



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

**I. A. No. 13 of 2019**  
**in**  
**O. P. No. 4 of 2013**

**Dated 28.09.2022**

**Present**

Sri T. Sriranga Rao, Chairman  
Sri M. D. Manohar Raju, Member (Technical)  
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s VBC Ferro Alloys Limited,  
R/o 6-2-913/914, 3<sup>rd</sup> Floor,  
Progressive Towers, Khairatabad,  
Hyderabad-500 082.

... Applicant

**AND**

1. Southern Power Distribution Company of Telangana Limited,  
Corporate Office, # 6-1-50, Mint Compound,  
Hyderabad-500 063. ... Respondent No.1/Petitioner
2. The Superintending Engineer,  
Operation Circle, Sangareddy, Medak. ... Respondent No.2

The application came up for physical hearing on 04.01.2020, 25.01.2020, 13.12.2021, 03.01.2022 and 02.02.2022 and virtual hearing through video conference on 11.02.2021, 22.02.2021, 15.03.2021, 09.06.2021, 15.07.2021, 11.08.2021, 06.09.2021, 25.10.2021 and 15.11.2021. The appearance of Advocate / representative of the applicant and respondents is as given below:

<b>Date</b>	<b>Applicant</b>	<b>Respondents</b>
04.01.2020	Sri. Deepak Chowdary, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Advocate along with Sri. K. Vamshi Krishna, Advocate

<b>Date</b>	<b>Applicant</b>	<b>Respondents</b>
25.01.2020	Sri. M. Sreedhar, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Advocate
22.02.2021, 15.07.2021, 11.08.2021, 15.11.2021	Sri. M. Sridhar, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Mohammad Bande Ali, Law Attaché
15.03.2021, 03.01.2022, 02.02.2022	Sri. Challa Gunaranjan, Advocate	Sri. Mohammad Bande Ali, Law Attaché
11.02.2021, 09.06.2021, 06.09.2021, 25.10.2021	Sri. Deepak Chowdary, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Mohammad Bande Ali, Law Attaché
13.12.2021	No representation	Sri. M. Eshwar Das, DE (IPC) TSSPDCL

The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

### **ORDER**

M/s VBC Ferro Alloys Limited (applicant) has filed an interlocutory application on 11.01.2019 under Section 62 read with Section 86 of the Electricity Act, 2003 (Act, 2003) and TSERC (Conduct of Business) Regulation, 2015 seeking revisiting the conditions more particularly in respect of consumer category of HT-I (B) 'Ferro Alloy Units' stipulated in the retail supply tariff order for FY 2013-14 passed by the Commission by order dated 30.03.2013 in O. P. No. 01 to 04 of 2013.

2. The averments made in the application are extracted below:
  - a. The applicant stated that it is a company incorporated under the Companies Act, 1956, engaged in the business of manufacture and sale of ferro alloys in the State of Telangana and had been availing of power from the erstwhile Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) and eventually from the respondent No.1.

The erstwhile APCPDCL was the licensee for the area in which the unit of the applicant was located that is Sangareddy District. Due to unfavourable market conditions and power holidays imposed by the erstwhile APCPDCL, the applicant has had to close down their unit, however, the applicant has over last year invested substantial amounts to refurbish the unit and are seeking to recommence operations by early January, 2019.

- b. It is stated that for manufacturing of ferro alloys, electricity is a major input as the industry is highly power intensive and electricity constitutes around 40-70% of the manufacturing cost. Initially the applicant was drawing power from National Thermal power Corporation (NTPC) and Andhra Pradesh Gas Power Corporation (APGPCL) and only from the financial year 2002-03, the applicant has been drawing the power from the then Transmission Corporation of Andhra Pradesh (APTRANSCO) and presently from the respondent No. 1. The erstwhile Andhra Pradesh Electricity Regulatory Commission (erstwhile APERC), by orders dated 26.09.2002 in I. A. No.10/2002 in O. P. No.29-33 / 2002 fixed the tariff for the ferro alloys units as a separate category by itself without demand and minimum charges subject to the condition that the ferro alloy units draw their entire requirement of power from the DISCOMs alone and surrender their other sources of cheaper power from NTPC and APGPCL and also maintain a minimum load factor of 85% on an annual basis. In case the annual load factor is less than 85% the units have to pay deemed consumption charges to the extent of shortfall. It is stated that while passing the order, the erstwhile APERC was oblivious of the situation that APTRANSCO/DISCOMs were having surplus power and even in its order dated 22.03.2002 (para 283 of the tariff order 2002-03), the same was dealt with for sale to outside the combined State of Andhra Pradesh. In other words, the erstwhile APERC as well as the APTRANSCO / DISCOMs arrived at the tariff on the presumption that there would be continuous and uninterrupted power supply.
- c. It is stated that the erstwhile APERC continued with the same formula and determined the tariff to these units till the financial year 2008-09.

From the financial year 2009-10, though the erstwhile APERC retained the very same formula, it had issued a clarification which reads as under.

*“Guaranteed energy off-take at 6701 units per kVA per annum (at 85% annual load factor) on Average Contracted Maximum Demand or Average Actual Demand whichever is higher. The energy falling short of 6701 units per kVA per annum will be billed as deemed consumption.”*

- d. It is stated that even subsequently for the financial year 2010-11 and up to 2013-14, a similar condition had been stipulated by the erstwhile APERC. In tariff order for FY 2013-14, the erstwhile APERC had made the following decision:

*“If the licensees’ proposal is approved, the tariff applicable for HT-I(A): Industry will be applicable for Ferro Alloy units also. At present, Ferro Alloy Units are covered under HT-I(B) category with specific tariff conditions, viz. minimum off take of 6701 kVAh per kVA / annum (at 85% load factor per annum), no demand charges, no ToD tariff and energy charges less by Rs.0.32/kVAh compared with HT-I(A): Industry General. The consumers, whether they consume or not, pay for 6701 units per kVA during year. Accordingly these consumers have no choice in energy usage unlike other consumers and also assure revenue to licensees. The Commission has not seen any merits in licensees’ proposal and hence not accepted the proposal of merging HT-I(B) Ferro Alloy units with HT I (A) Industry.”*

- e. It is stated that during the financial year 2012-13, the erstwhile APCPDCL (DISCOM) initially had imposed power cuts on intimation to the applicant and subsequently when the difference between demand and supply was increasing, the erstwhile APCPDCL approached the erstwhile APERC and requested to impose restrictions under Section 23 of the Act, 2003. Accordingly, the erstwhile APERC imposed restrictions from 12.09.2012 onwards by its order dated 07.09.2012. Subsequently, the same were extended by orders dated 17.04.2013, 15.06.2013 and 02.07.2013. By order dated 15.06.2013, the erstwhile APERC extended the restriction and control measures upto the billing date of September,

2013. However, when the DISCOM represented to the erstwhile APERC to lift the restrictions in view of the availability of power from the hydel stations from 31.07.2013, the erstwhile APERC by order dated 31.07.2013 removed the same with effect from 01.08.2013. As per Clause 12(b) of the said order, no deemed consumption charges was to be levied by the DISCOM during the Restriction and Control (R & C) measures. Till this period in view of the condition stipulated in the respective R & C orders, no deemed consumption charges could have been imposed.

