

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

Dated : 28th May, 2019

Present:

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

RP No.16/2018

BETWEEN:

Cardolite Speciality Chemicals India LLP,
No. 61-63, Dr. Radhakrishna Salai,
Mylapore, Chennai- 600604.

Plant Located at IP1 and IP2,
Mangalore Special Economic Zone,
Bajpe, Mangalore-574142.

.. **PETITIONER**

[Represented by Manmohan P.N. Associates, Advocates]

AND

Mangalore Special Economic Zone Ltd.,
3rd Floor, Mangalore Urban Development Authority Building,
Urwa Stores, Mangalore-575006.

.. **RESPONDENT**

[Represented by Srinivas & Badri Counsels, Advocates]

ORDERS ON APPLICATION FOR REVIEW OF ORDER DATED 14.05.2018

1. Facts of the Case:

- a. The Petitioner, a unit in Mangalore Special Economic Zone, is a limited liability Partnership firm and is carrying on the business of manufacturing chemicals.

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- b. The Respondent is a developer of Mangalore Special Economic Zone and was formed with the object of developing a special economic zone in Mangalore.
 - c. The Petitioner has entered into a Power Supply agreement with the Respondent and has undertaken to consume a minimum quantity of 5 MU/ annum and has been duly complying with its undertaking.
 - d. The Respondent had filed an application dated 29.11.2017 before this Commission seeking approval of the APR for the financial year 2017, revised ARR and retails supply tariff for FY19.
 - e. The Commission, vide its order dated 14.5.2018, determined and notified the retail supply tariff of the Respondent for the financial year 2019 and permitted the Respondent to make one-time recovery of the deficit of Rs.0.60 crores for the financial year 2016 from its consumers and recovery of Rs.3.31 Crores towards deficit of FY18, from the consumer of the Respondent including the Petitioner.
 - f. Pursuant to the order passed by this Commission, the Respondent issued a letter dated 5.6.2018, calling upon the Petitioner to pay a sum of Rs.24,61,192/- for the financial year 2015-16 and Rs.54,71,768/- for the financial year 2017-18. The Petitioner, by letter dated 4.7.2018, requested the Respondent to grant two months' time to take a decision in the matter. The Respondent issued letter dated 5.7.2018 insisting that the Petitioner should make the payment by 14.07.2018 failing which the Respondent would impose interest charges as applicable.
2. Aggrieved by the said Order, this Review Petition is filed seeking review of the order dated 14.5.2018 passed by this Commission, in so far as it permits the

Respondent to recover the deficits from the Petitioner and for certain other reliefs.

3. The Petitioner submits that the order permitting the Respondent to recover the deficit from the Petitioner is without jurisdiction. The Respondent is a company and the deficits of the Respondent cannot be recovered from the Petitioner who is a consumer. The Commission has not considered the provisions of SEZ Act and Rules and has failed to notice the terms and conditions of the agreements between the parties. It is also stated that the provisions of the SEZ Act will have overriding effect on the other laws including the electricity Act, 2003. There has been an error apparent on the face of the record. Hence, this review petition seeking review of Tariff Order date: 14.05.2018.
4. It is contended that the capacity created is not according to the power consumption of the various consumers. The present power consumption of the consumers of the Respondent is 20MVA but the infrastructure of 40 MVA is created at the instance of other consumer namely OMPL. The Petitioner has not requested the Respondent for such a huge power infrastructure. Hence, there is no justification for the Respondent and this Commission to fasten the liability on the Petitioner who has complied with its power purchase obligations.
5. It is further contended that mere existence of deficit cannot be the basis for recovery of the same from the consumers. The Respondent company has to provide necessary infrastructure to its consumers and the respondent cannot recover any amount from the petitioner towards its infrastructural expenses, deficits etc.,

