

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 86 of 2019

**Petition of M/s. Global Energy Pvt. Ltd. for surrender of Trading Licence No. 1 of 2018
granted to it vide Order dated 27 April, 2018 in Case No. 132 of 2015**

Coram

I. M. Bohari, Member
Mukesh Khullar, Member

M/s. Global Energy Pvt. Ltd. : Petitioner

V/s.

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| 1. Morries Energy Ltd. | : Impleaded Respondent No. 1 |
| 2. Modern India Ltd. | : Impleaded Respondent No. 2 |
| 3. Oberoi Mall | : Impleaded Respondent No. 3 |
| 4. Saidpur Jute Co. Ltd. | : Impleaded Respondent No. 4 |
| 5. Triveni Sangam Holdings and Trading Co. Pvt Ltd. | : Impleaded Respondent No. 5 |
| 6. Indapur Dairy and Milk Products Ltd. | : Impleaded Respondent No. 6 |
| 7. Jubilant Life Sciences | : Impleaded Respondent No. 7 |
| 8. Dhariwal Industries | : Impleaded Respondent No. 8 |
| 9. Palm Grove Beach Hotels | : Impleaded Respondent No. 9 |
| 10. Nirani Sugars Ltd. | : Impleaded Respondent No. 10 |
| 11. Unique Estate Development Co. Ltd. | : Impleaded Respondent No. 11 |
| 12. Chalet Hotel (JW Marriott Hotel) | : Impleaded Respondent No. 12 |
| 13. Chalet Hotel | : Impleaded Respondent No. 13 |
| (Renaissance Convention Centre and Marriott Executive Appt.) | |
| 14. Epcos India Pvt. Ltd. | : Impleaded Respondent No. 14 |
| 15. Foundation Brake Manufacturing Pvt. Ltd. | : Impleaded Respondent No. 15 |

16. Sahyadri Industries Ltd. : Impleaded Respondent No. 16
17. Maharashtra State Electricity Distribution Co. Ltd. : Impleaded Respondent No. 17
1. POSCO Maharashtra Steel Pvt. Ltd.
2. Siddhayu Ayurvedic Research Foundation Pvt. Ltd. : Interveners

Appearance:

- For the Petitioner : Shri Matrugupta Mishra (Adv.)
(with no instructions from the Petitioner)
- For the Respondent No. 2 : Smt Seema Patil (Adv.)
For the Respondent No. 6 : Shri Sumant Patole (Adv.)
For Respondent No. 10 : Shri Saurabh Oka (Adv.)
For the Respondent No. 12 and 13 : Shri Aniruddha Hariyani (Adv.)
For the Respondent No. 8, 17 and
for the Intervener No. 1 and 2 : Shri Ashish Singh (Adv.)

INTERIM ORDER

Dated: 5 December, 2020

1. M/s. Global Energy Pvt. Ltd. (**GEPL**) has filed a Petition on 3 April 2019 for surrender of the Trading Licence granted to it vide Order dated 27 April 2018 in Case No. 132 of 2015.
2. **Petitioner's main prayers are as follows:**
 - i. *allow the application of the Applicant to surrender the Trading Licence No.1 of 2018;*
 - ii. *pass an order declaring that the Trading Licence No.1 of 2018 stands revoked with effect from 02.04.2019;*
 - iii. *waive and exempt the Applicant from paying licence fees as per Clause 9 of the Trading Licence No.1 of 2018; "*
3. GEPL, in its Petition, has stated that due to the prevailing and incumbent unfavorable market conditions, increase in cross subsidy surcharge and additional surcharge, the business of trading in electricity in the State had become unviable and uncertain. GEPL had not been able to undertake any trading transaction using the Trading Licence since obtaining it from the Commission vide the Order dated 27 April 2018 in Case No. 132 of 2015. GEPL further stated that GEPL did not expect its business to commence in near future and therefore, it intended to surrender the Trading Licence. GEPL also claimed that it did not have any outstanding liability towards any party on account of any trade in electricity conducted using the Trading Licence. GEPL has also requested the

Commission to exempt it from paying the requisite Licence Fees claiming that it had not been able to trade any electricity using the Licence.

