

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

**PRESENT: Shri C.Balakrishnan, Chairman
Shri M.P.Aiyappan, Member**

19th May, 2006

Petition DP No.20	Dy. No. 00486 dated 25/04/2006	Binani Zinc Ltd, Binanipuram, Kochi Kerala State Electricity Board, Vaidyuthi Bhavanam, Thiruvananthapuram	Petitioner Respondent
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ORDER

1. Background

The petitioner, viz .Binani Zinc Limited, Binanipuram, Kochi 683 502 (hereinafter called Binani) in its petition dated 28th September 2005 has stated that they are an Extra High Tension Consumer of electricity engaged in the manufacture of Zinc metal and Sulphuric Acid and Cadmium as by-products. Binani had stated that they received a Notice from the respondent viz. Kerala State Electricity Board (hereinafter called the 'Board') vide letter No.HTBT/701/ACD/2005/1904 dated 26-07-05 to remit Rs.5,20,76,450/- (Rupees five crore twenty lakh seventy six thousand four hundred and fifty only) as Additional Cash Deposit.

Binani has stated that as per clause 30 of the Kerala Electricity Supply Code, 2005 issued by Kerala State Electricity Regulatory Commission vide Notification No.1/1/KERC 2005/IV dated 2-3-05, Board is to obtain approval for the Terms and Conditions of Supply. The collection of security deposit vide clause 13 of the Supply Code is therefore subject to approval of the Terms and Conditions of Supply by the Commission.

Binani has further stated that Board has demanded the Additional Cash Deposit amounting to Rs.5,20,76,650/- without getting approval from the Commission and that they informed this to the Board vide letter dated 19th August 2005.

Binani has stated vide letter No.HTB 7/701/2099 dated 13th September 2005 that Board has reiterated its demand for additional cash deposit and has drawn reference to clause 25(1)(h) which prescribes the conditions for disconnection.

Binani has stated that such coerce action on the part of the Board is illegal since clause 25 becomes applicable in respect of payment of security deposit only when such terms for collection of security deposit are approved as part of the terms of Conditions of Supply.

Binani has, in the petition, stated that they are aggrieved by the demand notice of the Board on account of the following:

1. The notice for additional deposit is not valid since Board has not taken approval as per clause 30 of the Electricity Supply code, 2005.
2. Even in their reply dated 13-09-05, Board has not admittedly addressed this aspect.
3. Board has issued notice of disconnection under clause 25 of the Kerala Electricity Supply Code 2005, though this clause is inapplicable in the said case.
4. Government of Kerala has given sanction to Binani for two small hydel projects of 10 MW and a Thermal Project of 25 MW for captive use. Similar consumers who owned captive power plants need pay the Additional Cash Deposit only proportionately.

5. Commission has permitted consumers to participate in power trading arrangements so as to enable them to obtain power at cheaper rates. Hon'ble Commission had given time to Binani to submit application before the Board up to November 2005. Once the above arrangements are made, Binani can supply power to the State Grid substantially and their consumption will be reduced and there may not be any need for additional cash deposit.

The Commission in its meeting held on 27th October 2005 examined in detail the petition filed by Binani and decided to admit it as DP 20. Commission also decided to forward a copy of the petition to Board for comments within 15 days from the date of receipt.

Board while replying to the above vide letter No.KSEB/TRAC/A&F/1582/05/93 dated 18th November 2005 has stated as follows:

1. Binani, an EHT consumer was served with a demand notice to remit Rs.520,76,450 as ACD as the security deposit at the credit of the consumer was found insufficient .i.e. not equal to two months current charges as per the terms of the Agreement with the consumer and as specified by the Commission in the Supply Code.
2. As per clause 13(4) of the Supply Code notified by the Commission, the Licensee is empowered to require a consumer having monthly billing at all times maintain with the Licensee an amount equivalent to two months electricity bill as security during the period of agreement in force. Further under sub clause (5) of the Code, the Licensee is authorized to review the adequacy of security every financial year or when tariff revision is effected and demand for shortfall or make refund the excess security as the case may be by giving 30 days notice to the consumer.
3. Immediately after receipt of the Supply Code, the Board took necessary steps to prepare and submit the Draft Terms and Conditions of Supply. Pending

finalisation of the Terms and Conditions of Supply, Board requested the Commission for permission to follow the present procedure of collection of ACD, vide letter dated 26th September 2005.

