



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

:: Present:: R. DAMODAR

Wednesday, the Eighteenth Day of January 2017

Appeal No. 49 of 2016

Preferred against Order Dt. 23-06-2016 of CGRF In

CG.No: 63(New)/2016-17 of Medak Circle

Between

M/s Agarwal Foundries Private Limited Represented by its Director, Mr. Pramod
Agarwal, Rama Towers, 2nd Floor, 5-4-83, Mahatma Gandhi Road,
Secunderabad - 500 003. Phone: 040-23447321.

... Appellant

AND

1. The SAO/OP/Medak/TSSPDCL/ at Sanga Reddy.
2. The DE/OP/Toopran/TSSPDCL/Medak Dist.
3. The SE/OP/Medak Circle/TSSPDCL/Medak Dist.

... Respondents

The above appeal filed on 02.08.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 10.11.2016 at Hyderabad in the presence of Sri. Pramod Agarwal - Appellant and Smt. P. Manjula - SAO/OP/Medak, Sri. G. Subhash - DE/OP/Toopran for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has service connection No. HT MDK 893. The Appellant sought withdrawal of penalties levied in the months of June to September of 2014 on the ground of excess power drawn during the power holidays declared by the Licensee. The Appellant contended that the power holidays were not approved by the ERC, which is the competent authority for imposing R&C measures. The Appellant further claimed that the Licensee had not informed the Appellant about imposition of power holidays. The Appellant claimed that had the power holidays been informed, the Appellant might have drawn extra power through Open Access during the relevant period.

2. The Respondents submitted that the Licensee had imposed power holidays (one day every week) to the industries to tide over the power shortage and that they

had permitted those industries with continuous process to draw power from private power generators on the power holidays, to enable them to have uninterrupted power supply and avoid production loss.

3. The Appellant's representative claimed that the Licensee had no instructions from ERC to impose any power holidays and imposition of five times penalty. He claimed that there is no information about power cuts by way of any notification published in the newspapers and that the Appellant is not aware of power holidays and that the company has taken Open Access power without any break.

4. On the other hand, the 1st Respondent/SAO/O/Medak stated that due to severe power shortage in the state due to increase in Rabi crop loads, Summer loads, intermittent loss of Thermal generation and subsequent onset of Kharif season, the Licensee imposed one day power holiday in a week throughout its jurisdiction by informing about the power holidays to all the HT consumers. To bridge the gap of 1200 MW power, the feeders were kept off on the day of power holiday. In those circumstances, the 1st Respondent stated that when the consumers approached the licensee seeking permission to avail Open Access power on power holiday, the licensee considered the plea and permitted Open Access by obtaining an undertaking from the prospective Open Access consumers to the effect that the consumer will not draw power/energy over and above the power purchased through Open Access on the day of power holiday, duly accepting the five times penalty for excess drawal of power /energy on the power holiday. The intention of the Licensee was to see that the Open Access consumer was not put to any hardship, but to maintain grid discipline and regulate supply to all the consumers.

5. The 1st Respondent further stated that the undertaking given by the Appellant clearly shows that it is aware of restrictions of power holidays and penal rates for excess drawal and further the Appellant purchased power from the Open Access only on the day of power holidays, which clearly shows that the Appellant is aware of power holidays and the penal rates. The Appellant was issued bills from time to time by levying penal charges under the head "other charges". When the Appellant sought clarification, the Licensee provided the necessary data and MRI dumps and thereafter the Appellant approached the CGRF. It is further submitted that the power restrictions/power holidays were not a regular feature and that when the supply position improved, the DISCOM lifted the power holidays/power restrictions, as such,

the licensee did not approach the ERC for getting necessary approval, as it was a temporary measure for a short period only.

6. The 1st Respondent further submitted that the Licensee issued NOC to the prospective Open Access consumers for purchasing power from Open Access. The quantum of power to be purchased is within the discretion of the consumer about which the Licensee has no role. In the present case, the Appellant should have restricted its consumption up to the quantum purchased from the Open Access. It is asserted that the Appellant is aware of the power restrictions/power holidays and therefore, it purchased power from the Open Access only on the basis of the power holidays declared by the Licensee.

