

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

IA NO. 814 OF 2021 in Appeal No. 198 of 2021

I.A. NO. 825 OF 2021 in Appeal No. 202 of 2021 (DFR No. 198 of 2021)

I.A. NO. 822 OF 2021 in Appeal No. 204 of 2021 (DFR No. 197 of 2021)

Dated : 26th July, 2021

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member (Electricity)**

In the matters of:

Appeal No. 198 of 2021

Ultra Tech Cement Limited

(Unit: Vikram Cement Works)

through its Authorised Representative

having its registered office at

B Wing, Ahura Centre,

2nd Floor, Mahakali Caves Road,

Andheri (E), Mumbai – 400 093

.... Appellant

Versus

**1. Madhya Pradesh Electricity
Regulatory Commission**

Through its Secretary

5th Floor, Metro Plaza,

Area Colony, Bittan Market,

Bhopal 462 016

Madhya Pradesh

**2. Madhya Pradesh PashchimKshetra
Vidyut Vitran Company Ltd.**

Through its Managing Director,

G.P.H Compound, Polo Ground

Indore – 452 003

.... Respondents

Counsel on record of the Appellant(s) : Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Tushar Nagar
Mr. Samikrith Rao Puskuri

Counsel on record for the Respondent(s): Mr. G. Umapathy
Ms. Pavitra Balakrishnan
for R-2

Appeal No. 202 of 2021 (DFR No. 198 of 2021)

**Ultra Tech Cement Limited
(Unit: Dhar Cement Works)**

through its Authorised Representative
having its registered office at
B Wing, Ahura Centre,
2nd Floor, Mahakali Caves Road,
Andheri (E), Mumbai – 400 093

.... Appellant

Versus

1. Madhya Pradesh Electricity Regulatory Commission

Through its Secretary
5th Floor, Metro Plaza,
Area Colony, Bittan Market,
Bhopal 462 016 Madhya Pradesh

**2. Madhya Pradesh Pashchim Kshetra
Vidyut Vitran Company Ltd.**

Through its Managing Director,
G.P.H Compound, Polo Ground
Indore – 452 003

... Respondents

Counsel on record of the Appellant(s) : Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Tushar Nagar
Mr. Samikrith Rao Puskuri

Counsel on record for the Respondent(s) : Mr. G. Umapathy
Ms. Pavitra Balakrishnan for
for R.2

Appeal No. 204 of 2021 (DFR No. 197 of 2021)

(1) UltraTech Cement Limited
(Unit: Dhar Cement Works)
Through its Authorised Representative
having its registered office at
B Wing, Ahura Centre,
2nd Floor, Mahakali Caves Road,
Andheri (E), Mumbai – 400 093

(2) Amplus Sunshine Private Limited
Through its Authorised Representative
having its registered office at
A-57, DDA Sheds,
Okhla Industrial Area, Phase-II,
New Delhi – 110 020.

.... Appellants

Versus

(1) Madhya Pradesh Electricity Regulatory Commission
Through its Secretary
5th Floor, Metro Plaza,
Area Colony, Bittan Market,
Bhopal 462 016
Madhya Pradesh

(2) Madhya Pradesh PashchimKshetra Vidyut Vitran Company Ltd.
Through its Managing Director,
G.P.H Compound, Polo Ground
Indore – 452 003

....Respondents

Counsel on record of the Appellant(s) : Mr. Amit Kapur
Mr. Abhishek Munot

Mr. Tushar Nagar
Mr. Samikrith Rao Puskuri
for App. 1 & 2

Counsel on record for the Respondent(s): Mr. G. Umapathy
Ms. Pavitra Balakrishnan **for R-2**

ORDER

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

IA NO. 814 OF 2021 IN APPEAL NO. 198 OF 2021

1. Appeal No. 198 of 2021 is preferred by the Applicant/Appellant-Ultratech Cement Limited (“**UTCL**”) challenging the legality and validity of Madhya Pradesh Electricity Regulatory Commission’s (“**MPERC**”) Order dated 14.05.2021 passed in Petition No. 62 of 2020 (“**Impugned Order**”). The Applicant has filed this Application seeking interim relief along with the appeal.

2. UTCL is part of the conglomerate Aditya Birla Group and is one of the largest cement manufacturing company in India. It operates various cement manufacturing units/ plants across India with total installed capacity of 111.4 MTPA. The present Appeal is in relation to the Vikram Unit.