4. Board finalized the draft Terms and Conditions of Supply and submitted to the Commission vide letter dated 10th October 2005. Most of the consumers other than the petitioner made payment of ACD as per this scheme.
5. The demand for Security Deposit/ACD has been made with reference to the present level of consumption of energy and it has nothing to do with the petitioner's future plans to set up their own captive power plant or to purchase power from elsewhere. As and when these efforts of the petitioner materialize and the consumption of Board's power becomes reduced, the security will be revised as per provisions in the Supply Code. 2005.
6. The petitioner owe a huge amount to Board, avoiding payment on one pretext or other exploiting the administrative procedures.

2. Hearing of the matter

Commission decided to conduct a hearing so that Board and Binani can present their case in detail. Accordingly the parties were informed vide letter dated 21st February 2006 that a hearing on the subject will be held on 9th March 2006 in the Office of the Commission. This was postponed to 24th March 2006 because the letter dated 21st February was not delivered in time to Binani.

The hearing proposed for 24th march 2006 was postponed to 7th April 2006 and then to 17th April 2006 on request from the advocate for Binani.

In the hearing held on 17th April 2006, Binani presented their case first. The points presented are as follows:

1. Binani started their operations in 1967 and about 1000 families depend on Binani for their livelihood.

2. Because of the peculiar nature of their operations, uninterrupted supply of power is essential.
3. Binani has been maintaining with the Board a Security Deposit of Rs 1,77,26,000/- (Rupees one crore seventy seven lakh and twenty six thousand only) from 1997 onwards.
4. Board suddenly issued a notice dated 26-07-05 raising a demand for security deposit of Rs 6,98,02,443/- working out to an additional cash deposit of Rs 5,26,76,450/-
5. Binani replied to the notice raising various contentions and pointing out the illegality of the demand notice.
6. In the letter dated 13th September 2005, Board suggested that if Binani is aggrieved for any reason, then the matter may be taken up with the Commission.
7. Due to global economic scenario and raw material price increase, Binani is not in a position to pay the large amount.
8. Binani has already paid upfront a sum of Rs one crore to the Government of Kerala for setting up of hydel projects for captive generation and to Board Rs ten lakh for feasibility report for setting up these hydel projects.
9. Once these hydel and the thermal projects commence operation, Binani would not be entirely dependent on Board for its power supply. The demand on the Board would be reduced by 60% to 70%. Similar consumers like Carborandum Universal and Murugappa Industries and INDSIL who have captive power resources need maintain security deposits in proportion to their actual demand after deducting the power generated through their captive power sources.
10. Binani has been negotiating with power trading agencies like PTC, NTPC and Global Energy for sourcing power.
11. As per interim orders in OP No.5669 of 2002 of the Hon'ble High Court of Kerala and as per order in Civil Appeal No.7453 of the Supreme Court of India and as per the order of the Appellate Tribunal for Electricity, Binani has been paying energy charges at Rs.2.38 per unit. The balance CD payable after

deducting the SD already paid, is Rs.2,29,55,670/- based on two months average consumption.

Board while presenting their case pointed out that the demand for ACD was made in July 2005. All consumers except Binani have remitted ACD demanded and that Binani has been raising one issue after another which created a lot of problems for Board.

3. Commission's Findings

The main points put up by Binani are:

1. The notice for additional deposit is not valid since Board has not taken approval as per clause 30 of the Electricity Supply code.
2. Even in their reply dated 13-09-05, Board has not admittedly addressed this aspect.
3. Board has issued notice of disconnection under clause 25 of the Kerala Electricity Supply Code 2005, though this clause is inapplicable in the said case.