7. On the basis of the material placed on record and contentions of the parties, the CGRF opined that since the power holidays were a short period imposition of power restrictions, the Licensee could not obtain approval of the ERC, while the Appellant was accorded permission to draw Open Access power on power holidays imposed by the licensee and thus the Appellant gave an undertaking on 4.7.2014 that in case of excess power over and above the Open Access agreement is drawn, they shall be liable to pay 5 times penal charges on such over drawals and thus, the Appellant has been found liable to pay the penal charges levied by the licensee in the final settlement of the Open Access bills issued from June,2014 to September,2014 though the impugned orders.

8. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal, primarily on the following grounds:

- a. The Licensee has not obtained orders from State Electricity Regulatory Commission for imposing power holidays.
- b. The alleged undertaking dt.4.7.2014 that in case of drawal of excess power over the Open Access power, the Licensee can bill such excess power at five times the tariff applicable is not legal.
- c. The DISCOM has no power to impose power restrictions/power holidays from June,2014 to September,2014 which are illegal.
- d. The Appellant who was not in a position to bargain, had been obliged to give the undertaking.

9. In view of nature of the dispute and respective stands, mediation has not succeeded. Hence the matter is being disposed on merits.

On the basis of the material on record and contentions, the following issues arise for determination:

Issues 1 to 3:

1. Whether the Appellant is liable to pay five times the tariff as per the undertaking dt. 4.7.2014, in case of excess drawal of power over the Open Access power?
2. Whether the DISCOM has no power to impose power restriction/ power holidays during June 2014 to September 2014?
3. Whether the impugned orders are liable to be set aside?

10. **Issues 1 to 3:**The Appellant claimed that due to the inability of the DISCOM to supply power, the company had opted for taking power through Open Access and for availing the transmission system of DISCOM, the company has paid wheeling and other charges and therefore, it is not liable to the DISCOM for any other charges.

The Appellant questioned the final settlement of Open Access bills. It is alleged that the quantum of Open Access power utilised by the Appellant has to be shown and deducted from the total power consumed by the Appellant, to arrive at the quantum of power supplied by the DISCOM and bill accordingly. The Appellant alleged that the 3rd Respondent has been deducting lesser units of Open Access power and levying huge amount under the head “other charges” and an amount of Rs 82,88,857/- as Open Access final settlement has been claimed by the Respondents for the months of June, July and August,2014, which is not legal.

11. The Appellant contended that nowhere the Respondents indicated in the CC bill or letter of demand that the appellant has utilised excess units than the Open Access supplied and that the demanded amount is not the regular billing dispute, but it relates to the penalty of five times on the regular charges, the delay charges and other undisclosed charges and that no notice was given by the Respondents for levying the penalties.

12. The Appellant lastly contended that if the Respondents are relying on the R&C order issued by the Regulatory Commission, they should have equally followed the waiver of 50% on penalties, as ordered by the Commission.

13. The DISCOM had implemented Restriction on power supply by means of power holidays citing certain grounds:

Grounds for Restriction : Respondents(TSSPDCL) proposed power holidays in view of the severe power shortage in the state due to increase in Rabi and summer loads and the intermittent loss of thermal generation & to bridge the average 1200 MW shortfall, in addition to the ongoing domestic sector load reliefs.

Schedule of power holidays: Power holidays were imposed under the jurisdiction of TSSPDCL and each operation circle was allotted one day of the week as power holiday. The Appellant's service falls under Medak circle. In this Circle every thursday of week the power supply was restricted to all industries (HT-1, LT-3) excluding IT and ITES, data centres, cellular signal processing/communication towers/centres and Telephone exchanges from 03.03.2014 initially for duration 00.00Hrs to nextday midnight 00.00hrs. Subsequently TSSPDCL relaxed the duration & timings depending upon prevailing load deficit.