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6. The Petitioner submits that after the MYT regulations were notified, many private players have entered the electricity distribution business especially the SEZ developers who are deemed licensees. The development of SEZ is over a small area as compared to the other distribution companies like BESCOM, which cover a few districts. The existing guidelines under the MYT Regulations are not suitable to the consumers using power in the SEZ area. Hence, the Petitioner requests the Commission to suitably amend the Regulations.
 7. The Petitioner submits that the Respondent may recover the depreciation and interest on loans on such additional infrastructure from the future consumers proportionately instead of loading everything on the existing consumers. The loading of these charges on the existing consumers is without any basis.
 8. The Petitioner further submits that the Respondent has mentioned in the application for approval of Annual Revenue Requirement that the computation of the ARR is based on the approved business plan of the Respondent. The Petitioner believes that the approved business plan of the Respondent at the time when the Petitioner has entered into the Lease Agreement on 16.01.2012 with the Respondent is different than the one which is submitted at the time of submission of ARR. Hence, the recovery of power charges from the Petitioner should be based on the business plan which was in existence as on date of entering into the Lease Agreement. The subsequent change in the approved business plan is evident from the fact that Mangalore SEZ Ltd. has incorporated another entity called MSEZL Power Ltd to take care of the power distribution business.

9. The Petitioner has stated that this Commission may direct the Respondent to produce the approved business plan of the Respondent for the year 2011-12 i.e. the business plan pertaining to the period when the Petitioner entered into Lease Agreement with the Respondent, as well as the approved business plan at the time of filing the application for approval of ARR for FY19. On perusal of the Financial Statement for the year ending March, 2014, the Power Supply was not identified as a separate segment for the revenue. The Petitioner submits that these approved business plans are not available with the Petitioner and the presence of the said business plans is necessary for proper and effective adjudication of the instant petition and the Respondent may be directed to produce the approved business plan of the year 2011-12 as well as year 2014-15 in the interest of justice and equity.

10. It is submitted by the Respondent that:

- a. it is a deemed distribution licensee under the Electricity Act, 2003, supplying power to the consumers located at Mangalore Special Economic Zone (MSEZL) and as such the whole business of distribution of electricity is governed and regulated by the Regulations/ Directions issued by this Commission.
- b. The Respondent, as per the Tariff Regulations, had filed the first tariff petition for approval of Annual Revenue Requirement (ARR) and retail supply tariff, for FY16 and thereafter has been filing the Tariff applications as per Regulations, year on year, for approval of the ARR and Annual Performance Review (APR). This Commission, after following the due process of law has been issuing necessary Tariff orders, from time to time.

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- c. However, aggrieved by the tariff Order dated 08.05.2017 of the Commission on the ARR of FY18, the Respondent, i.e., Mangalore Special Economic Zone Ltd., filed a Review Petition before this Commission vide RP No. 8 of 2017, on 08.06.2017. The same was disposed of by the Commission vide its order dated 26.10.2017.
- d. The present Review Petition filed by Petitioner is against this Commission's tariff order dated 14.05.2018 wherein the Hon'ble Commission has, pursuant to its decision (in the above RP Order dated 08/2017 dated 26.10.2017) allowed the Respondent to recover the net deficit of FY18 ARR Rs.3.91 Crores from the existing consumers in proportion to the energy consumed.
- e. Based on the Commission's direction as per tariff order dated 14.05.2018, the Respondent has proceeded and issued invoice for recovery of electricity charges from all the consumers including the Petitioner, which is now objected to by the Petitioner.
- f. The Review Petition-RP8/2017 was filed seeking primarily revision of Annual Revenue Requirement (ARR) for FY18, since the ARR determined and tariff fixed thereon did not consider certain allowable items of expenditure (of FY18) as per the MYT Regulations of KERC.
- g. It is submitted that in pursuance of the Review Petition filed by the Respondent, this Commission had made the consumers (including the Petitioner – Cardolite Speciality Chemicals India LLP) as Respondents and gave them an opportunity for filing their objections.
- h. The Petitioner had appeared in person and also submitted his written objections against the revision of ARR for FY18. It may be noted that the

grounds of objections raised (by the present Petitioner) against the Review Petition (filed by MSEZL) are similar to the present grounds and objections raised and filed by them.