- f. It is stated that the basic premise on which the tariff order was passed is that the ferro alloy consumers, whether they consume or not, pay for 6701 units per kVA during the year, accordingly these consumers have no choice in energy usage unlike other consumers and this also assures revenue to the DISCOM. The DISCOM had every right to vary the hours of supply as per the order passed under Section 23 of the Act, 2003. However, once the tariff order and the orders passed under Section 23 of the Act, 2003 have been finalised or have attained finality, the DISCOMs had no choice but to stick on to the schedule of supply hours.
- g. It is stated that however, the DISCOM deviated from the supply hours (number of scheduled and unscheduled outages), as a result of which the applicant, being a ferro alloy unit and being consumers of the DISCOM situated in the State of Telangana, suffered commercial loss. Thus, the rationale and premise on which the tariff order was passed was rendered nugatory by the acts and omissions on behalf of the respondent. A tabular statement based on the logbooks maintained by the applicant would go to show the actual hour of load shedding, as compared to the permitted hours of load shedding.
- h. It is stated that the DISCOM had imposed power holidays of 2 days each week from February, 2012 onwards. The applicant, being a ferro alloy unit which requires constant uninterrupted power, therefore proposed to the DISCOM that they were willing to operate their unit at a reduced load of 70% for all 7 days a week which would be equivalent to operating at 85% for 5 days and at 0% for 2 days a week. The applicant was even willing to pay penalties for utilization of power at more than 70% and also

informed the DISCOM that power holidays were causing losses to the applicant. Permission for the same was granted with instructions to strictly off-take less than 70% load and after ensuring that the applicant had installed a demand control meter, which would trip if the offtake load increased beyond even 60%. By July, 2012, the DISCOM was imposing power holidays of 3 days each week and the applicant now requested permission to offtake only 60% load for 4 days and operate at 10% load for 3 days. This permission was granted vide letter dated 07.08.2012. However, by this time, the DISCOM had already issued a demand notice dated 21.07.2012 to the applicant in lieu of the applicant consuming less than 85% load. The applicant being vexed by this demand, where on one hand the DISCOM was availing of R&C measures due to shortage of power and demanding that the applicant not offtake more than 60% load, while on the other hand was demanding amounts for off taking less than 85% load, sent a letter dated 23.01.2013 requesting that the said demand be withdrawn. It is further stated that the applicant, being forced to operate at less than 60% load, was suffering heavy losses and had temporarily shut down operation by 15.07.2012. The applicant attempted to restart its unit in February, 2013, but due to the constant power interruptions, could not function efficiently and closed again in June, 2013. The power connection of the applicant was disconnected by the DISCOM on 17.06.2013.

- i. It is further stated that as mentioned above the erstwhile APERC on an application made by the DISCOM, had vide proceedings No. APERC / Secy / 3 / 2012-13 dated 07.09.2012, APERC / Secy / 14 / 2012-13 dated 14.09.2012 and APERC / Secy / 16 / 2012-13 dated 01.11.2012 imposed R & C measures across the joint State of Andhra Pradesh from 12.09.2012 to 31.03.2013. The applicant being an HT furnace based industry was restricted to 60% of the permitted demand limit for this period. The DISCOM however once again issued a demand notice dated 09.01.2015 for an amount of Rs. 27,32,61,984/- for FY 2012-13 and 2013-14 on account of deemed energy charges for load factor shortfall. Surprisingly, even though the applicant's power connection was disconnected on 17.06.2013, the DISCOM had billed the applicant at the

rate of Rs.4.58 for 3,22,32,000 units for the months of August-October, 2013.

- j. It is stated that even when the R & C measures were withdrawn, the DISCOM had not given up the unscheduled load shedding. In fact, the load shedding increased and went unregulated after the R&C measures were withdrawn. In sum, the hours of supply were varied as per the choice and convenience of the DISCOM, however, the obligation to pay for the 85% load factor remains fastened on the ferro alloys producers.
- k. It is stated that after the bifurcation of the State of Andhra Pradesh, the respondent now being the licensee of the factory area of the applicant, that is Patancheru Mandal, Sangareddy District, has raised huge demands on the applicant purported to be on account of deemed consumption charges for the financial year 2013-14. By these demands, the applicant has been threatened with disconnection if the same is not paid within 15 days from the date of the notice. The respondent has misinterpreted the condition of tariff order without appreciating the rationale and object in framing the same.
- l. It is stated that 1<sup>st</sup> respondent had further sought the view of this Commission with respect to waiver of the deemed energy charges for ferro-alloy units, to which this Commission vide Lr. No. T-38 / 2018-19 / JD (Law)-2 / D.No.667 informed that it was for the individual consumers to approach the Commission for modification of the respective tariff orders and had left the decision of waiver of the said deemed energy charges to the 1<sup>st</sup> respondent and the Government of Telangana (GoTS). The Commission had vide Regulation No.1 of 2014 had adopted the orders of the erstwhile APERC including the tariff orders. Pursuant to the said letter, the 2<sup>nd</sup> respondent had issued a demand notice dated 01.12.2018 for an amount of Rs. 58,56,43,970/- in lieu of deemed energy charges and surcharge thereon, payable within 15 days, failing which the applicant's service connection would be disconnected. It is further stated that the applicant is attempting to restart its unit after refurbishing it as the same had been lying idle for the past few years and has spent significant amounts to restart the same.

- m. It is stated that the circumstances assumed at the time of passing the tariff order were that there would be continuous availability of power for supply. But the said assumption proved to be wrong and there was no continuous supply for want of availability of power but not for want of network facility. The Hon'ble Supreme Court in the case of '*Amalgamated Electricity Company Limited Vs Jalgaon Borough Municipality*' reported in (1975) AIR 2235 held that where there was a demand for minimum charges, even if the electricity was not consumed, as long as the supplier could supply power whenever required, a liability arose on the purchaser to pay. However, in the present case, as the DISCOM was reeling under a power shortage, let alone being in a position to supply power whenever needed, a reading of the said judgment would clearly establish that in the inverse case, no liability would accrue on the purchaser that is the applicant.
- n. It is further stated that the APERC had vide order dated 06.04.2016 in I. A. No. 23 / 2015 in O. P. No. 2 / 2013 had dealt with a similar issue with respect to the APDISCOMs had held that the ferro-alloy units were not liable to pay any deemed consumption charges as the DISCOMs were neither ready and willing to supply power for the entire period in which the deemed consumption charges were being levied nor had they suffered any loss due to the non-consumption of electricity by the ferro-alloy units.
- o. It is stated that since the circumstances ceased to exist, the orders of the Commission deserve to be revisited in view of the prevailing circumstances for the following among other grounds.
- i. The tariff order was passed on the premise of continuous, uninterrupted and quality power supply by the DISCOM. However, the hours of supply came to be modified by way of R & C orders passed from time to time. Hence, passing of the R & C orders goes on to show that premise on which the tariff order was passed changed. However, the R & C orders were passed because the erstwhile APERC, in view of the existing precarious power demand and supply situation that is being encountered by the utilities, permitted the respondents to introduce inevitable



demand control measures by means of load shedding/R & C measures. The hours of supply, outage, penal consequences of over drawl etc., have all been well defined in the orders. The passing of the R & C orders should have changed the premise on which the applicant was charged viz., cancel the compulsion to pay for 85% load factor. Be that as it may, once the R & C orders have been passed, it was the duty of the applicant and the DISCOM to adhere to the measures contained therein. However, the DISCOM did not adhere to the tariff order as it stands amended by the R & C orders. Hence, they are precluded from levying deemed consumption charges at the rate of 6701 kVAh per kVA / annum (at 85% load factor per annum).

- ii. Because of a variety of factors and issues discussed therein including but not limited to the initial permission accorded to the DISCOM to buy costly RLNG and then even increasing the quantum, tariff order contemplates continuous, uninterrupted power supply. The said obligation was however modified in view of series of R & C orders. As a matter of fact, the DISCOM has neither bought R-LNG or has it followed the R&C orders.
- iii. That from FY 2002-03 onwards the ferro alloy units were placed into a separate category HT-I B and the tariff stipulated for this category was based on the formula.

$$1 \text{ kVA} \times 365 \text{ days} \times 24 \text{ hrs} \times 85\% \text{ LF} \times 0.9 \text{ PF} = 6701 \text{ kWh per kVA}$$

Any shortfall in the consumption below the 6701 kWh/kVA on an annual basis was to be billed as deemed consumption.