4. Seventeen Parties (generators/consumers) including Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) were impleaded as Parties in the matter. Also, a Miscellaneous Application (MA 10 of 2019) had been filed by POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. seeking impleadment / intervention in the matter.
5. At the hearing dated 20 May 2019, some of the impleaded Parties stated that they had received the copy of the Petition only on 15 May 2019 and they needed time to file their respective replies. The Advocate for GEPL objected to the impleadment of various Parties as well to the application for intervention filed by POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. and stated that it will be filing its objection within seven days. The Commission directed GEPL to make its written submission on objections to the impleadment of Parties within seven days. The impleaded Respondents were directed to file their replies to the Petition within seven days thereafter.
6. GEPL through its written submission filed its objections to suo motu impleadment of the seventeen Respondents. It also objected to the intervention sought by POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. On the other hand, the Respondents including the intervenors objected to the Petition and requested the Commission not to allow the surrender of Trading Licence by GEPL till the enquiry initiated against GEPL under the Order dated 15 October 2018 in Case No. 242 of 2018 is completed.
7. Vide daily Order dated 15 July 2019, the Commission directed GEPL to post its Licence surrender application on its website and to publish a notice seeking comments/objections on its Application for surrender/revocation in two daily newspaper in English Language and two daily newspapers in the Marathi Language having wide circulations in the State of Maharashtra. GEPL was also directed to submit its replies on the comments/objections within one-week of the receipt of the comments/objections to the Commission, with a copy to concerned objector. The MA filed by M/s. POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. for intervention was allowed by the Commission to the extent of their impleadment in the matter and all impleaded Parties were directed to file their replies, if any, within three weeks. GEPL was directed to carry out the above activities within a period of 2 months and submit its compliance to the Commission.
8. Vide its letter dated 23 October 2019, GEPL stated that it has complied with the Commission's directions regarding notice publication and uploading the Licence surrender application on website.
9. At the hearing held on 22 November 2019, Advocate for GEPL stated that it has complied the direction regarding notice publication and further stated that it intended to file rejoinder to the replies filed by the impleaded Parties. GEPL further sought adjournment to the hearing. The Respondents did not object to the adjournment request of GEPL. The

Commission directed GEPL to file rejoinder to the replies received by it and the hearing was adjourned.

10. The Petition was scheduled for further e-hearing on 23 November 2020 vide notice dated 16 November 2020.
11. In response, an email dated 21 November 2020 was received from GEPL which has informed that:
 - 11.1 Vide Order dated 2 December 2019, the National Company Law Tribunal (NCLT), Mumbai Bench has admitted an application filed by ValueLabs LLP under Section 9 of the Insolvency and Bankruptcy Code, 2016 against GEPL.
 - 11.2 Vide its Order dated 2 December, 2019 in the matter (CP (IB) 2520/MB/2018), NCLT has imposed moratorium on GEPL in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 and directed as under:

“ ...

21. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in paying the outstanding unpaid invoices raised by the Petitioners in terms of the Power Purchase Agreement and addendums thereto and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under of Section 9 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of Item-I, namely:

I.(a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. ...”

- 11.3 GEPL has preferred an Appeal against the Order dated 2 December 2019 before the National Company Law Appellate Tribunal (NCLAT) and vide Order dated 9 December, 2019, NCLAT has stayed the publication and the formation of the Committee of Creditors.