The DISCOM has taken certain steps for Relaxation of restrictions of power supply: For those consumers seeking power through private power generators, to avoid production loss to the industries such as continuous process industries, the DISCOM issued NOC's for purchasing power from Open Access on the day of power holiday. The DISCOM has nothing to do with the quantum of power purchased from the Open Access.

14. **Disputed bills containing penalties levied:** The Appellant claimed that the penal charges were levied during the months of June.14 to September,14 which are not legal. The Respondents contended that the demand notice for Open Access final settlement bills for the month of July,2014 and August,2014 were issued when the Appellant had exceeded the consumption of power/energy during the power holidays in these two months only and therefore, as per the undertaking, the Appellant is liable to pay the bills.

15. **Mode of penalties:** The SAO/Medak vide letter D.No. 186 dt.21.9.2016 stated that the terms and conditions set by the TSERC vide PR No. APERC/Secy/08/2013 dt.17.4.2013 were relied on for imposition of power restrictions and levying penal charges for over drawal. The Licensee accorded permission to draw Open Access power on power holidays, subject to an undertaking that in case of excess drawal of power over and above the Open Access agreement, the Appellant shall be liable to pay 5 times penal charges on such over drawals and the Appellant had agreed for such levy.

The timings of power holiday was as follows:

06.00 Hrs to 18.00 Hrs	No power
18.00 Hrs to 22.00 Hrs	10 % of CMD
22.00 Hrs to 06.00 Hrs	10 % of CMD

16. The Respondents based on the MRI data, furnished brief details of excess drawals and penal charges levied. The penal charges were levied 4 times on the excess power/energy drawn.

In the month of July 2014; as per the the MRI data, the consumer/Appellant has exceeded the consumption of power/energy during the power holidays off peak KVAH 86158 units, peak KVAH 77126 units, off peak KVA 14176 units and peak KVA 14208 units. The details of units exceeded is shown in para 20 infra and the detailed calculation is shown below:

	<u>Units</u>	<u>Rate</u>	<u>Power Holiday</u>	<u>Hours</u>	<u>No.of Times penalty</u>	<u>Total</u>	<u>Remarks</u>
1	2	3	4	5	6	7 = (2 x3x4x5x6)	8
Off peak KVAH	86158	4.9	0	0	4	1688696.8	
Peak KVAH	77126	5.9	0	0	4	1820173.6	
Off peak KVA	14176	350	.3/30	.20/24	4	1653866.67	
Peak KVA	14208	350	.3/30	.4/24	4	331520	
Total						5494257.07	

17. For the month of August 2014; as per the the MRI data, the consumer has exceeded the consumption of power/energy during the power holidays off peak KVAH 47976 units, peak KVAH 19122.5 units, off peak KVA 5776 units and peak KVA 5656 units. The details of units exceeded is shown in para 20 infra and the detailed calculation is shown below:

	Units	Rate	Power Holiday	Hours	No.of Times penalty	Total	Remarks
1	2	3	4	5	6	7 = (2 x3x4x5x6)	8
Off peak KVAH	47976	4.9	0	0	4	940329.6	
Peak KVAH	19122.5	5.9	0	0	4	451291	
Off peak KVA	5776	350	.4/31	.20/24	4	869505.38	
Peak KVA	5656	350	.4/31	.4/24	4	170288.17	
Total						2431414.5	

In all Rs 54,94,257 + 24,31,414 = 79,25,671/- penal charges were levied. In addition, surcharge over delayed payment as on 05.08.2016 for an amount of Rs 28,23,481/- was levied, making overall total of Rs 1,07,49,153/- towards final settlement of Open Access bill issued from June,2014 to September,2014. This was communicated to the Appellant vide Lr.No. 134 dt.5.8.2016. The particulars are shown here under:

Other charges of SDP893, M/s. Agarwal Foundries Pvt. Ltd						
S.No.	Month	Amount	Due Date	Cut off date	No.of days	Surcharge amount
1.	July,2014	5494258	09-08-2014	31.07.2016	722	1983427
2.	Aug.2014	2431414	09.09.2014	31.07.2016	691	840054
		7925672				2823481