The amendment to the tariff for was passed by the then Commission in O. P. No. 29-33 of 2002, I. A. No.10 / 2002 and it was subject to the condition that:

- a) That the ferro alloy units draw their entire requirement of power from DISCOMs only.
- b) Maintain on an annual basis a load factor of 85%.
- c) In case the annual load factor is less than 85%, the deemed consumption charges amounting to the shortfall shall be paid to the DISCOMs.

The above formula has been continued from time to time specifying the deemed consumption charges to be arrived at on an annual basis. The formula itself has been worked out taking entire year as a unit, therefore when admittedly for the months of April, 2013 to June, 2013, the erstwhile APERC itself has in its orders stipulated that no deemed consumption charges should be levied, the formula cannot be applied for the remaining period of the financial year. If it were to be applied for this balance period, the very rationale and object of arriving at the formula would be defeated. The above calculation of the load factor is to be arrived at on an annual basis when full (100%) and continuous power is made available by the DISCOM for all the 24 hrs and 365 days so that the stipulated consumption could actually take place and any shortfall in consumption in any period can be covered up in the subsequent period thereafter. If after having provided full and continuous power, the consumer fails to achieve the stipulated consumption, the short fall units were to be billed as deemed consumption. This principle and practice has been retained in all the subsequent tariff orders including that for 2013-14. While this had cast a responsibility on the units to ensure stipulated consumption on an annual basis, it also imposes a reciprocal duty on the DISCOM to supply full (100%) and continuous power for the whole year on 24 hrs x 365 days basis.

- iv. Due to acute shortage of available power for meeting the full demand within the State, the DISCOM itself had proposed to the erstwhile APERC for imposition of Restriction and Control measures and erstwhile APERC was pleased to impose the R&C measures which were extended from time to time and continued up to July, 2013. It is therefore evident that the DISCOM by its own admission were not in a position to supply full and continuous power to the ferro alloy industry throughout the FY 2013-14 and therefore, billing of the shortfall in consumption below the stipulated level of 6701 per kVA is against the very principle on which the tariff is based.

- v. It is also a fact that the R&C measures were lifted from 01.08.2013. However, load restrictions by way of Emergency Load Relief (ELR) and Load relief (LR) had continued throughout the remaining period of the FY 2013-14. There were even days, when virtually no power was available for any industrial operation. Extra weekly power holiday in addition to regular weekly off too was imposed. The ELR & LR imposed have been brought to the notice of the respondent from time to time through written communications. The applicant prays the Commission to call for the records from the respondents in this regard for the period from 01.08.2013 to 31.03.2014 so as to ascertain whether the DISCOM / respondents really supplied the power without any power cuts to both scheduled and unscheduled consumers.
- vi. Even during the short period of around two or three months in FY 2013-14 when the DISCOM did not impose any power cuts, the units not consumed by the applicant have already been sold and used by others in a power deficit situation and revenue for the same has already been realised by the DISCOM. Therefore, there is no consequential loss to the DISCOM by non consumption of the said units. It will, therefore, not be equitable, proper or just to try to earn further revenue by charging the deemed consumption charges.
- vii. The ferro alloy industry is a continuous process industry which uses power as a major input for smelting of the ore with the reductants. For the smelting reactions to take place temperatures of 1800 to 2000 degree Celsius have to be reached in the reduction zone of the furnace and this temperature has to be maintained continuously and throughout the process. If at any time, there is power cut due to any reason, the furnace cools down, the smelting reactions slow down or completely stop and the furnace needs to be gradually reheated to bring it back to the operating temperature. Thus, frequent interruptions, load restrictions and load relief act against the maintenance of the load factor as the furnace cannot be brought back to the working

temperature suddenly after a cut in the available power and also result in lower production at a much higher cost of production. This would lead to breakdown of electrodes used to smelt the raw materials in the furnace. The baking of the carbon electrodes will take 48 to 72 hours to bring them back to the required size. Even the power cut in a single day during a week will hamper the entire load factor as the furnace takes at least two days there from to reach the optimum level.

- viii. During the time of R&C measures the reduced load is shared by all consumers and this will invariably result in the over loading of the grid. This will result in lowering in coming voltage and frequency reduction. This is highly detrimental to the power systems of consumers, particularly in ferro alloys units which results in a loss of power/ production and poor quality of the product.
- ix. The DISCOM prefer the load offtake of ferro alloys to stabilize the grid operation with least harmonic distortion due to the large size and load of the furnaces. Ferro alloy units consist of a submerged arc which is much more stable when compared to steel arc furnaces. This ensures uniform harmonics and there is a stable power input in all phases which creates no disturbance to the grid in any way. Ferro alloy unit operations consume a steady load at night and the power consumption acts as a ready storage for the grid to balance the supply.
- x. The DISCOMs are major beneficiaries in supplying to ferro alloy units. During the closure of ferro alloys plants in 2002-2009, there were grid disturbances in the absence of such ferro alloy loads in the grid. However, despite the advantages that stable loads consumed by the ferro alloy units provides to the grid and the DISCOMs, HT-I consumers have a minimum contracted load of merely 50 units as compared to the almost 600 units of minimum contracted load for ferro alloy units which come under HT-I(B). Such a situation is neither fair nor reasonable considering the advantages that ferro alloy units provide to the grid.

- xi. That the principle of continuous supply of power for entitlement to deemed consumption is a prerequisite, is also recognised by the erstwhile APERC as during the R&C measures, it exempted the ferro alloy units from levy of the deemed consumption.
- xii. The erstwhile APERC had further clarified in R. P. (SR) No. 78 of 2013 in O. P. No. 1 of 2013 that "*this deemed consumption is a penal provision and it is estimated quantity and hence there is no loss of revenue*". A penal provision can be invoked only when the non-defaulting (other) party has fulfilled its part completely. But in this case, by own admission, the DISCOM / respondent had not been able to fulfil the obligation cast upon it to supply 100% and continuous power to the unit and therefore, it is not entitled to claim the deemed consumption charges.
- xiii. The R & C measures were suddenly lifted with effect from 01.08.2013, but the uncertainty about the power situation had continued even thereafter and the DISCOM was not in a position to ensure continuous supply of 100% power even for four months as was observed by the erstwhile APERC at para No. 30 of the order dated 13.08.2013 in O. P. No. 4 of 2013. As per the then available information with the erstwhile APERC, the expected daily shortage was going to increase from the then present level to a level of 90 MU by March, 2014 and that imposition of R&C measures was imminent. It was further observed that the licensees obligations are not fully met when R & C measures are imposed. Thus, without fulfilment of the obligation of the respondent, no penal charges could be imposed.
- xiv. In view of uncertain power supply situation, the applicant could neither book export orders in advance, nor plan and procure the imported raw material enabling them to operate at full capacity and achieve the load factor of 85% on an annual basis for FY 2013-14 as well as to fulfil the supply obligation. Non supply or delayed supply in export orders entails very heavy penalty with possibility of customer dissatisfaction, loss of reputation and good will. Therefore sustained financial losses and loss of market as a

result of the R & C measures and the continued ELR, LRs and other unscheduled power cuts imposed by the DISCOM from time to time in FY 2013-14 for no fault of the applicant apart from imposition of penalty of deemed consumption charges will only result in a death blow and the very existence of the industry is under jeopardy.