- 11.4 In view of the aforesaid Orders, the Management of GEPL is currently under suspension. Also, the Interim Resolution Professional appointed, is yet to take charge of the affairs of GEPL. Hence, in these peculiar circumstances, we are unable to pursue the matter.
12. Also, another email has been received on 21 November 2020 from the Advocate of GEPL which stated that he had no instructions from GEPL to appear in the matter, though he had appeared in the captioned matter, in the past. Being the Officer of the Court, he would remain present, if necessary, to assist the Commission, for apprising the present circumstances.
13. **At the e-hearing through video conferencing held on 23 November 2020:**
- 13.1 Shri Matrugupta Mishra stated that:
- i. GEPL's management is under suspension since the Corporate Insolvency Resolution Proceeding (**CIRP**) has been initiated against GEPL and also the Interim Resolution Professional was appointed, but he has not taken charge.
 - ii. Presently, there are no instructions from GEPL to him, although during earlier occasions, he had appeared on behalf of GEPL in the matter.
 - iii. Let all the Parties in present Petition file their replies. GEPL will file its rejoinder to the replies.
 - iv. The Commission is requested to keep the Petition in abeyance.
- 13.2 Advocate appearing on behalf of Modern India Ltd. stated that it was objecting the present Petition of GEPL and further stated that GEPL ought to have appeared during the hearing.
- 13.3 Advocate appearing on behalf of MSEDCL and other three Respondents/Intervenors (Dhariwal Industries, POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd.) stated:
- i. The enquiry initiated against GEPL ought to be reinstated.
 - ii. GEPL should approach NCLAT appraising about lack of any progress in the CIRP proceeding initiated against it.
 - iii. GEPL may not be in a position to take any call as far as present hearing is concerned, but it should have appeared in the hearing for clarifying its position.
 - iv. Considering the present circumstances and in view of natural justice, one more opportunity may be given to GEPL by adjourning the hearing. In case of failure to attend next hearing, present Petition may be dismissed for non-prosecution.
- 13.4 The Advocates appearing for Indapur Dairy and Milk Products Ltd. and Nirani Sugars Ltd. stated that it supported the arguments made by the Advocate for MSEDCL.
- 13.5 The Advocate appearing for Chalet Hotel stated that:
- i. In November 2019, the same stand was taken by GEPL which has been taken presently.

- ii. The enquiry initiated against GEPL would be rendered infructuous if the present Petition is allowed by the Commission.
 - iii. The arguments made by the Advocate for MSEDCL are supported and the present Petition should be allowed for non-prosecution in next hearing.
14. The Commission notes that GEPL, in present Petition, has claimed that it does not have any outstanding liability towards any party on account of trading of electricity undertaken using the Trading Licence which is being proposed by GEPL for surrender. However, the Commission, through its Order dated 15 October 2018 has ordered an independent enquiry in order to ascertain whether GEPL is in default in doing any of the duties and obligations cast upon it by or under the EA or the Rules and Regulations made thereunder as also the terms and conditions of its Licence and also to look into the truth of allegations for payment defaults to generators and MSEDCL, overbilling to consumers, illegal revocation of bank guarantees etc. against GEPL. The Commission has constituted one-member enquiry committee for this purpose, vide its Notification dated 15 November 2018. The aforesaid constitution of an enquiry committee had been challenged by GEPL in its Appeal No. 23 of 2019 before the Hon'ble Tribunal for Electricity (ATE) alongwith an Application for stay of enquiry. However, vide its Order dated 13 March 2019, the Hon'ble ATE dismissed the Interim Stay Application of GEPL holding that there was no ambiguity or illegality in the decision of the State Commission to appoint an enquiry committee to look into various complaints and to ascertain the truth in such complaints / disputes. Accordingly, the Hon'ble ATE has upheld the enquiry ordered by the Commission in Case No. 242 of 2018. However, due to filing of present Petition by GEPL, this enquiry has been kept on hold till the disposal of present Petition vide Notification dated 20 May 2019.
15. Under proceedings of the Present Petition (which has been filed on 3 April 2019), GEPL has filed its written submission on the impleadment of Parties and also impleadment sought by POSCO Maharashtra Steel Pvt. Ltd. and Siddhayu Ayurvedic Research Foundation Pvt. Ltd. However, it is yet to file its rejoinder on the replies filed by the Respondents although since November 2019, it had been expressing its intention to file the same. Thus, the pleadings in the matter are yet to be completed. The Commission also acknowledges the present circumstances informed by GEPL's Advocate due to which difficulty was expressed by them in pursuing the matter. Thus, there is a legal hurdle in deciding the Petition on merits and the Petition cannot be disposed of at this point in time.
16. Thus, the enquiry against GEPL is on hold due to present proceedings at NCLT and the present proceedings before this Commission also cannot be decided due to GEPL's inability to pursue and represent its surrender licence application case before the Commission due to present status of CRIP proceeding before the NCLT. Further, there is no clarity as to when GEPL would be in position to pursue the present Petition and make further submissions in the matter. However, non-disposal of present Petition due to present circumstances, would mean that GEPL would continue to hold Trading Licence granted to it for undertaking intra-state trading transactions in the State. The enquiry against GEPL was to be completed within a period of two months commencing

