242	33	18%	367659	338878	September, 2019	-28781
5		2.9.2019	15061242	3.10.2019	7530622	7530620	31	18%	230251	338878	October, 2019	108627
6		3.10.2019	7530620	1.11.2019	7530622	-2	28	18%	103984	225919	November, 2019	121935
							138	TOTAL	1504061	2146228		642167

A perusal of the above calculation sheet of the Appellant shows that the due dates for payment in installments are 18.06.2019, 29.06.2019, 04.07.2019, 31.07.2019, 02.09.2019 and 03.10.2019. It shows that the Appellant has taken due date for payment, as on date of payment of the installments and calculated the ACD surcharge at the rate of interest 18% P.A. on 138 No.of days delayed.

As per the CGM/Commercial's order no 814, dt.01.06.2019, in regard to payment of ACD amount in installments, the due date for payment was scheduled as following:-

TABLE- 3

Sl.No.	Installments	ACD Amount	Due Date
1.	First	Rs 4,51,83,730/-	01.06.2019
2.	Second	Rs 3,76,53,108/-	30.06.2019
3.	Third	Rs 30,12, 24,487/-	31.07.2019
4.	Fourth	Rs 2,25,91,866/-	31.08.2019
5.	Fifth	Rs 1,50,61,245/-	30.09.2019
6.	Sixth	Rs 75,30,624/-	31.10.2019

The following are the actuals of ACD surcharge levied with due date, payment dates and amount of ACD surcharge:-

TABLE- 4

Sl. No	Month	ACD Amount	Due Date	Payment Date	ACD Surcharge
1.	26/07/2019 (20.06.2019 to 20.07.2019)	Rs 4,51,83,730/-	01.06.2019	29.06.2019	Rs 6,77,756/-
2.	26/08/2019 (20.07.2019 to 20.08.2019)	Rs 3,76,53,108/-	30.06.2019	04.07.2019	Rs 5,64,797/-
3.	26/09/2019 (20.08.2019 to 20.09.2019)	Rs 30,12, 24,487/-	31.07.2019	31.07.2019	Rs 3,38,878/-
4.	26/10/2019 (20.09.2019 to 19.10.2019)	Rs 2,25,91,866/-	31.08.2019	02.09.2019	Rs 3,38,878/-
5.	26/11/2019 (19.10.2019 to 20.11.2019)	Rs 1,50,61,245/-	30.09.2019	03.10.2019	Rs 2,25,919/-
6.	26/12/2019 (20.11.2019 to 20.12.2019)	Rs 75,30,624/-	31.10.2019	01.11.2019	Rs 1,12,959/-

In the rejoinder the Appellant pointed out that Rs 6,77,756/- was claimed in July'2019 against the ACD due amount of Rs 4,51,83,730/-. An amount of surcharge of Rs 5,64,797/- against ACD amount of Rs 3,76,53,108/- was claimed in August'2019 and same amount of Rs 3,38,878/- ACD surcharge was claimed in September and October bill, there is no change in the ACD surcharge amount for the two months. It is stated that the calculation is made on 30 days of the month without considering the date of payment of installments, without considering the actual amount due and actual number of days delayed in violation of Clause 6(4) of Regulation 6 of 2004. It is reiterated that the actual surcharge payable is Rs 15,04,061/- for the period from 18.06.2019 to 1.11.2019, whereas the Respondents claimed Rs 21,46,228/- for the period from 01.05.2019 to 30.09.2019.

7. In response to the Appellant's rejoinder the Respondent No.2, SAO/OP/Vikarabad submitted his rejoinder in correction to initial given written submissions which the Appellant had no objection, that there was a typographical error in periods of calculating interest which is preponed one month and to be corrected as given below:-

ACD surcharge calculation for the month of November,2019 is given below:-

Rs 75,30,622x18%/100x1/12 = Rs 1,12,959/- surcharge for the month of November-2019.

The surcharge claimed in December'2019 bill of Rs 1,12,959/- towards ACD surcharge for the period from 01.11.2019 to 30.11.2019.