3. UTCL has set up a 2x23 MW thermal CPP on site in order to meet its power requirement at the Vikram Unit. UTCL owns 100% of the CPP and consumes approximately 99% of the power generated from it (in case of surplus energy it is sold on short term on the IEX). UTCL's CPP has complied with the captive qualification criteria set out in Rule 3 of the Electricity Rules during the FY 2017-18 to FY 2019-20 and is entitled to receive all benefits of captive use including no levy of additional surcharge.

4. UTCL's onsite CPP was commissioned in June, 2008 and has been generating power since then. On 18.09.2020, UTCL received a Demand Notice from Respondent No.2- Madhya Pradesh Pashchim Kshetra Vidyut Vitran Company Ltd. ("**MPPKVCL**") levying Additional Surcharge to the tune of Rs. 51,51,18,496/- on the captive power consumed by its Vikram Unit during FY 2017-18 to FY 2019-20 on an erroneous interpretation of Section 42(2) and (4) of the Electricity Act. Levy of Additional Surcharge, in the facts of the present case, is contrary to the provisions of the Electricity Act and the legislative intent of promoting captive use of electricity.

5. Aggrieved by the said Demand Notice dated 18.09.2020, UTCL had filed a Petition No. 62 of 2020 before Respondent No.1-Madhya Pradesh Electricity Regulatory Commission ("**MPERC**") seeking amongst others, a

declaration that Additional Surcharge is not leviable on the quantum of power consumed by UTCL's Vikram Cement Works ("**Vikram Unit**"), from its 2 x 23 MW onsite Captive Thermal Power Plant ("**CPP**").

6. After hearing the parties, on 14.05.2021, MPERC has passed the Impugned Order dismissing UTCL's Petition.

7. Alleging that the Impugned Order is violative of the letter and spirit of the applicable provisions of the Electricity Act as interpreted by the Hon'ble Supreme Court and this Tribunal, the Applicant has preferred the instant appeal together with an application seeking the following interim reliefs:

- (a) "Allow the present Application;
- (b) Pending final adjudication of the present Appeal, pass an ex parte ad-interim order:
 - (i) "Staying the Impugned Order dated 14.05.2021 passed by MPERC in Petition No. 62 of 2020,
 - (ii) Staying the operation of the Demand Notice dated 14.09.2020 bearing reference No. MD/WZ/05/COMM/11871 issued by MPPKVVCL to the Applicant;
 - (iii) Directing MPPKVVCL not to take any coercive actions against the Applicant, including future levy of Additional

Surcharge on the Applicant for the power consumed by the Applicant from its Captive Generating Station;

(c) Pass any such Orders as this Tribunal may deem fit in this regard.”

I.A. NO. 825 OF 2021INAPPEAL NO. 202 OF 2021

8. Appeal No. 202 of 2021 has been filed by UTCL challenging the legality and validity of the Order dated 14.05.2021 passed by MPERC in Petition No. 61 of 2020 (“**Impugned Order**”). The present Appeal relates to the Dhar Unit of the Appellant.

9. To meet its power requirement at the Dhar Unit, UTCL has set up a 1x13 MW WHRS CPP on site. UTCL owns 100% of the CPP and consumes 100%of the power generated from it. For FY 2019-20, UTCL’s CPP has complied with the captive qualification criteria set out in Rule 3 of the Electricity Rules and UTCL is entitled to receive all benefits of captive use including no levy of additional surcharge.

10. UTCL’s onsite CPP was commissioned in 2019 and has been generating power since then. On 18.09.2020, UTCL received a Demand Notice from Respondent No.2-MPPKVVCL levying Additional Surcharge to the tune of Rs. 2,16,53,195/- on the captive power consumed by its Dhar

Unit during FY 2019-20 on the basis of an erroneous interpretation of Section 42(2) and (4) of the Electricity Act. Levy of Additional Surcharge, in the facts of the present case, is contrary to the provisions of the Electricity Act and the legislative intent of promoting captive use of electricity.

11. Aggrieved by the Demand Notice dated 18.09.2020, UTCL had filed a Petition No. 61 of 2020 before MPERC seeking amongst others, a declaration that Additional Surcharge is not leviable on the quantum of power consumed by UTCL from its 1 x 13 MW onsite CPP.

