

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 103 of 2021**

**Case of SMW Ispat Pvt. Ltd. (Formerly known as Mahalaxmi TMT Pvt. Ltd.)  
seeking Power Factor Incentive on Open Access consumption for the period  
March, 2013 to September, 2016 in view of the Judgments passed by the  
Hon'ble Appellate Tribunal for Electricity**

**Coram**

**Sanjay Kumar, Chairperson  
I. M. Bohari, Member  
Mukesh Khullar, Member**

SMW Ispat Pvt. Ltd. (Formerly known as Mahalaxmi TMT Pvt. Ltd.) .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) .....Respondent

**Appearance:**

For the Petitioner : Shri Vishal Hegde (Adv.)

For MSEDCL : Shri Ravi Prakash (Adv.)

**ORDER**

**Dated: 7 December 2021**

1. SMW Ispat Pvt. Ltd. (Formerly known as Mahalaxmi TMT Pvt. Ltd) (**SMW Ispat/ Petitioner**) has filed a Case on 28 August 2021 under Regulations 32 and 35 of the MERC (Distribution Open Access) Regulations, 2016 (**DOA Regulations, 2016**) seeking Power Factor (**PF**) Incentive on Open Access (**OA**) consumption for the period from March 2013 to September 2016 with interest for delayed period in view of the Hon'ble Appellate Tribunal for Electricity (**ATE**) Judgment dated 14 November 2013 in Appeal No. 231 of 2012 (*Jindal Stainless Vs HERC*)( **Judgment in Appeal No. 231 of 2012**), the Hon'ble ATE Judgment dated 20 October 2020 in Appeal No. 36 of 2018 (*TPC-D Vs MERC*) (**Judgment in Appeal No. 36 of 2018**) and Hon'ble ATE Judgment dated 12 August 2021 in Appeal No. 70 of 2019 (*Jindal Poly Vs MSEDCL*) (**Judgment in Appeal No.70 of 2019**). The Petitioner also sought to get Practice Directions issued from

Commission for universal application of PF Incentives to all eligible OA consumers of MSEDCL prior to notification of the Distribution Open Access First Amendment Regulations 2019 (**DOA First Amendment Regulation, 2019**) i.e., prior to 07 June 2019.

**2. Petitioner's main prayers are as follows:**

- (a) *Direct MSEDCL to provide "Power Factor incentive" to the Petitioner on open access consumption for the Period March 2013 to September 2016 in view of the law settled by the Hon'ble APTEL vide its judgment dated 14.11.2013 in Appeal No. 231/2012 which has been reiterated by the Hon'ble APTEL in Judgment dated 20.10.2020 in Appeal No. 36/2018 and Judgment dated 12.08.2021 in Appeal No. 70/2019;*
- (b) *Exercise powers under Regulation 35 of MERC (DOA) Regulations, 2016 and issue "Practice Directions" for universal application of "Power Factor Incentive" to all eligible open access consumers of MSEDCL prior to notification of the (DOA) (First Amendment) Regulation, 2019 i.e. prior to 07.06.2019;*
- (c) *Direct MSEDCL to pay interest @ 1.25% per month from March, 2013 till date, on account of delay in providing "Power Factor incentive."*

**3. Petitioner has stated as follows:**

- 3.1. Petitioner (**SMW Ispat**) is a HT Consumer of MSEDCL and has also availed OA under Group Captive Route through Sai Wardha Power Generation Limited (**SWPGL**) for the period from March 2013 to September 2016.
- 3.2. MSEDCL had denied PF Incentive on OA consumption to all consumers in its Distribution license area including the Petitioner.
- 3.3. In the meanwhile, the Commission vide its Order dated 28 November 2017 in Case No. 110 of 2017(*Mumbai International Airport Ltd. Vs TPC-D*) allowed PF Incentive based on the Hon'ble ATE Judgment dated 14 November 2013 in Appeal No. 231 of 2012. This led to filing of numerous Petitions before the Commission by several Consumers of MSEDCL seeking clarification as to whether "PF Incentive" is applicable to OA consumption or not on the basis of the Hon'ble ATE judgment in Appeal No. 231 of 2012.
- 3.4. Thereafter, the Commission passed several identical Orders ruling that the PF Incentive would not be applicable on OA consumption in MSEDCL Area. One such Order passed by the Commission was Order dated 28 November, 2018 in Case No. 173 of 2018 ("*Jindal Poly Films Limited Versus MSEDCL*"). The aforesaid Order was challenged before the Hon'ble ATE in Appeal No. 70 of 2019 by Jindal Poly Films Limited.
- 3.5. In the meantime, the Hon'ble ATE vide its Judgment dated 20 October, 2020 in Appeal No. 36 of 2018 ("*TPC -Distribution Versus MERC & Ors*") held that PF Incentive/Penalty has to be made applicable to all consumers whether availing power directly from distribution licensee or partially through OA.