18. On the claim of the Appellant that the DISCOM has nothing on record to show that they have intimated about imposition of power holidays to the HT consumers, the Respondents have produced an undertaking letter signed before a notary by the Appellant dt.19.7.2014, which was signed by Sri. Mahesh Varma(Manager) of M/s Agarwal Foundries pvt. Ltd. which is reproduced here for clarity:

“ I. Sri. Mahesh Varma(Manager) of HT SC No. 893 i.e.M/s Agarwal Foundries pvt.ltd do herebyundertake that I shall not draw power/energy in excess of power/energy contracted through OA during the period of power holiday declared for my dedicated/express/mixed feeder. In case, I draw power/energy in excess of power/energy contracted through OA during power holiday for my feeder, notwithstanding any power tariff fixed by

APERC for my connection, DISCOM can bill such excess power/energy at five times the tariff applicable for my connection.”

Again on 27.9.2014, Sri. Mahesh Varma (Manager) of M/s. Agarwal foundries pvt.ltd gave an undertaking which is reproduced here:

“ I. Sri. Mahesh Varma(Manager) of HT SC No. 893 i.e.M/s Agarwal Foundries pvt.ltd do hereby undertake that i shall not draw power/energy in excess of power/energy contracted through OA during the period of power holiday/energy in excess power/energy contracted through OA during power holiday for my feeder, notwithstanding any power tariff fixed by APERC for my connection, the DISCOM can be charged with such excess power/energy at five times the tariff applicable for my connection.”

19. a) The Respondents, to the claim of the Appellant that there was no intimation of power holidays and no publicity, contended that there was wide publicity given in all the leading news papers informing power holidays for the Industries and Domestic consumers. Copies of newspapers (cuttings) are filed in support of such claim. The following News Papers carried news about imposition of power holidays for industries and power cut to others:

Deccan Chronicle	2.3.2014
Andhra Jyoti	2.3.2014
Eenadu	2.3.2014
Namaste Telangana	2.3.2014
Andhra Bhoomi	2.3.2014
Indian Express	2.3.2014
Andhra Prabha	2.3.2014
Times of India	2.3.2014
THE HINDU	2.3.2014
Vaaritha	2.3.2014

Apart from above, further information regarding power holidays for industries in Medak on Thursday is also part of the press note which is relevant for the present purpose. From the month of March 2014, the restriction continued covering the relevant period of July and August 2014 also, because there is no material on record to hold otherwise.

This material clearly counters the argument of the Appellant that the Appellant is not aware of declaration of any power holidays relevant to the Appellant industry. Apart from this, **the clear action of the Appellant in purchasing power by way of Open Access strengthens the conclusion that the Appellant is quite aware of the power holiday and with open eyes and knowing the consequence of over drawal based on the agreement to pay five times the penalty, has resorted to retract and deny circumstances, which might burden the company.**

b. The Respondents produced daily log sheets of the manual readings recorded at 132/33 KV Manoharabad Sub station showing the hourly readings recorded in MW of 132KV Agarwal feeder during power holidays for the months of July and August, 2014.

20. The Respondents, replying to the contention of the Appellant that they were not aware of any power restriction and power holiday, contended that the fact that the **Appellant purchased power from Open Access only during power holiday days in some days of the month shows that they were aware of the schedule of the power holiday.** The phenomenon of availing loads particularly on power holidays, leaving Power ON days, supports such claim, which is clear from the following table for the months of July and August:

For the month of JULY

Date	Power Holidays/ Power on days	Total Actual drawal in KVAh	Interstate OA Schedule in KVAh		Daily excess peak KVAh	Maximum Demand Per Day over PDL in KVA	
			Off Peak	Peak		Off Peak	Peak
1.7.14	Power on	343212	38103	5080	0	0	0
2.7.14	Power on	342843	0	0	0	0	0
3.7.14	Power Holiday	278898	148200	0	18254	4156	10527
4.7.14	Power on	260925	0	0	0	0	0
5.7.14	Power on	339909	2143	2543	0	0	0
6.7.14	Power on	357192	0	0	0	0	0
7.7.14	Power on	341367	0	0	0	0	0
8.7.14	Power on	351957	2533	0	0	0	0
9.7.14	Power on	330024	0	0	0	0	0
10.7.14	Power Holiday	345651	131880	0	51174	14176	14208
11.7.14	Power on	340230	62183	2488	0	4646	0