A detailed study of the above given written submissions of the Appellant and the Respondents shows that the due dates followed by the Appellant considering the date of payment of installments do not have any statute to support and are based on his own calculations and on the number of days delayed for payment. Here the question arises is the surcharges are to be levied on the number of days delayed or shall be levied without any reference to the number of days delayed. The Tariff Order envisages the Respondents under HT Category to levy surcharges differently over levying delayed payment surcharges on the CC bill and in case of grant of installments, the relevant Clause 7.125 - Additional charges for belated payment of charges - Tariff Order FY-2018-19 is reproduced hereunder

The Licensees shall charge the Delayed Payment Surcharge (DPS) per month on the bill amount at the rate of 5 paise/ Rs. 100/ day or Rs. 550 whichever is higher. In case of grant of installments, the Licensee shall levy interest at the rate of 18% per annum on the outstanding amounts, compounded annually and the two charges shall not be levied at the same time.

As per the above clause the delayed payment surcharges are based on number of days delayed @ 5 ps/ Rs 100/-/ day, such is not in case of grant of installments, which is more specifically prescribed in Clause 6(3)(b) of Regulation 6 of 2004 also, that if there is delay in payment of ACD, the consumer shall pay surcharge thereon at 18% Per Annum. In the absence of the specific remarks over charging the surcharges towards installments on number of days delayed, the surcharges shall be levied on the balance ACD amount @ 18% P.A. which fell due as on the date of generation of the monthly bill. The due dates scheduled in the order of CGM/Commercial is for disconnection of the service in case of default in payment of ACD amounts as per the schedule and not for levying surcharges.

8. There was mistake over levy of period of ACD surcharges this can be ascertained from the Table-4 above, the ACD surcharge of Rs 6,77,756/-against the ACD due amount of Rs 4,51,83,730/ was levied in the month of July which is for the period

20.06.2019 to 20.07.2019, actually the said ACD surcharge is liable to be shown in the June month bill, as per the CGM/Commercial order of installments, the first installment is to be paid immediately as on 01.06.2019 and the payment was received on 29.06.2019, which shows that as on the date of generation of June month bill i.e. 26.06.2019 the total ACD amount was un paid and became due. Subsequently ACD surcharge amounts would have to be raised on the balance ACD amount @ 18 P.A. taking due as on the date of generation of the monthly bill, and also there was a mistake in calculation of surcharges towards balance ACD amount of Rs 3,01,22,486/- which was shown as Rs 3,38,878/- instead of Rs 4,51,837/- in the August billing month (Rs $3,01,22,486 \times 18\% / 100 \times 1/12 =$ Rs.4,51,837/-) resulting in shortfall of ACD surcharge of Rs 1,12,959/-, the mistake was admitted by the Respondents vide Lr.No. 262 dt.09.06.2020 (Appeal no 43 of the same Appellant). The same amount of Rs 1,12,959/- claimed during the month of December bill is actually shortfall amount of ACD surcharge of August billing month i.e. Rs 4,51,837/- (ACD Surcharge to be levied) minus Rs 3,38,878/- (ACD Surcharge levied) and not the ACD surcharge amount for the period from 01.11.2019 to 30.11.2019 as claimed by the Respondents. On the whole the levy of total ACD surcharges of Rs 22,59,186/- is as per Clause 6(3)(b) Regulation 6 of 2004 i.e, 18% Per Annum towards delay in payment of the ACD amount payable as against the 6 Nos. installments given to the Appellant. The Appeal of the Appellant for withdrawal of ACD surcharge of Rs 1,12,959/- is not tenable and liable to be paid.

9. The Appellant contended that the Respondents did not resolved their complaint for withdrawal of Rs 1,12,959/- vide letter dt.11.12.2019 within 7 working days of receipt of the complaint as per Clause VII 7.1(i) and (ii) of Regulation 5 of 2016, hence the amount has to be withdrawn, but in the discussions above it is clearly found that the Appellant has to pay Rs 1,12,959/-, as such the said contentions of the Appellant is rejected.

Hence, in the face of the above findings, this issue is decided against the Appellant.

Issue No.2

10. In the result the Appeal is dismissed.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 19th day of June, 2020.

Sd/-

Vidyut Ombudsman

1. Sri. Bharat Kumar, (Managing Director), M/s. Sugna Metals Limited,
Represented by Ms. Nishtha, #1-8-673, Azamabad, Hyderabad 500 020.
Cell: 9848044005, 7036205211.
2. The DE/OP/Vikarabad/TSSPDCL/Hyderabad.
3. The SAO/OP/Vikarabad/TSSPDCL/Hyderabad
4. The SE/OP/Vikarabad Circle/TSSPDCL/Hyderabad

Copy to :

5. The Chairperson, CGRF-GHA, TSSPDCL, GTS Colony, Vengal Rao Nagar,
Hyderabad.
6. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul, Hyd.