- i. This Commission, after having heard the objections, has passed the Orders in RP No.8 of 2017 dated 26.10.2017, as under;

“Thus, the Commission decides to approve revised ARR of Rs.62.33 Crores for FY18, which also includes the net deficit of Rs.0.98 Crores for FY16. After considering the revenue of Rs.58.42 Crores from the existing tariff, the net revenue deficit for FY18 is Rs.3.91 Crores. The Commission decides to carry forward this net deficit to the ARR for FY19 without disturbing the retail tariff already fixed for FY18”.

- j. Hence, effectively the Commission has revised the ARR for FY18, but however the collection of revised deficit was postponed to FY19.
- k. It is submitted that the Respondent has followed the MYT Regulations and has submitted the business/perspective plan at the beginning of each control period, based on reasonable assumptions and related expected behaviour of the various parameters viz., operations, sales forecast, power procurement plan, capex, distribution losses and financial variables-entire cost chain for Annual Revenue Requirement. These parameters have been reviewed and revised by the Respondent considering the overall energy requirements of the consumers in the SEZ and the financial variables of the Respondent.
- l. It is submitted that this Commission, after duly fulfilling its duties and responsibilities as per law i.e. undertaking initial validation of numbers through validation process, directing the licensee to publish the ARR/APR document filed it on its web site and also make available copies of the

documents on payment of prescribed fee, providing opportunity to the consumers to raise objections and participate in the public hearing etc., has passed the tariff orders including the order under review for FY2017-18. It may be noted that the ARR for FY17-18 has been questioned by the Petitioner thrice, with the same set of objections.

- m. The Respondent also submits that this Commission, while passing its Order on the Review Petition filed by MSEZL on the Tariff Order of FY18, approved a revised ARR and decided not to revise the tariff for FY18 and decided to carry forward the deficit of Rs.3.91 Crore (which is otherwise due for recovery in FY17-18 itself) is being now recovered. The Commission also ordered recovery of electricity charges Rs.79.33 lakhs from the Petitioner, without any carrying cost, towards the costs that are already incurred by the Respondent during FY18 itself. Accordingly, the Respondent has raised the invoice for Rs.79.33 lakhs on the Petitioner for recovery of FY18 ARR and also claimed the balance amounts on other consumers of the MSEZL.
- n. The Respondent further submits that the tariff is determined by Commission for all the categories of consumers and cannot be fixed for an individual consumer, as the Petitioner is making it out.
11. Accordingly, the Respondent has prayed for issuance of directions to the Petitioner to pay the invoice of Rs.79.33 lakhs at full and seek waiver of interest levied for delayed payment, which would be considered favourably by MSEZL or to pay the invoice value of Rs.79.33 lakhs in three equal instalments with proportionate interest charges in terms of the power supply agreement entered with the Respondent on 04th July, 2017 has agreed to pay as per tariff order approved by the Hon'ble Commission.

Non-payment of approved tariff charges results in breach of agreement and read with conditions of supply of electricity, non-payment as per tariff result in termination of the power supply agreement.

12. During the final arguments on 11.04.2019, the learned Counsel for the Petitioner made the following submissions:
 - a. The Parliament enacted Act called the Special Economic Zones Act, 2005 to provide infrastructure facilities for the promotional of export and for matters connected there with or incidental thereto. Section 2(p) of the said Act, defines "infrastructure facilities for the development of a Special Economic Zone".
 - b. Section 3 of the Act prescribes procedure for making proposal to establish special economic zone.
 - c. Section 51 of the said Act, has overriding effect in respect of matters covered under it. The provisions of SEZ Act, 2005 overrides the provisions of the Electricity Act, 2003. The Rule 2(1) (s) of the Special Economic Zones Rules 2006 defines infrastructure which includes providing various facilities including generation and distribution of power, gas and other forms of energy which are needed for development, operation and maintenance of a Special Economic Zone, etc.
 - d. It is mandatory on the part of Respondent to prepare a 'Business Plan' to assess the requirement of infrastructure facilities to be provided to the members of SEZ.

e. It is contended that Respondent has not produced a copy of the Business plan for the year 2011-12 and Commission has been placing reliance upon the business plan for the year 2014-15 and taken basis for fixing tariff for this SEZ. In the matter of non-production of business plan, the Petitioner has placed reliance on Supreme Court judgement reported in (2006) 12- Supreme court cases 556 in SLP(c) No.25757 of 2010 which held that para 6 d & e".