From the above table it is clear that there was no purchase of Open Access Power on other than Power Holidays and on 2nd, 4th, 6th, 7th, & 9th of July which are Power ON days, the Appellant relied on DISCOM supply of Power & purchased power only on Power holidays i.e on 3rd & 10th of the month as shown above:

For the month of August

Date	Power Holidays/Power on days	Total Actual drawal in KVAh	Interstate OA Schedule in KVAh		Daily excess peak KVAh	Maximum Demand Per Day over PDL in KVA	
			Off Peak	Peak		Off Peak	Peak
5.8.14	Power on	362481	0	0	0	0	0
6.8.14	Power on	358998	0	0	0	0	0
7.8.14	Power Holiday	162954	22760	45520	0	4368	2088
8.8.14	Power on	362397	68280	0	0	5148	0
9.8.14	Power on	354918	0	0	0	0	0
10.8.14	Power on	359676	0	4740	0	0	0
11.8.14	Power on	367095	0	0	0	0	0
12.8.14	Power on	336600	0	0	0	0	0
13.9.14	Power on	361962	0	0	0	0	0
14.8.14	Power Holiday	93612	68220	0	0	2760	0
15.8.14	Power on	332619	0	0	0	3298	0

From the above table, it is clear that there was no purchase of Open Access Power on other than Power Holidays. On 5th, 6th, 9th, & 10th, to 13th of August, which are Power ON days and the Appellant relied on DISCOM supply of Power & purchased power only on Power holidays i.e on 7th & 14th of the month.

The above usage of load pattern during power on days and power holidays discloses that the consumer availed Open Access power particularly during power holidays, which shows that the schedule of power holidays is within the clear knowledge of the Appellant. The denial of the Appellant about being not aware of power holidays schedule, is not tenable, in view of the above clear facts and circumstances.

21. The Appellant contended that the DISCOM has no authority to declare power holidays and penalise 5 times the prevailing tariff over excess demand and it is

only the Regulatory Commission which is empowered to place restriction on the power consumption. Section 23 of the Electricity Act,2003 authorises the appropriate commission to pass orders for regularising supply, distribution, consumption or use thereof, which is extracted hereunder.

Section 23 of Electricity Act,2003 :

“Directions to licensees:- If the Appropriate commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.”

22. Apart from S.23 of the Electricity Act 2003, Clause 16 of GTCS also speaks about the restrictions on use of Electricity and it is reproduced here:

Clause 16: Restrictions on use of electricity:

“ The company shall endeavour to afford continuous supply and to restore interrupted supply as early as possible. The company shall be entitled to stagger or curtail supply of electricity to any consumer or a class of consumers in accordance with the Directions issued by the statutory authorities including commission from time to time, for maintaining efficient supply and securing equitable distribution of electricity.”

23. The Respondents contended that the major criteria for restrictions on use of electricity is for maintaining efficient supply and securing equitable distribution of electricity. Soon after the state bifurcation, the newly formed Telangana State was reeling under acute power shortage due to various factors such as increase in Rabi crop loads, summer loads, intermittent loss of thermal generation, which was estimated by the DISCOM as up to 1200 MW shortage. The SAO/Medak submitted that the DISCOM imposed one day power holiday in a week throughout the jurisdiction by informing the same to all HT consumers. The DISCOM, to bridge the gap of 1200MW Power, kept off the feeders on the day of power holidays.