- 3.6. Subsequently, on 12 August 2021, the Hon'ble ATE passed its Judgment in Appeal No. 70 of 2019 (*Jindal Poly films Vs MSEDCL*) wherein it has allowed the appeal and set aside the Commission's Order dated 28 November 2018 in Case No. 173 of 2018 in line with its earlier judgment in Appeal No. 36 of 2018. However, MSEDCL, even after the said judgment of Hon'ble ATE, has denied PF Incentive to the Petitioner. Hence, the Petitioner has filed the present Petition.
- 3.7. MSEDCL is bound to implement the Hon'ble ATE Judgment in Appeal No. 70 of 2019. Once the Hon'ble ATE has categorically reiterated and directed that PF Incentives /Penalty has to be made applicable to all class of consumers whether sourcing power from Discom or through OA, then the same has to be implemented universally by MSEDCL for all consumers. There can be no denial of PF incentives on OA consumption when a higher Judicial Forum has decided the said issue by setting aside the Order passed by the Commission.
- 3.8. The Petitioner has to be restituted to the same economic position which it would have been if MSEDCL had not illegally denied PF Incentives from March 2013 to September 2016, as the issue has already settled by the Hon'ble ATE in Judgment in Appeal No. 231 of 2012 which has been twice reiterated by the Hon'ble ATE vide its Judgment in Appeal No. 36 of 2018 and Judgment in Appeal No. 70 of 2019.
4. **MSEDCL has not filed any written reply in the instant Case.**
5. **At the E-hearing through video conferencing held on 22 October 2021:**
  - 5.1. Advocate of the Petitioner re-iterated its submission as made out in the Petition.
  - 5.2. Advocate of MSEDCL stated that it has challenged the Hon'ble ATE Judgment in Appeal No. 70 of 2019 before Hon'ble Supreme Court. However, there is no stay to the ATE Judgment.
  - 5.3. In rejoinder, Advocate of the Petitioner stated that as there is no stay to Hon'ble ATE Judgment, and hence the ATE Judgement needs to be complied by MSEDCL.

**Commission's Analysis and Rulings:**

6. The Petitioner through the present Petition has sought the following reliefs based on the Hon'ble ATE Judgement in Appeal No. 70 of 2019:
  - (i) Applicability of PF Incentive /Penalty to the Petitioner for the period from March 2013 to September, 2016.
  - (ii) Applicability of PF Incentive/Penalty to all eligible OA consumers prior to notification of the DOA First Amendment Regulations 2019.
  - (iii) Applicability of payment of interest on account of denial of the Power Factor Incentives / Penalties to the Petitioner and other eligible OA consumers.

7. The main argument of the Petitioner is that MSEDCL has denied PF Incentive on OA consumption to the Petitioner in spite of the Hon'ble ATE Judgements. The Petitioner has relied on the Hon'ble ATE's Judgments in Appeal No. 231 of 2012, Appeal No. 36 of 2018, and Appeal No. 70 of 2019. The Hon'ble ATE in these judgements have ruled that PF incentives/ penalty has to be made applicable to all class of consumers whether sourcing power from Discoms or through OA.
8. The Commission notes that the issue of applicability of PF Incentive/Penalty for OA consumers in MSEDCL area came before it when the Jindal Poly films had filed Petition in Case No. 173 of 2018. The Commission vide its Order dated 28 November 2018 in Case No. 173 of 2018 ruled that PF Incentives / Penalty was allowed only on the Net Energy supplied by MSEDCL and not on OA consumption. Aggrieved by the Commission's said Order, Jindal Poly Films had filed an Appeal No. 70 of 2019 before the Hon'ble ATE. The Hon'ble ATE vide its Judgment dated 12 August 2021 in Appeal No. 70 of 2019 (*Jindal Poly Films Vs MSEDCL-Applicability of PF Incentives*) has set aside the Commission's Order and ruled as follows:

*“68. It is to be mentioned that a similar case came up before this Tribunal vide Appeal No 36/2018. Based on the submissions of all the parties, relevant Regulations & Grid Code, various previous judgements, etc, the said appeal was adjudicated and decided by a judgement of this Tribunal dated 20.10.2020 holding that PFI/Penalty has to be made applicable to all class of consumers whether sourcing power from Discom or through open access. We, accordingly, hold that this Tribunal's Judgement in Jindal Stainless Ltd's Case and also judgment dated 20.10.2020 (MIAL/HPCL vs TPC & others) are squarely applicable to the present case on hand.*

*69. Without going into further details regarding measurement of reactive energy charges vis-à-vis quantum of PF Incentive/Penalty applicable to open access consumers including the Appellant, we hold that the State Commission has not passed the Impugned Order in accordance with settled law, and hence, the impugned order is liable to be set aside.*

**ORDER**

*70. In the light of the above discussion, we are of the considered view that the issues raised in the instant Appeal No. 70 of 2019 have merits, and hence the Appeal is allowed.*

*71. The Impugned Order dated 28.11.2018 passed by MERC in Case No.173 of 2018 is hereby set aside.*

*72. All the pending IAs, if any, shall stand disposed of. There shall be no order as to costs.*

.....”

**[Emphasis Added]**

9. The Hon'ble ATE in aforesaid Judgment has re-confirmed its earlier Judgment dated 20 October 2020 in Appeal No. 36 of 2018 and ruled that PF Incentive/Penalty has to be made applicable to all class of consumers whether sourcing power from Discom or through OA and accordingly has set aside the Commission's Order in Case No. 173 of 2018. Hence, Hon'ble ATE through aforesaid Judgment made applicability of PF Incentive /Penalty to OA consumers for their consumption sourced through OA also.
10. The Commission notes that MSEDCL has not filed the written submission in the matter. Further, MSEDCL has challenged the Hon'ble ATE Judgment in Appeal No. 70 of 2019 (*PF incentives Judgment of Jindal Poly film VS MSEDCL*) before the Hon'ble Supreme Court in Civil Appeal No. 6291 of 2021. As per MSEDCL submission at the hearing and the status accessed from the website of the Hon'ble Supreme Court, it is observed that there is no stay to the Hon'ble ATE Judgment and the matter is pending before the Hon'ble Supreme Court.
11. As regards the payment of interest on account of denial of PF Incentive / Penalty by MSEDCL, the Petitioner has sought direction against MSEDCL to pay the interest @ 1.25% per month from March 2013 till date. In this context, the Commission notes following:
- 11.1. In the present matter claims of the Petitioner relate to a period in the past from March 2013 to September 2016. Hence the provisions of the DOA Regulations 2005, DOA Regulations 2014 (DOA Regulation 2014 notified on 25 June 2014) and DOA Regulations 2016 (notified on 30 March 2016) would be applicable.
- 11.2. DOA Regulations, 2005 provide that Distribution Licensee shall pay interest at a rate equivalent to the Bank Rate of the Reserve Bank of India. The proviso of Regulation 4.2.7 of DOA Regulations 2005 for the payment of interest stipulates as under:
- “4.2.7 .
- ....
- Provided that the Distribution Licensee shall pay interest at a rate equivalent to the Bank Rate of the Reserve Bank of India for the portion of deposit that is returned to the Consumer on resolution of the dispute.----
- 11.3. Further, DOA Regulations 2014 (3<sup>rd</sup> proviso to Regulation 4.2.6) and DOA Regulations 2016 (2<sup>nd</sup> Provision to Regulation 4.5) have similar provisions for payment of interest amount.
- 11.4. The Hon'ble ATE vide its judgment dated 14 November 2013 in Appeal No. 231 of 2012 (*Jindal Stainless Vs HERC*) on the applicability of the PF rebate along with the Interest amount has ruled as follows:
- “57 In view of our findings above the Impugned Order is set aside. The 2nd Respondent is directed to remit the amount recovered from the Appellant as power factor rebate along with interest at 9% per annum.”