- xv. Though the R&C conditions were lifted with effect from 01.08.2013, The DISCOM was unable to meet the required demand due to which admittedly they have restored to declaring power holidays, without even seeking prior approval for the erstwhile APERC under Section 23 of the Act, 2003. This clearly establishes that the respondents were not in a position to supply continuously and uninterruptedly and if they had approached the erstwhile APERC explaining the said situation, definitely, orders would have been issued imposing R & C once again, in which event, the DISCOM/respondents would have been restrained from levying any deemed consumption charges. The DISCOM / respondents without any authority and authorization imposed these power holidays.
- p. It is stated that the very fact that the respondent did not seek reintroduction of R & C measures proves that there was no scarcity of power and there was adequate hydro power available, as contended by the respondent in their letter to the erstwhile APERC. Even then, admittedly the DISCOM was not in a position to supply power at any rate. Hence, it is not entitled to levy the impugned demand and further no prejudice or harm would be caused to it. Per contra, grave injustice and prejudice would be caused to the applicant as they had suffered severe power cuts all throughout FY 2013-14 which resulted in severe financial crisis apart from hardship caused to the applicant and the dependants on the industry. As it is the applicant is seeking to commence operations again at their plant by investing substantial amounts and these demands of the respondent will only make sure that the applicant can never again commence operations. Thereby all those dependants on the industry including workers and their families and those indirectly dependant

would be affected. The applicant, after recommencing operations, will contribute crores of rupees towards duties, taxes and other levies to the State and Central exchequers, so there would be severe loss as well. The applicant has a good case on merits and has all chances of succeeding in the present matter. If the annual guaranteed charges are made to be paid before disposal of the case, the very purpose of filing of this case would be rendered infructuous.

3. Therefore, the applicant has sought the following relief in the application-  
*“Revisit the terms and conditions of the HT Tariff as mentioned in Clause 7(2) (HT supply Specific Conditions) and consequently declare that the action of the respondent in demanding deemed consumption charges in pursuance to the guaranteed energy offtake at 6701 kVAh per kVA per annum on contracted maximum demand for the financial year 2013-14 as contrary to the tariff order dated 30.03.2013 passed by the erstwhile APERC in O.P.No.1/2013 for the financial year 2013-14 as being illegal and unenforceable and consequently set aside the demands raised by the respondents on the applicant.”*
4. The respondents have filed counter affidavit on 23.01.2020 to the application and the averments of it are extracted below:
  - a. It is stated that the power supply to the applicant was disconnected on 19.06.2013 due to non-payment of regular CC bills. Subsequently, the HT agreement was terminated on 19.10.2013. Later, power supply to the applicant was restored on 05.11.2018 on receipt of a letter from GoTS vide letter No.582 / PR. A2/2018 dated 04.09.2018 to the effect that surcharge on pending arrears would be reimbursed by the GoTS except 85% deemed energy charges. Initially CMD of 1 MVA was released on 05.11.2018 and additional CMD of 19 MVA was released on 19.01.2019 totalling to 20 MVA. Subsequently, the power supply to the applicant was disconnected on 10.10.2019 for non-payment of regular CC charges.
  - b. It is stated that the supply to the ferro alloy industries/units is being extended at concessional tariff that is with lesser energy charges, no demand charges and no minimum charges when compared to that of all other HT industrial units with effect from November 2002 as per the

orders of Electricity Regulatory Commission from time to time. Hence, the condition of maintaining 85% annual load factor has been fixed and the demand notices for payment of 85% deemed/guaranteed energy charges are being issued every financial year. The same formula continued till 2008-09 financial year and from 2009-10 financial year, the Commission added the following Clause.

*“Guaranteed energy off-take at 6701 kVAh per kVA per annum on Average Contracted Maximum Demand or Average Actual Demand, whichever is higher. The energy falling short of 6701 kVAh per kVA per annum will be billed as deemed consumption.”*

The above Clause is subject to the condition that ferro alloy units drawing the entire power from DISCOMs. Moreover the ferro alloy units are not eligible for HT-I(A) load factor incentive. As per the above Clause, notices for payment of deemed energy charges are being issued to ferro alloy units every financial year including the applicant.

- c. It is stated that TSSPDCL has been issuing demand notices for payment of deemed energy charges by the ferro alloy units every year as per the tariff regulations issued by the Commission from time to time. During the financial year 2012-13, erstwhile APERC issued R & C measures for the period from 12.09.2012 to 31.07.2013 vide letter dated 07.09.2012 as there was shortage of power supply when compared to demand. During the period in which the R & C measures were in force, the ferro alloy units were exempted from payment of 85% deemed energy charges. Accordingly, the R & C period was excluded while arriving at the deemed energy charges while issuing demand notice dated 09.01.2015 for an amount of Rs. 12,32,61,984/- payable by the applicant for the FY 2012-13 towards short fall amount of 85% load factor. Further, it is stated that the DISCOMs proposal for merging of HT-I(B) ferro alloys units with HT-I(A) industry has been negated as the ferro alloy units are covered under special category with no demand charges, no minimum charges etc. Hence, the levy of deemed energy charges for ferro alloy unit is justifiable.
- d. It is further stated that it is a fact that the Commission has issued orders imposing R & C measures during the FY 2012-13 with a Clause 12(b)



stating that the 85% deemed energy charges should not be levied to ferro alloy units during the R&C period. TSSPDCL has strictly followed the said Clause while issuing notice dated 09.01.2015 to the applicant for payment of deemed energy charges as acknowledged by the applicant in para 4 of the affidavit.

- e. It is stated that the Clause of billing for 6701 units per kVA in respect of ferro alloy units was stipulated by the Commission because of the concessions/relief extended to the ferro alloys units in the tariff orders by way of concessional tariff that is with lesser energy charges, no demand charges and no minimum charges when compared to that of all other HT industrial units. Hence, the contention of the applicant that the billing of 6701 units per kVA ensures revenue to the DISCOM is not tenable as the DISCOM is simultaneously losing revenue due from the other part of tariff by way of minimum charges, lesser energy charges and demand charges. Further, it is stated that no deemed energy charges were levied beyond 31.07.2013 as per Clause 12(b) of the Commission order dated 07.09.2012.
- f. It is stated that the demand notice dated 09.01.2015 for payment of Rs. 27,32,61,984/- (Rs. 12,56,39,424/- for the FY 2012-13 and Rs. 14,76,22,560/- for FY 2013-14) has been issued to the applicant duly excluding the R & C period that is from 12.09.2012 to 31.07.2013 in which the applicant demand was restricted to less than 85% of CMD due to R & C measures. Hence, the contention of the applicant that deemed energy charges should not be levied when the demand is restricted to less than 85% is not correct as the deemed energy charges are calculated for the period in which the power supply was in full without any R & C measures in force. Hence, the applicant is liable to pay the deemed energy charges as arrived at by the respondent company. The exemption of 85% deemed energy charges for disconnection period has been approved by the Commission with effect from the FY 2016-17.
- g. It is further stated that the contention of the applicant that the DISCOM on one hand is imposing R&C measures restricting the demand to less than 85% and on the other hand is levying deemed energy charges for the shortfall amount less than 85% of CMD is not tenable as the deemed

energy charges are not levied to the applicant during the R&C period in which the demand is restricted to less than 85% of CMD, on the contrary deemed energy charges are calculated for the period in which R&C measures were not in force during the FY 2012-13 and the respondent was supplying 100% power to the applicant without any restrictions.

- h. It is stated that the notice for payment of deemed energy charges by the applicant has been issued strictly in accordance with the tariff regulations issued by the Commission from time to time and in terms of the R & C measures issued vide letter dated 07.09.2012 covering the period from 12.09.2012 to 31.07.2013. Hence, the contention of the applicant that the respondents have misinterpreted the condition of tariff order without appreciating the rationale and object in framing the same is not tenable.
- i. It is stated that with an intention to help the ferro alloy units the respondents have approached the Commission for waiver of deemed energy charges to the ferro alloy units. The Commission had left the decision of waiver of deemed energy charges to the respondents and the GoTS. Since, nothing is heard from the GoTS regarding reimbursement of deemed energy charges in respect of ferro alloy units, the respondents have issued a notice dated 01.12.2018 for payment of Rs. 58,56,43,970/- towards pending deemed energy charges including surcharge for delay in payment. If the Commission passes any orders in O. P. No.4 of 2013 filed by the applicant before the Commission, the orders of the Commission shall be implemented subject to reimbursement by the GoTS as these charges have been considered by TSSPDCL while filing tariff proposals before the Commission and keeping in view the interest of TSSPDCL. Hence, the 85% deemed energy charges are levied as per the existing tariff regulations issued by the Commission.
- j. It is stated that it is a fact that the tariff order was prepared presuming continuous availability of power supply. Though the assumption proved to be wrong as contended by the applicant due to some unforeseen circumstances, the applicant is forgetting the fact that the deemed energy charges are not levied during the R & C period in which there was shortage of power instead, levied during the period in which there

was continuous power supply that too in accordance with the provisions of tariff regulations and in terms of orders of the Commission letter dated 07.09.2012 regarding R & C measures. Hence, the ruling in Hon'ble Supreme Court judgment in the case of "*Amalgamated Electricity Company Limited Vs. Jalgaon Borough Municipality*" (1975) AIR 2235 as stated by the applicant does not have relevance to this present case as the deemed energy charges are levied for the period in which there was continuous power supply to the applicant.