24. As rightly contended on behalf of the Appellant, the power to restrict supply is within the exclusive domain of the ERC under S.23 of the Electricity Act 2003. There is no material on record to show that the restriction imposed and publicised by the DISCOM has ever been questioned during the time of the implementation of the order by the consumer. After expiry of the period of restrictions, if the step is questioned, then there would be nothing to decide especially after the major newspapers published the press note and the ERC had not intervened to exercise its power under S.23 of the

Electricity Act 2003 which is also a circumstance to negative the contention of the Appellant that the ERC had not issued the orders for restriction of power supply.

25. The Respondents contended that when the consumers approached the DISCOMs seeking permission to avail Open Access power on power holidays, the DISCOM considered the plea of such consumers and permitted them to purchase power from Open Access, by taking an undertaking with a condition of not drawing power/energy over and above the power purchased from the Open Access, on the day of power holiday and on accepting levy of five times the penalty for excess drawal.

26. During power shortages in the past in the Unified state of Andhra Pradesh in the year 2012, the ERC imposed the Restriction & Control measures for the first time consequent to the following situation:

“when the DISCOMs of the state were resorting to load shedding depending on the contingency and the measures to regulate the supply and consumption of electricity were found to be inadequate, and when the shortage was known, instead of unscheduled load reliefs, an order restricting the usage of power depending on the nature of industry, extent of consumption was considered best option to address the shortages and protect grid safety while keeping the feeders alive. (orders given by the ERC in Proc No.APERC/Secy/154/2013, Dt: 08-08-2013)

Accordingly, the commission after receiving letters from the DISCOMs for power restrictions & after taking views of all the stakeholders by conducting public hearing, introduced the “Restriction & Control measures” in exercise of the powers conferred by section 23 read with Clause (k) of Subsection (1) of section 86 of the Electricity Act, 2003 (vide Proc No. APERC/Secy/13/2012-13 Dt: 07-09-2012).

Subsequently, on the representations of the DISCOMs alleging that there is deliberate violation of consumption by some of the consumers, and sensing further danger to the stability of the grid and the need to curb the violations, the commission approved the control measures vide para 18 of the R&C order dated 01-11-2012 & considered that a harsh deterrent was required by way of (a) Disconnections, if any consumer exceeds the PDL and PCL and (b) Penal charges for non-compliance of R&C Measures.

27. While the Appellant questioned the DISCOM's authority for declaring power holidays and penalising with 5 times the tariff over excess power/ energy availed over contracted Open Access demand, the Respondents relied on the mutual agreement

executed between the parties (wherein the Appellant agreed upon levy of 5 times tariff for over drawal notwithstanding any power tariff fixed by ERC) and power scarcity prevailing at that time and further reiterated that they (DISCOM) did not approach the ERC for necessary approvals for power restrictions / power Holidays, claiming that it was based only as a temporary measure and for short period only.

28. In a similar case, where Licensees resorted to imposition of 3 times the tariff on the consumers who availed service connection in lieu of not producing Occupancy Certificate (mandatory under section 455 of the GHMC Act, 1955) without statutory approval from the Regulatory Commission, the Hon'ble High Court of Judicature, Telangana and Andhra Pradesh in W.P.No. 32906 of 2014 Dated: 5.11.2014 (K. Mahender Vs TSPDCL & Others) observed and ordered the following:

“ In my opinion, so long as respondent No.1, who is licensee under the provisions of the Electricity Act,2003, does not amend its supply regulations/ conditions in tune with the Government policy qua levy and collection of tariff higher than that prescribed under its Regulations, such levy cannot be legally sustained. Being a Licensee, it cannot charge its consumers higher than what is prescribed by the tariff regulations, approved by the Regulatory Commission.

In this view of the matter, demand and collection of electricity consumption charges at three times the normal rates from the petitioner cannot be sustained and the same is declared as illegal. The respondents are directed to adjust the excess tariff, if any collected so far, from the petitioner's future C.C.bills.”

29. From the above judgement of the Hon'ble High Court, it is clear that the DISCOM, under the provisions of the Electricity Act,2003, is not entitled to collect higher tariff than that is prescribed under its regulations and levy five times penalty, without statutory support/ approval from the Regulatory Commission. The mutual agreement between the parties does not hold good and lacks statutory support.