Clause 30 of the Supply Code 2005, stipulates that a Licensee shall within one month of coming in to force of this Code submit to the Commission for approval the Draft Terms and Conditions of Supply.

Clause 25 of the Supply Code 2005 is on disconnection of supply of electricity by a Licensee. As per sub clause 'h' of clause 24, supply to a consumer can be disconnected if the security provided by the consumer has become insufficient or the consumer fails to provide additional security as required by the Licensee.

The Supply Code is dated 23rd March 2005. As per clause 1 of the Code, the regulations under this code shall come in to force **at once**.

The notice demanding ACD is seen issued on 26-07-05 ie after the publication of the Supply Code 2005 and the same coming in to effect.

Disconnection notice is also made with reference to clause 24 of the Supply Code 2005.

The Supply Code 2005 specifies the guiding principles for the Terms and Conditions of Supply to be framed by the Licensees.

Clause 13.5 of Supply Code, 2005 clearly stipulates that the Licensee shall review the adequacy of security of all consumers in the first quarter of every financial year or when tariff revision is effected based on the average consumption of the preceding financial year and charges and tariffs in force.

In the present case there was no revision of tariff. Hence the adequacy of security should have been reviewed in the first quarter of 2005-06 i.e. before 1st July 2005. But Board has issued notice demanding ACD only on 26-07-05 which is against the provisions of the Supply Code, 2005.

Regarding the claims by the consumer that they are going to set up captive power plants both thermal and hydel and the fact that they are trying to procure power through trading agencies, Commission is of the view that the argument does not hold any ground because there is a provision (Clause 13.5) in Supply Code to refund

security after review every year if the consumption is found less. Also global economic changes and raw material prices cannot be linked with security deposit.

Thus the consumer has to pay ACD if Board makes the demand in the light of provisions of the Supply Code 2005/Kerala State Electricity Board Terms and Conditions of Supply, 2005 approved by the Commission.

There is an issue regarding the amount to be collected as ACD. Board has in the hearing on 17th April 2006 stated that the tariff applied is only Rs 2.38 per unit as per court order and the case is pending before the Appellate Tribunal. Pending a decision on tariff, as per sub-clause 3 of clause 15 of the Terms and conditions of Supply, 2005 approved by the Commission the board will require a consumer having monthly billing, at all times, maintain with the Board an amount equivalent to two months electricity bill as security. In the case of Binani, the Board has been raising bills at a rate as given in the tariff notification dated 24th October 2002 but payment is accepted at a lower rate as per the directions from the Hon. Court. The matter is pending before the Appellate Tribunal. Commission is of view that the rate at which the consumer is making payment now as per Court order alone can be used for computation of Security Deposit because security is based on monthly electricity charges and also because the same can be revised once the case is settled by Appellate Tribunal/Supreme Court.

Commission also is of view that the consumer's argument that Board has a surplus budget cannot be accepted as a point for considering any reduction in security. Security has to be based on the level of consumption of electricity.

4. Commission's Order

As per sub clause (5) of clause 13 of the Kerala Electricity Supply Code, 2005, the Licensee shall review the adequacy of the security deposit of all consumers in the first quarter of every financial year or when tariff revision is effected based on the average consumption of the preceding financial year and charges and tariffs in force. Based on the review the Licensee may demand for shortfall or refund the excess security as the case may be by giving 30 days notice to the Consumer. In this particular case the demand for ACD is issued by the Board only on 26-07-05. i.e. after the first quarter of the Financial Year and hence invalid.

Board shall issue a fresh demand notice to Binani as per relevant provisions of the Kerala Electricity Supply Code, 2005 and the Kerala State Electricity Board Terms and Conditions of Supply, 2005 approved by the Commission.

The amount of ACD may be worked out as per the remittance accepted by the Board from Binani as per Court orders in force. Once the Court case is settled the balance ACD if any due may be collected.

Petition No.DP 20 is disposed off accordingly.

Sd/-
M.P.Aiyappan
Member (F)

Sd/-
C.Balakrishnan
Chairman

Authenticated copy for issue

Sd/-
Secretary