- k. It is stated that the deemed energy charges are levied strictly in accordance with the provisions of tariff regulations issued by the Commission from time to time and in terms of the R & C orders issued by the Commission vide letter dated 07.09.2012. Further, it is stated that since, the deemed energy charges are calculated leaving the R & C period, the averments of the applicant are not tenable.
- l. It is stated that though the respondent could not supply continuous power to the applicant during the R & C period, there was continuous supply of power for the rest of the period attracting the provisions of tariff regulations for levy of deemed energy charges for FY 2013-14.
- m. It is stated that the respondent did not levy deemed energy charges to the applicant during the R & C measures period. Further, there was adequate power supply on expiry of R & C measures period that is beyond 31.07.2013 as noted by the applicant. The respondent supplied continuous power to the applicant after R & C period and is eligible for levy of deemed energy charges. Hence, the contention of the applicant that the respondent is not eligible for levy of deemed energy charges is not tenable.
- n. It is stated that in view of the above submission, the respondents pray the Commission to set aside the interlocutory application filed by the applicant and allow the TSSPDCL to collect the deemed energy charges along with applicable surcharge for the delay in payment as per the provisions of tariff order issued for FY 2012-13 or else TSSPDCL would be put to severe financial loss.

5. The respondents have filed additional counter affidavit on 06.03.2021 to the application and the averments of it are extracted below:

- a. It is stated that the applicant has filed an interlocutory application vide I. A. No. 13 of 2019 in O. P. No. 4 of 2013 on 07.01.2019 praying for revisiting the terms and conditions of HT tariff as mentioned in Clause 7 (2) (HT Supply Specific Conditions).
- b. It is stated that the Act 2003 and Regulation No.2 of 2015 do not speak about the relief of 'revisiting' the orders of the Commission. In fact, the applicant seeks review of the orders of the Commission. Such review petition is required to be filed within 75 days from the date of order.
- c. It is stated that Clause 32 of (Conduct of Business) Regulation No.2 of 2015 provides 75 days for review of any order, direction or decision approved by the Commission. The said Clause is reproduced below for perusal please:  
*"(1) The Commission may on its own motion or on the application of any person or parties concerned, within 75 days of any decision, or order, review such decision, direction or order as the case may be and pass such appropriate orders as the Commission thinks fit.  
Provided that the Commission may allow on production of sufficient cause to the petitioner a further period not exceeding 30 days for filing the review petition on such terms and conditions as may be appropriate"*
- d. It is stated that in the instant case the applicant has filed the interlocutory application on 07.01.2019 after about 57 months (about 1700 days) for review/ revisiting of the conditions of tariff order pertaining to 2013-14 which was issued by the Commission on 30.03.2013.
- e. It is stated that review petition filed by the applicant dated 07.01.2019 is liable to be dismissed since it is barred by limitation.

6. The applicant has filed rejoinder to the counter affidavit and the averments of it are extracted as below.

- a. It is stated that the main contention raised by the respondents in their additional counter is that the present applicant is filed for revisiting of terms and conditions of HT Tariff is in the nature of review in as much as Clause 32 provides for limitation of 75 days with further period of 30 days

for condonation, the present application is barred by limitation is totally misconceived. The applicant has not filed any review and the nature of application before this Commission is revisiting of the terms and conditions of tariff which is well within the powers of this Commission.

- b. It is stated that the tariff was determined by erstwhile Commission and so far as HT-I (B) category consumers were concerned, the following conditions were imposed:

*"Guaranteed Energy off-take at 6701 kVAh per kVA per annum on Average Contracted Demand or Average Actual Demand whichever is higher. The energy falling short of 6701 kVAh or kVA per annum will be billed as deemed consumption."*

- c. It is stated that the above condition presupposes that the licensee shall supply power for the entire year uninterruptedly and consequently, the consumer was obligated to meet the minimum of 85% of demand worked out on annual basis. The intention of the Commission in specifying the above Clause is very clear that 85% of the demand has to be worked out only on annual basis and not for period lesser than the same.
- d. It is further stated that the respondents had come up with request for imposition of R & C measures, sometime in September, 2012 in the midst of tariff year, which culminated into issuance of orders restricting supply. The orders dated 07.09.2012 were extended on 14.09.2012, 01.11.2012, 17.04.2013 and finally restrictions were called off by order dated 31.07.2013. The above periodical intensions indicate that respondents were not clear and no plan of action to supply enough power and this uncertainty forced the applicants to close down the plants. Besides these subsequent events after issuance of tariff order made things detrimental to the consumers who are power intensive. In this situation and coupled with the orders passed by APERC revisiting of the very same conditions. The present application has to be considered exercising the inherent powers of the Commission and cannot be treated as one that of a review. Therefore Clause 32 has no application and the petition is very much within the powers of the Commission for revisiting of the conditions.

- e. It is stated that the respondents in the counter had primarily contended that deemed consumption charges were not to be imposed during R&C period from 12.09.2012 to 31.07.2013, ignoring the fact that the said charges could have been levied and computed on annual basis but not on staggered periods excluding R & C. Therefore, these charges are to be excluded from the FY 2011-12, FY 2012-13 and FY 2013-14 during which period admittedly R & C was implemented. Besides it is also an admitted fact that even beyond 31.07.2013, there was severe power shortage resulting in un-scheduled outages in the entire composite State which has been accepted and judicial notice has been taken by APERC in its order dated 06.04.2016 in I. A. No. 1 / 2016 in O. P. No. 4 / 2011, I. A. No. 21 / 2015 in O. P. No. 1 / 2012, I. A. No. 22 / 2015 in O. P. No. 1 / 2013, I. A. No. 23 / 2015 in O. P. No. 3 / 2012 and I. A. No. 24 / 2015 in O. P. No. 2 / 2013. The respondents have not disputed that said factual position, except stating that there was a continuous supply. In the erstwhile State all the power procurement for four DISCOMs was done by APPCC and the same was allocated proportionately, therefore, when there is a shortage of power, two DISCOMs falling within Andhra Pradesh, the respondents herein obviously would be on the same footing as that of other DISCOMs and it is futile to contend otherwise.
- f. Further, the APERC had considered this factual position in its order dated 06.04.2016, to which APSPDCL was a party, part of which was then in the distribution area of APCPDCL, presently TSSPDCL, which is extracted hereunder:

*"10. The respondents have made available the power supply position to Ferro Alloys units during the non R & C periods of FYs 2012-13 and 2013-14 which details show that the percentage of days with interruptions in supply went even up to 67% of the period and varying periods of interruptions show that except in respect of three services, there were considerable interruptions in the supply. The petitioners filed similar details furnished by Load Monitoring Cell for 2013-14 and other statements furnished by the respondents show that the deficit power supply was significant during the relevant periods."*

- g. It is stated that the respondents had contended that they would be losing revenue on account of removal of this deemed consumption, which is also factually in-correct. The position at the relevant period of time was that was inadequate power and when DISCOMs are unable to make available the required demand, any revenue loss projected by them would result only in case of availability of excess power. Even this aspect of the matter, the APERC had given specific finding which is extracted hereunder:

*"Apart from the distribution companies not projecting or proving any actual loss due to non-consumption of energy by the petitioners during the relevant periods and when the distribution companies realized actual consumption charges for the power supplied to the petitioners even during the relevant periods, the deemed consumption charges ought not to have been imposed and collected from the petitioners."*

- h. It is stated that the applicant and its association has brought this to the notice of State Government, which in turn in order to review the industry, responded in a positive and pragmatic consideration and has addressed letter dated 06.06.2018 to the Commission requesting to consider the issue in the light of order passed by APERC and conditions then prevailing, this application is concerned only with deemed consumption for the year mentioned and has nothing to do with other charges such as consumption charges, minimum charges etc, which the applicant are not in issue in the present application. Therefore, respondents' contention that the DISCOMs would suffer revenue losses is misconceived. In fact, applicant and similarly situated industries are in the process of reviving the industries by paying the outstanding arrears besides furnishing required security deposit. The applicant had paid an amount of Rs. 3,00,00,000/- towards Initial consumption deposit and due to unforeseen events, the plant has to shut down and intending to reopen.
- i. It is stated that it is a matter of fact and does not traverse any specific reply and the reason for non-payment of CC charges was on account of the R & C measures imposed by the respondent, which forced most of the units under the said industry to shut down.

- j. It is stated that the respondents reiterate the conditions of the tariff orders on which the concept of demand on 85% load factor was introduced in the year 2009-10 and condition precedent to is that the respondents supply continuous un-interrupted power to the high tension scheduled consumers such as applicant herein.
- k. It is stated that for the above reasons and for such further reasons and submissions that may be made in the course of the proceedings and/or at the hearing, the applicant prays the Commission to allow the petition as prayed for.

7. The Commission has heard the parties at length and also perused the material placed before it along with the judgment rendered by the Hon'ble Supreme Court. The submission made by the counsel for the parties are briefly extracted herein below:

Record of proceedings dated 04.01.2020:

*"... .. The advocate representing the counsel for the applicant stated that the applicant in the I.A. is only seeking modification of the conditions laid down in the order in the facts and circumstances of the case explained in the application. The counsel for the respondent sought time for filing a counter affidavit and also to appraise the Commission as to the maintainability of the application in view of the law made prior to 2014. Accordingly, the matter is adjourned."*

Record of proceedings dated 25.01.2020:

*"... .. The advocate representing the counsel for the applicant stated that the applicant in the I.A. is only seeking modification of the conditions laid down in the order in the facts and circumstances of the case explained in the application. The counsel for the respondent stated that the counter affidavit is filed. The counsel for the petitioner stated that the counter affidavit is not received and a copy of it is received by him now. He sought time for filing rejoinder. Accordingly, the matter is adjourned."*

Record of proceedings dated 11.02.2021:

*"... .. The counsel for the applicant stated that the matter relates to the issue of clarification of the tariff order for FY 2013-14 insofar as conditions stipulated in the order. The representative of the respondents stated that the counter affidavit has been filed in the matter. The counsel for applicant stated that he is*



*not in receipt of the counter affidavit. The representative of the respondents agreed to provide a copy of the same immediately to the applicant by email. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 22.02.2021:*

*“... .. The counsel for the applicant stated that he has received counter affidavit in the matter and he is required to file rejoinder against the said counter affidavit. He needs two weeks time to file the same. The representative for respondents has no objection for the same. Accordingly, the applicant shall file rejoinder on or before 08.03.2021 duly serving a copy of the same to the respondents through email or in physical form. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 15.03.2021:*

*“... .. The counsel for the applicant stated that he needs further time to file rejoinder in the matter for a period of two weeks. The representative of the respondents required them to serve a copy of the same as and when it is filed. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 09.06.2021:*

*“... .. The counsel for the applicant stated that he needs further time to file rejoinder in the matter for a period of two weeks. The representative of the respondents required them to serve a copy of the same as and when it is filed. The rejoinder shall invariably be filed on or before the next date of hearing duly obtaining acknowledgement of service to the respondents and filing the same before the Commission. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 15.07.2021:*

*“... .. The counsel for the petitioner sought further time to file the rejoinder in the matter. He stated that the authorized signatory is unwell and therefore, the company is assigning the task to another person, accordingly he requires three weeks more time. The representative of the respondents stated that the respondents have filed their counter affidavit long back. In the circumstances, the matter is adjourned.”*

*Record of proceedings dated 11.08.2021:*

*“... .. The advocate representing the counsel for applicant has sought further time for filing the rejoinder, as the authorized person has been changed and the new person has already completed the task, as such the same will be filed immediately. The Commission observed that the applicant took time for filing*

*rejoinder on several occasions and as such, the matter has been posted today for final hearing including filing of rejoinder. However, the advocate persisted with the request and stated that the rejoinder will be filed by tomorrow itself. Having regard to the request of the counsel for the applicant, the matter is adjourned on the condition that the rejoinder shall be filed immediately duly making available a copy of the same to the respondents, either physically or by email and no further adjournment will be granted in the matter, as it will be heard finally.”*

*Record of proceedings dated 06.09.2021:*

*“... .. The advocate representing the counsel for applicant has sought further time to make submissions in the matter, as the pleadings have already been completed with the filing of common rejoinder on 04.09.2021. The representative of the respondents also sought time to make submissions in the matter, as he has received the rejoinder only the other day. Accordingly, the matter is adjourned but it is made clear that no further adjournment will be given in the matter.”*

*Record of proceedings dated 25.10.2021:*

*“... .. The advocate representing the counsel for applicant has sought further adjournment in the matter, as the counsel for the petitioner is engaged elsewhere and would definitely argue the matter on the next date of hearing. The representative of the respondents has no objection. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 15.11.2021:*

*“... .. The advocate representing the counsel for applicant stated that the application is old one and need to be heard. However, he sought time to make submissions in the matter on any other date. The representative of the respondents has no objection. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 13.12.2021:*

*“... .. The representative of the respondents stated that the regular representative for the respondents is unable to attend the hearing today due to personal inconvenience. Therefore, he sought short adjournment of the matter. Accordingly, the matter is adjourned.”*

Record of proceedings dated 03.01.2022:

*“... .. The counsel for petitioner stated that the office file has been misplaced in his office, though he is ready to argue the matter. To trace the record and submit the arguments in the matter, he has sought short adjournment. The representative of the respondents stated that it is an old matter. In view of the request of the counsel for petitioner, the matter is adjourned.”*

Record of proceedings dated 02.02.2022:

*“... .. The counsel for applicant stated that the prayer in this petition is prima facie with regard to revisiting the tariff order for the year 2013-14 in respect of deemed consumption by the ferro alloys units as specified therein in terms of the earlier orders. Due to imposition of restriction and control measures for the said year, the applicant was not able to function and the unit was closed. The Commission, while imposing the restriction and control measures in the relevant year, had specifically imposed a condition of not levying deemed consumption charges in respect of the industry.*

*The Commission, in the relevant tariff order, had imposed condition of drawing at least 85% after energy demand at 6701 kVAh per kVA of demand. The tariff had been fixed at Rs.4.05 per unit. However, during the course of the relevant year, the licensees failed to meet the demand and approached the Commission to impose restriction and control measures under section 23 of the Electricity Act, 2003. The Commission having considered the demand supply position of power availability and allowed the licensees to impose such measures on such of the consumers as was decided by it. In doing so, the Commission had quantified and specified the methodology of availing the power in respect of the each of the categories of consumers. The applicant being constrained to function under the said conditions had closed the unit, since the equipment is required to have continuous power supply for 365 days in a year. If the machinery is stopped, it will take about two days to restore normalcy, which is detrimental to the functioning of the applicant.*

*The counsel for applicant emphasized the provisions of the Electricity Act, 2003 as also the Conduct of Business Regulation, 2015. It is his case that the Commission has ample power to revisit the order passed by it at any point of time to mitigate the difficulty caused to any of the stakeholders. Particular reference has been drawn to section 62 (4) of the Act, 2003 and Clauses 38 (1)*

and (3) of the Conduct of Business Regulation, 2015. He also relied on an order passed by the Andhra Pradesh Electricity Regulatory Commission on 06.04.2015 in respect of the similar issue arising in that State. He has brought to the notice of the Commission during the financial years 2012-13 and 2013-14 only two ferro alloys units functioned and all other units were closed as they existed in the combined state at that time.