30. The Appellant's act of overdrawing power during power holidays, in spite of the agreement with the DISCOM to restrict the usage of power within the limits, seems to be deliberate since the overdrawal is more than once on regular basis in order to perhaps manage the industrial production. During the times of power crises, if such overdrawal is collectively done by all the industries without restricting their

loads, it may lead to collapse of the system, endangering the Grid, which has to be kept in mind by all concerned.

31. Keeping in view the fact that the Appellant had the liberty to avail as much power required from the exchange through the Open Access, if it indeed needed such excess power for their industrial production, which is not availed fully, but resorted to excess drawal of power from the DISCOM during power off days, it is found that the Appellant has to bear the penalty for overdrawal of power sans mutual agreement.

32. The relevant penal clause for overdrawal over the contracted demand is guided by Clause 6(8) of part 'B' of H.T SUPPLY-GENERAL CONDITIONS of the Tariff Order 2013-14, which is reproduced here for clarity:-

“If in any month the Recorded Maximum Demand (RMD) of the consumer exceeds his Contracted Demand with Licensee, the consumer will pay the following charges on excess demand and energy.

RMD OVER CMD	Demand charges on Excess demand	Energy charges on full energy
100 to 120%	2 times of normal charge	Normal
Above 120% and up to 200%	2 times of normal charge	1.15 times of normal charge
More than 200%	2 times of normal charge	1.20 times of normal charge

In case of Category-HT-V (Railway Traction), the energy charges shall be computed at 1.05 times of normal charges on the entire consumption, if RMD exceeds 120% of Contracted Demand.”

33. When there was power holiday on, the power was overdrawn during Open Access consumption, the Appellant is liable only to pay Additional Charges on excess energy/demand drawn over the sanctioned Open Access energy/demand leaving 10% of CMD at the prescribed rates mentioned above as per Clause 6(8), part 'B' of HT supply general conditions of the Tariff Orders 2013-14 mentioned above.

For the month of July 2014

Penal charges levied during power holidays over excess consumption by the DISCOM

	<u>Units</u>	<u>Rate</u>	<u>Power Holiday</u>	<u>Hours</u>	<u>No.of Times penalty</u>	<u>Total</u>	<u>Remarks</u>
1	2	3	4	5	6	7 = (2 x3x4x5x6)	8
Off peak KVAH	86158	4.9	0	0	4	1688696.8	
Peak KVAH	77126	5.9	0	0	4	1820173.6	
Off peak KVA	14176	350	.3/30	.20/24	4	1653866.67	
Peak KVA	14208	350	.3/30	.4/24	4	331520	
Total						54,94,257.07	

Revised Penal charges to be levied as per Clause 6.8 Part B of HT Supply General Conditions of the Tariff Orders 2013-14.

	<u>Units</u>	<u>Rate</u>	<u>Power Holiday</u>	<u>Hours</u>	<u>No.of Times penalty</u>	<u>Total</u>	<u>Remarks</u>
1	2	3	4	5	6	7 = (2 x3x4x5x6)	8
Off peak KVAH	86158	4.9	0	0	1.2	506609.04	10% of CMD = 2000 KVA(as given in para 15) The RMD is 14176 which is more than 200% hence 1.2 times of normal charge is levied
Peak KVAH	77126	5.9	0	0	1.2	564052.08	10% of CMD = 2000 KVA The RMD is 14208 which is more than 200% hence 1.2 times of normal charge is levied
Off peak KVA	14176	350	.3/30	.20/24	2	826933.335	
Peak KVA	14208	350	.3/30	.4/24	2	165760	
Total						20,63,354.45	

For the month of August 2014

Penal charges levied during power holidays over excess consumption by the DISCOM.