11.5. The Commission Vide Order dated 28 November 2017 in Case No. 110 of 2017 (*MIAL Vs TPC-D*) on the issue of applicability of PF Incentives / Penalties along with interest amount has ruled as follows:

*“13. In view of the foregoing, the Commission directs TPC-D to provide Power Factor Incentive (or levy Power Factor Penalty, as the case may be,) to MIAL and other similarly placed consumers on the charges it levies on the power sourced by them through Open Access. For past periods, these may be adjusted in the ensuing bills of MIAL and other such Open Access consumers, along with applicable interest.”*

11.6. TPC-D had challenged the Commission’s above Order before the Hon’ble ATE in Appeal No. 36 of 2018 (*TPC-D Vs MIAL/ MERC*). The main prayers of TPC-D were to hold and declare that PF Incentive was not applicable on power sourced through Open Access. TPC-D had also sought to recover the amounts already paid by it to the OA consumers towards PF Incentive along with applicable interest. The Hon’ble ATE vide Judgment dated 20 October 2020 in Appeal No. 36 of 2018 dismissed the Appeal filed by TPC-D and upheld the Commission’s Order dated 28 November 2017 in Case No. 110 of 2017 directing to pay PF Incentive along with applicable interest.

11.7. Further, the Appellant Jindal Poly film in Appeal No. 70 of 2019 had prayed before the Hon’ble ATE for PF incentive along with the applicable interest. Accordingly, the Hon’ble ATE in Appeal No. 70 of 2019 while addressing the prayer of the Appellant including the interest on the PF incentive has ruled as follows:

*“70. In the light of the above discussion, we are of the considered view that the issues raised in the instant Appeal No. 70 of 2019 have merits, and hence the Appeal is allowed”*

11.8. It is settled position of the law that payment of the dues, without fault of the party, need to be effected with the applicable interest. Further, the Commission’s DOA Regulations provide for the same as discussed above. The Commission notes that MSEDCL was Respondent in Appeal No. 70 of 2019 and hence directives of the Hon’ble ATE are binding on it for implementation of the same.

11.9. The Commission further notes that there is no stay to the Hon’ble ATE Judgment in Appeal No. 70 of 2019 challenged by MSEDCL before the Hon’ble Supreme Court in Civil Appeal No. 6291 of 2021.

12. In view of the above background and the Hon’ble ATE rulings in aforesaid Appeals which have not been stayed by Hon’ble Supreme Court, MSEDCL is bound to implement the Hon’ble ATE Judgment in Appeal No. 70 of 2019 in terms of payment of PF Incentive/ Penalty along with applicable interest as per the relevant provisions of DOA Regulations.

13. The Commission notes that the Petitioner also sought to get the practice directions issued from Commission under Regulation 35 of the DOA Regulations, 2016 for universal application of Power Factor Incentive to all eligible OA consumers of MSEDCL prior to

notification of the DOA First Amendment Regulation, 2019 . In this regard, the Commission notes that the period under consideration is from March,2013 to Septeemebr,2016. Thereafter, the Commission has amended the DOA Regulations,2016 in June,2019 wherein PF Incentive/Penalty needs to be provided on net energy sourced through Distribution Licensee. Further, the Commission vide its MSEDCL Tariff Order dated 30 March,2020 has provided KVAh billing and no separate PF Incentive/ Penalty is applicable for all HT Consumers. Practice directions are issued for implementation prospectively by clarifying any ambiguity in a regulatory provision. Considering that the issue relates to past period and the relevant regulatory provision doesn't exist anymore, practice directions on this issue cannot be issued.

14. Hence the following Order:

**ORDER**

- 1) **Case No. 103 of 2021 is partly allowed.**
- 2) **Maharashtra State Electricity Distribution Co. Ltd. shall comply with the Hon'ble Appellate Tribunal for Electricity Judgement dated 12 August 2021 in Appeal No. 70 of 2019.**

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Abhijit Deshpande)  
Secretary

  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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