The counsel for applicant has also drawn attention the communication made by the Government with regard to consideration of the issue by the Commission towards restoration of power supply and waving of the charges for the relevant period as also subsequently any penalties. It is stated that the Commission refused to dwell into the issue and relegated the matter to be decided between the licensee and the Government. On further pursuance of the matter, the Commission only clarified that the issue will be examined on a case to case basis, if at all, they approach the Commission.

The counsel for applicant stated that the applicant made efforts to revive the unit, but was stuck with the levy of charges for the period and also penalties due to non-consumption of the energy.

The representative of the respondents stated that non-levy of penalties or deemed consumption charges is applicable only to restriction and control measure period and it cannot be waved of unless suitable assistance is received from the Government. The licensee had no support from the Government despite explaining the status of the licensees as well as that of the consumers. Even otherwise, they cannot seek revisiting of an order passed determining the tariff as it anyway would constitute reviewing the order, which is not permissible under the Act, 2003 and the regulation thereof. The amendment of the order once passed by the Commission determining the tariff is subject to the discretion of the Commission as the provision employs the word 'may' and not 'shall'.

The representative of the respondents further stated that the licensees have acted in accordance with the directions of the Commission with regard to levy or exemption of the deemed consumption charges as well as penalty thereof. If the petitioner is seeking to wave of the amounts, the licensee should be suitably compensated. The calculations made by the licensee in respect of levy are in accordance with the orders of the Commission. The Commission has

*already decided the issue, when it has replied to the Government, as such there remains nothing to be decided by the Commission.*

*The counsel for petitioner while rebutting the contentions of the licensee, pointed out that the licensee cannot blow hot and cold in the matter. The issue is not generic to all industrial consumers, but is specific to ferro alloys units, as the Commission had imposed specific condition with regard to off take of energy. He has placed reliance on the judgment of the Hon'ble Supreme Court reported in 1975 (2) SCC 508 being Amalgamated Electricity Company Limited against Jalgaon Borough Municipality, wherein the Hon'ble Supreme Court considered the issue of minimum guarantee and minimum consumption. The present case also is on similar lines, which may be considered."*

### **Facts in Brief**

8. From the pleadings and on perusal of material on record it is understood that –
  - a) The applicant is engaged in the business of manufacture and sale of ferro alloys, a power intensive industry, in the Telangana State and had been availing power supply with contracted demand of 20 MVA from the erstwhile Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) and eventually from the respondent No.1 (TSSPDCL) in whose area of supply the applicant Ferro Alloy Unit [HT SC No. SGR 129] was located i.e., at Rudraram (V), Patancheru (M) in Sangareddy District.
  - b) That the applicant had to close down their unit due to unfavourable market conditions and power holidays imposed by the erstwhile APCPDCL. The power connection of the applicant was disconnected by the Respondent No. 2 on 19.06.2013 due to non-payment of regular CC bills. Subsequently, the HT agreement was terminated on 19.10.2013.

### **Applicability of retail supply tariff to HT-I(B) 'Ferro Alloy Units' category for FY 2013-14 where the present issue is connected**

- c) The Commission in its order dated 30.03.2013 in O.P.Nos.01 to 04 of 2013 has specified that –
  214. **Licensees' Proposal regarding HT-I(B) Ferro Alloy Units:** *The Licensees have proposed to merge this sub category into HT-I(A): Industry General.*

**Objections/Suggestions:** *The consumers and their representatives have expressed the opinion that the proposed merger will lead to steep increase in tariff per unit for Ferro Alloy units. The proposal appears to be an indirect way of raising the tariff for Ferro Alloy units and hence, not be accepted. They expressed that the proposal will result in tariff shock to consumers and closure of units.*

**Licensees' Views:** *The Ferro alloys category was separated from HT-I category in 2002. Until then, there was no difference between the Ferro alloy and other industries. In September, 2002, Hon'ble Commission created a separate sub category for Ferro alloy giving differential treatment due to higher load factor. There is no separate category for Ferro Alloys in any other major state in India. The licensee proposes to merge this with HT-I(A) Industrial category. As load factor of Ferro Alloy industries is higher as compared to other industries, the net tariffs for Ferro Alloy industries would still be lower than other industrial consumers even after the merger.*

**Commission's Decision:** *If the Licensees' proposal is approved, the tariff applicable for HT-I(A): Industry will be applicable for Ferro Alloy units also. At present, Ferro Alloy Units are covered under HT-I(B) category with specific tariff conditions, viz. minimum off take of 6701 kVAh per kVA/annum (at 85% load factor per annum), no demand charges, no ToD tariff and energy charges less by Rs. 0.32 / kVAh compared with HT-I(A): Industry General. The consumers, whether they consume or not, pay for 6701 units per kVA during year. Accordingly these consumers have no choice in energy usage unlike other consumers and also assure revenue to Licensees. The Commission has not seen any merits in Licensees' proposal and hence not accepted the proposal of merging HT-I(B) Ferro Alloy units with HT-I(A) Industry.*

The Commission determined retail supply tariff and specific condition [para 7 (2)] related to HT-I(B) 'Ferro Alloy Units' category in FY 2013-14 is as given below:

**“5.1.2 HT-I(B): Ferro Alloy Units**

<b>DEMAND CHARGES &amp; ENERGY CHARGES</b>		
<b>Voltage of Supply</b>	<b>Demand Charges Rs. / kVA / month of Billing Demand</b>	<b>Energy Charges Rs. / kVAh</b>
132 kV and above	Nil	4.58
33 kV	Nil	4.98
11 kV	Nil	5.41

... ..

**HT-I(B): Ferro Alloy Units**

7(2) *Guaranteed energy off-take at 6701 kVAh per kVA per annum on Average Contracted Maximum Demand or Average Actual Demand, whichever is higher. The energy falling short of 6701 kVAh per kVA per annum will be billed as deemed consumption.”*

**Restriction & Control (R&C) Measures Orders**

d) In view of the then prevailing precarious power demand and supply situation and on approach of the then APDISCOMs the then erstwhile APERC under Section 23 of the Electricity Act, 2003 had imposed Restriction & Control (R&C) measures by order dated 07.09.2012 with effect from 12.09.2012. The applicant being an HT furnace based industry was restricted to 60% of the permitted demand limit for this period. Subsequently, on consideration of the representation from the then APDISCOMs that the availability of power supply from the hydel stations the then erstwhile APERC by order dated 31.07.2013 removed R&C measures with effect from 01.08.2013 (thus, the R&C measures are in force from 12.09.2012 to 31.07.2013). As per clause 12(b) of the said order, no deemed consumption charges were to be levied during the R&C measures.

**Adoption of Orders**

e) The Commission vide Regulation No.1 of 2014 had adopted the orders of the erstwhile APERC including the retail supply tariff orders as well as R&C orders.

### **Deemed Energy Charges**

- f) The respondent No.2 has sent a letter/demand notice dated 09.01.2015 claiming Rs. 14,76,22,560/- towards deemed consumption (energy) charges for FY 2013-14.