	<u>Units</u>	<u>Rate</u>	<u>Power Holiday</u>	<u>Hours</u>	<u>No.of Times penalty</u>	<u>Total</u>	<u>Remarks</u>
1	2	3	4	5	6	7 = (2 x3x4x5x6)	8
Off peak KVAH	47976	4.9	0	0	4	940329.6	
Peak KVAH	19122.5	5.9	0	0	4	451291	
Off peak KVA	5776	350	.4/31	.20/24	4	869505.38	
Peak KVA	5656	350	.4/31	.4/24	4	170288.17	
Total						24,31,414.5	

Revised Penal charges to be levied as per Clause 6(8) Part B of HT Supply General Conditions of the Tariff Orders 2013-14.

	<u>Units</u>	<u>Rate</u>	<u>Power Holiday</u>	<u>Hours</u>	<u>No.of Times penalty</u>	<u>Total</u>	<u>Remarks</u>
1	2	3	4	5	6	7 = (2 x3x4x5x6)	8
Off peak KVAH	47976	4.9	0	0	1.2	282098.88	10% of CMD = 2000KVA(as given in para 15) The RMD is 5776 which is more than 200% hence 1.2 times of normal charge is levied
Peak KVAH	19122.5	5.9	0	0	1.2	135387.3	10% of CMD = 2000KVA The RMD is 5656 which is more than 200% hence 1.2 times of normal charge is levied
Off peak KVA	5776	350	.4/31	.20/24	2	434752.69	2 times the normal tariff
Peak KVA	5656	350	.4/31	.4/24	2	85144.08	2 times the normal tariff
Total						9,37,382.95	

The revised amount as per the Clause 6(8) of Part B of HT
General Conditions of the Tariff Order 2013-14 for July,2014 : Rs 20,63,354/-

The revised amount as per the Clause 6(8) of Part B of HT
General Conditions of the Tariff Order 2013-14 for August,2014 : Rs 9,37,382/-

The total amount the Appellant is liable to pay : Rs 30,00,736/-

Thus the Appellant is found liable to pay penal charges of Rs 30,00,736/- only.

In the view of foregoing discussion, the issues are answered accordingly.

34. In the result, the Appeal is partly allowed as follows:

1. The DISCOM on its own has no power to impose power/restriction/power holidays contrary to S.23 of the Electricity Act 2003.
2. The power holidays implemented in July and August 2014 by the DISCOM after the press releases from March, 2014 had the tacit approval of ERC which exercises power under S.23 of the Electricity Act 2003.
3. The Appellant is not liable to pay five times the Tariff including the surcharge raised thereon (because of lack of specific approval of TSERC) as per the undertakings dt 19.7.2014 and 27.9.2014 given to the DISCOM, while securing Open Access permission, contrary to Clause 6(8) part 'B' of HT supply general condition of Tariff Order 2013-14.
4. The Appellant is found liable to pay ADDITIONAL CHARGES on excess energy/demand drawn over the sanctioned Open Access energy/demand at the prescribed rates as per Clause 6(8) Part 'B' of HT supply General Conditions of the Tariff Order 2013-14, on power off days during July and August,2014 amounting to Rs 30,00,736/- duly taking into account the demand charges for power on days only.
5. The impugned orders to the extent of upholding penalty/surcharge five times of the Tariff is set aside.
6. The Appeal is partly allowed.

35. The licensee shall comply with and implement this order within 15 days for the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

TYPED BY CCO, Corrected, Signed and Pronounced by me on this the 18th day of January, 2017.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Agarwal Foundries Private Limited Represented by its Director,
Mr. Pramod. Agarwal Rama Towers, 2nd Floor, 5-4-83, Mahatma Gandhi Road,
Secunderabad - 500 003. Phone: 040-23447321.
2. The SAO/OP/Medak/TSSPDCL/ at Sanga Reddy.
3. The DE/OP/Toopran/TSSPDCL/Medak Dist.
4. The SE/OP/Medak Circle/TSSPDCL/Medak Dist.

Copy to:

5. The Chairperson, CGRF - 1, TSSPDCL, GTS Colony, Vengal Rao Nagar, Erragadda,
Hyderabad.
6. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.