12. On 14.05.2021, MPERC has passed the Impugned Order dismissing UTCL's Petition. Aggrieved thereby, the Applicant has filed the present appeal along with an interim application seeking the following interim reliefs:

- “(a) Allow the present Application;
- (b) Pending final adjudication of the present Appeal, pass an ex parte ad-interim order:
 - (i) “Staying the Impugned Order dated 14.05.2021 passed by MPERC in Petition No. 61 of 2020,
 - (ii) Staying the operation of the Demand Notice dated 14.09.2020 bearing reference No. MD/WZ/05/COMM/11870 issued by MPPKVVCL to the Applicant;

- (iii) Directing MPPKVVCL not to take any coercive actions against the Applicant, including future levy of Additional Surcharge on the Applicant for the power consumed by the Applicant from its Captive Generating Station;
- (c) Pass any such Orders as this Tribunal may deem fit in this regard.”

I.A. NO. 822 OF 2021INAPPEAL NO.204 OF 2021

13. Appeal No. 204 of 2021 is filed by the Appellants-UTCL and Amplus Sunshine Private Limited-ASPL challenging the legality and validity of MPERC Order dated 14.05.2021 passed in in Petition No. 12 of 2020 (“**Impugned Order**”). The present Appeal is in relation to the Dhar Unit of the Appellant.

14. ASPL is a generating company which owns, operates and maintains the onsite 15 MWp DC (12.75 MWpAC) Onsite Captive Solar Power Generating Plant (“**CPP**”) at UTCL’s Unit of Dhar Cement Works. UTCL owns 34.95% equity stake in ASPL and consumes 100% power generated from the said onsite CPP to meet part its power requirement. Admittedly, UTCL is a captive user. In other words, UTCL is both the generator and the consumer in the present case.

15. UTCL’s onsite CPP is operational from 10.07.2019. However, vide

monthly Bills starting from 28.07.2019, Respondent No.2-MPPKVVCL has without any cogent reason levied Additional Surcharge to the tune of Rs. 2, 52,04,469, out of which UTCL has paid Rs. 1,46,93,149 under protest.

16. Aggrieved by the unlawful and arbitrary levy of Additional Surcharge, the Appellant filed Petition No. 12 of 2020 before MPERC seeking a declaration that Additional Surcharge is not leviable on the quantum of power consumed by Dhar Unit from its onsite CPP and sought quashing of the said Bills.

17. On 14.05.2021, MPERC after hearing the parties has passed the Impugned Order dismissing the Petition. Aggrieved thereby, the Applicants/Appellant have preferred this appeal along with an application seeking the following interim reliefs:

- (a) Allow the present Application;
- (b) Pending final adjudication of the present Appeal, pass an ex parte ad-interim order:
 - (i) Staying the Impugned Order dated 14.05.2021 passed by MPERC in Petition No. 12 of 2020,
 - (ii) Staying the operation of EHT Bills raised on UTCL by MPPKVVCL to the extent of the demand of Additional Surcharge in such bills on UTCL;

(iii) Directing MPPKVVCL not to take any coercive actions against the Applicant, including future levy of Additional Surcharge on the Applicant for the power consumed by the Applicant from its Captive Generating Station;

(c) Pass any such Orders as this Tribunal may deem fit in this regard.

18. Reply and Rejoinder have not been filed. Learned counsel for the parties have filed written submissions.

ANALYSIS & DECISION:

19. The Appellants are the cement manufacturing units operating at different places as stated above. The Appellants have their own thermal captive power plants for consumption of electricity by their cement plants.

20. The issue pertains to levy of additional surcharge on the applicants for the power consumed by the applicants from their captive generating station. On earlier occasion, this Tribunal did pass protective interim orders, we are of the opinion that the present applications deserve to be allowed. We stay the operation of the impugned order of MPERC dated 14.05.2021 in Petition No. 62 of 2020, Petition No. 61 of 2020 and Petition No. 12 of 2020.

21. We also direct the Respondent Discom not to take any coercive action against the applicant/Appellant in respect of demand of additional surcharge in the past bill raised and so also future demands (bills) pending disposal of the Appeals.

List these matters on **13.09.2021**.

Pronounced in the Virtual Court on this the 26th day of July, 2021.

Ravindra Kumar Verma
(Technical Member)

Justice Manjula Chellur
(Chairperson)

tpd