### **Correspondence with GoTS and the Commission**

- g) The applicant and its Association have brought this to the notice of Government of Telangana which in turn in order to revive the industry, responded in positive and pragmatic consideration and has addressed a letter dated 06.06.2018 to the Commission requesting to consider the issue in the light of order passed by APERC and the conditions prevailing. The Commission refused to dwell into the issue and relegated the matter to be decided between the licensee and the Government. On further pursuance of the matter, the Commission only clarified that the issue will be examined on a case-to-case basis, if at all, they approach the Commission.
- h) The applicant has relied upon the judgement of Hon'ble Supreme Court reported in 1975 (2) SCC 508 being '*Amalgamated Electricity Company Limited Vs. Jalgaon Borough Municipality*', wherein the Hon'ble Supreme Court considered the issue of minimum guarantee and minimum consumption.
- i) The Applicant has also sighted that the APERC order dated 06.04.2016 in I. A. No. 22 / 2015 in O. P. No.1/2013 to which APSPDCL was a party, part of which was then in the distribution area of APCPDCL presently Respondent No.1.

9. Prima facie the issue in this Interlocutory Application is with regard to revisiting and modification of the retail supply tariff order for FY 2013-14 in respect of ferro alloys units specifically with regard to levy of deemed consumption (short fall of 85% load factor) charges for FY 2013-14 as specified therein on the grounds that the consumption shall be considered on annual basis and not for financial year. Whereas the rival contention of the respondents is on the contrary that the deemed energy charges are calculated for the period in which R & C measures were not in force during FY 2013-14 and during the period when the respondents was supplying continuous power to the applicant without any restriction and the demand notice was in



accordance with the provisions of tariff regulations and in terms of R&C orders issued by the Commission from time to time. The respondents further contended that if the applicant is seeking waiver of the amounts, the licensee should be suitably compensated.

10. Before dwelling upon the issue raised by the applicant, firstly it has to be seen whether the instant Interlocutory Application filed by the applicant falls within the purview of review petition and barred by limitation as contended by the respondents in their additional counter. According to the respondents the relief sought by the applicant is nothing but review of the orders of the Commission and such review petition is required to be filed within 75 days from the date of order as per Clause 32 of Regulations No. 2 of 2015 and the Commission may allow further period of 30 days on such terms and conditions as may be appropriate subject to production of sufficient cause and whereas the application has filed on 11.01.2019 after about 69 months for review/revisiting of the conditions of tariff order pertaining to 2013-14 which was issued by the Commission on 30.03.2013 therefore the application is barred by limitation and liable for dismissal. Whereas the contention of the applicant is that the application is not a review and nature of the application is for revisiting of the terms and conditions of retail supply tariff for FY 2013-14 which is well within the powers of this Commission under Section 62 (4) read with Section 86 of the Act, 2003 and Clause 38 (1) and (3) of Conduct of Business Regulations No.2 of 2015. Undoubtedly, neither the Electricity Act, 2003 nor 'Conduct of Business' Regulations No. 2 of 2015 does speak about the relief of revisiting the orders of the Commission. However, when the GoTS vide letter No. 1114 / PR. A1 / 2017, dated 06.06.2018 referred the matter to the Commission with a request to examine the request of the Ferro Alloys Industries for waiver of deemed energy (consumption) charges for the period from FY 2010-11 to FY 2014-15 and also for disconnection period w.e.f. FY 2015-16 as ordered by APERC, the Commission Communicated to the Government of Telangana vide letter dated 11.10.2018 that –

*“In the context of the subject, reference has been drawn to the orders of the Andhra Pradesh Electricity Regulatory Commission (APERC) on the issue of levy deemed consumption charges during the disconnection period and waiver of the same for the period 2010-11 to 2014-15. It may be appropriate to state that the ferro alloy units in that have approached the APERC by way of filing of*

*interlocutory applications in the respective tariff orders for the relevant years and after hearing the parties, the APERC passed orders on the said applications, allowing the same in respect of ferro alloy units.*

... ..

*Moreover, the issue cannot be generalized and a decision cannot be taken on the correspondence between the Commission, Government, Ferro alloy units and vice versa. Individual units have to file regular petitions / applications as may be advised to them for modifying the tariff order passed in the respective years by the then APERC and later the present Commission. No proceedings / communications across the board can be issued in the teeth of the fact that the DISCOM emphatically said that the waiver can be considered only upon reimbursement of the amount by the Government.*

... ..

*However, if the respective tariff order is to be modified, as stated above, it is for the individual consumers to approach this Commission for modification of the same and which has to be examined on a case to case basis.”*

Therefore, the Commission is of the view that the individual approach for revisiting the conditions and modification of the retail supply tariff order for FY 2013-14 by filing of the instant interlocutory application has a force for consideration and hence to proceed with.

11. The substantial issue would remain to be a billing issue viz., levy of deemed consumption charges.

12. The Commission had, at first instance, determined the retail supply tariff for FY 2013-14 by considering the normal conditions of supply and that the respondent/licensee would make available the required quantum of power to the consumers. However, during the course of the year the respondent / licensee realised that it is not able to meet the quantum demanded and therefore required the Commission to invoke the provisions of the Act, 2003 more particularly Section 23 thereof. The parties to this interlocutory application are expected to and are required to follow the impugned retail supply tariff order for FY 2012-13 and the R & C measures orders along with provisions of general terms & conditions of supply and need to be understood and implemented by undertaking harmonious construction of the same.

13. The Commission being conscious of the fact that the consumers belonging to HT consumer category viz., HT-I(B) 'Ferro Alloy units' are on the condition of deemed consumption charges had placed them under no liability of the same while imposing R & C measures.

14. The grievance of the applicant is that the respondents shall supply power for the entire year uninterruptedly and consequently, the consumer was obligated to meet '*Guaranteed Energy off-take at 6701 kVAh per kVA per annum on Average Contracted Demand or Average Actual Demand whichever is higher*' only on annual basis and not on staggered periods. This grievance of the applicant holds no water as considering the requests and submissions of Ferro Alloys Industries including the applicant a concessional retail supply tariff was fixed under a separate HT-I(B) 'Ferro Alloy Units' consumer category. The Commission notes that the respondent No. 2 did not levy deemed energy charges to the applicant during the R & C measures period and the notice for payment of deemed energy charges to the applicant has been issued in accordance with provisions of general terms & conditions of supply and in terms of R & C orders issued by the Commission. The action of the respondent/licensee cannot be termed as against to the retail supply tariff order for FY 2013-14.

15. Further, the judgement of Hon'ble Supreme Court reported in 1975 (2) SCC 508 being '*Amalgamated Electricity Company Limited Vs. Jalgaon Borough Municipality*' upon which the applicant has relied upon is of no benefit to it as the said judgment envisages that a liability arose on the purchaser to pay, even if the electricity was not consumed, as long as the supplier could supply power whenever required. In the present case the deemed energy charges are levied by the respondents for the period, excluding the R & C period, i.e., during which the respondents could supply continuous power to the applicant.

16. The applicant has also relied upon the APERC order dated 06.04.2016 in I. A. No. 22 / 2015 in O. P. No. 1 / 2013 which dealt with a similar issue with respect to the APDISCOMs and held that the Ferro-Alloy units were '*not liable to pay any deemed consumption charges*'. It is also brought to the notice of the Commission about the subsequent orders of the APERC on the same issue in favour of Ferro Alloys Industries. The orders of the APERC cannot constitute a binding precedent for this Commission and they are at the most only persuasive in nature. According to the

respondents that a request was already placed before Government of Telangana to that affect it is ready to waive the deemed consumption charges levied on the Ferro Alloy Industries including the applicant herein subject to reimbursement of the said amount by Government of Telangana but for that no whisper is made by the Government of Telangana except has addressed a letter dated 06.06.2018 to the Commission to look into the matter, the stand of the Commission in its letter dated 11.10.2018 communicated to the Government of Telangana is clear that the matter is left to the Government of Telangana and DISCOMs collectively to take a decision in the matter at their end.

17. In view of the above stated reasons it is hereby concluded that the interlocutory application of the applicant is devoid of any merits.

18. Accordingly, the interlocutory application is dismissed without costs.

**This order is corrected and signed on this the 28<sup>th</sup> day of September, 2022.**

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M. D. MANOHAR RAJU) MEMBER	Sd/- (T. SRIRANGA RAO) CHAIRMAN
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