from 15 November 2018. However, due to the circumstances and legalities, the enquiry pending till date, GEPL has held the Trading Licence and would continue to do so in future indefinitely inspite of prima facie case against it for revocation of its Trading Licence under Section 19 of the EA as ruled by the Commission in its Order dated 15 October 2018 in Case No. 242 of 2018. The Commission is of the view that with the background of cases of defaults against it, prima facie case against it for revocation of its Trading Licence, serious allegations against it from various generators/consumers and enquiry of GEPL ordered by the Commission (and also upheld by the Hon'ble ATE), GEPL should not be allowed to continue to hold its licence in the interim and the same needs to be kept under abeyance/suspension.

17. The Commission notes that there is no specific Regulation in the MERC (Trading Licence Conditions) Regulations 2004 and its amendments in 2006 and 2017 for suspension of the Trading Licence. However, the CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 has the Regulation for interim suspension of the Trading Licence for failure of the Trading Licensees to deposit the fees and surcharge, if any, within seven days of the expiry of due date of payment as per the CERC (Payment of Fee) Regulations, 2012. These Regulations also provide that the Licence could be suspended in the event the charge of contravention is established against the Trading Licensee.
18. The Commission also finds from the record available with Office of the Commission that the GEPL has not paid the required Annual Licence Fees as specified under MERC (Fees and Charges) Regulations 2017 after grant of its Trading Licence on 27 April 2018 till date. Also, the quarterly reports to be submitted for Trading transactions as required in the MERC (Trading Licence Conditions) Regulations 2004 and its amendments in 2006 and 2017 have also not been submitted by GEPL. These non-compliances/failures are also the part of the enquiry constituted by the Commission.
19. Considering the circumstances of the present matter as mentioned at **Para. 16** above with cases of defaults against GEPL, prima facie case against it for revocation of its Trading Licence, serious allegations against it from various generators/consumers, enquiry of GEPL ordered by the Commission (and also upheld by the Hon'ble ATE) and also lack of clarity as to when GEPL would be in position to pursue the present Petition, the Commission deems it appropriate to hold that the Trading Licence granted to GEPL shall be kept under suspension from the date of this Order in the interim, till the present Petition is disposed of. Needless to say that GEPL may file its further submissions for hearing in present proceeding.
20. The Commission is of the view that the above direction would not prejudice GEPL as there would be no adverse impact on GEPL and it is GEPL's own claim that it has not undertaken any transaction under its Trading Licence and it also does not expect its business to commence in near future.

Interim Order

1. The Commission directs that the Trading Licence granted to M/s. Global Energy Pvt. Ltd. vide Order dated 27 April 2018 shall be kept under suspension from the date of this Order in the interim, till the present Petition is disposed of.
2. M/s. Global Energy Pvt. Ltd. may file its further submissions for hearing in present proceeding.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