"Therefore, the facts remain that on the important aspects of the matter i.e. non-production has rightly been drawn by the Commissioner as well as by the trial court after adverting to the privy council judgement in MotiLal V/s Kundan Lal, where in it has been held that failure by the party in spite of the order for discovery to produce against the respondent accounts books which ought to have been produced or should have explained the non-production raises a presumption that the contents were unfavourable to the party."

13. The Learned Counsel for Respondent, in response to the arguments of the Petitioner, submitted that the Petitioner has challenged the Commission's jurisdiction to review without arguing on the powers of the Commission to review its Orders. It is submitted that the Commission has the power to review its Orders, if any apparent error is brought to its notice through a Review Petition. The learned Counsel relied on the decision of the Supreme Court in Parsion Devi and Ors Vs Sumitri Devi and Ors –MANU/SC/1360/1997: (1997) 8 SC 715, wherein it was held that:

"9. Under Order 47 Rule 1 Code of Civil Procedure a judgement may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 Code of Civil Procedure. In exercise of the jurisdiction

under Order 47 Rule 1 of the Civil Procedure it is not permissible for an erroneous decision to be "reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise".

It is further contended that the Petitioner has participated in the review proceedings and all the relevant records / objections were available on record. Hence the principles of natural justice were complied with by the Commission, while passing the orders. It is submitted that in terms of section 62 of the Electricity Act, the Commission has determined the tariff and that all the consumers in the SEZ distribution area are bound to pay the tariff so determined.

14. We have heard the learned counsel for both the sides and considered the respective pleadings and documents produced by the parties. The following Issues would arise, for consideration:
- (1) Whether the Petitioner's prayer to direct the Respondents to furnish the Business Plan for FY12 and for subsequent years has any relevance for tariff fixation by the Commission; and whether the same is sustainable?
 - (2) Whether the Petitioner is bound to pay the electricity charges as per the earlier agreement entered into with the SEZ developer or otherwise?
 - (3) Whether the Petitioner is entitled to the reliefs sought on the ground that the infrastructure created is far in excess of the requirement of usage of power by various consumers and that he is not liable to pay for the deficits towards the fixed costs of the infrastructure loaded only to the existing consumers?

(4) What Order?

15. After considering the submissions of the learned counsels for the parties and the pleadings on record, our findings on each of the above Issues are as follows:

16. **ISSUE No.(1)**: *Whether the Petitioner's prayer to direct the Respondents to furnish the Business Plan for FY12 and for subsequent years has any relevance for tariff fixation; and whether the same is sustainable?*

a. The Respondent, namely the MSEZL is a deemed distribution licensee in terms of the Electricity Act, 2003. The deemed licensees, for the purpose of distribution of electricity, are primarily governed by the provisions of the Electricity Act, 2003, Tariff Regulations, Licensing Conditions and also governed by the other Regulations notified by the respective State Electricity Regulatory Commission under section 181 of the Electricity Act, 2003. Accordingly, in terms of the KERC (Tariff) Regulations 2000, and the KERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity) Regulations, 2006, as amended from time to time, the Respondent MSEZL has filed its first tariff application during FY15, for approval of ARR and retail supply tariff for FY16 and thereafter has been filing its tariff applications for subsequent years for approval of ARR and for determination of retail supply to its consumers in its distribution area, In terms of the said Regulations, all the required documents have been filed before this Commission for approval of ARR and the retail supply tariff. Thus, the Commission need not direct the Respondent to produce the document for an earlier period, when the Respondent was not a deemed licensee as

the same is not relevant to the issue on hand. The Commission, in pursuance of the Tariff Regulations, is approving the ARR and the retail supply tariff to the consumers of the MSEZL. The determination of tariff is basically dependent on the projection of sales/revenue and expenses based on the actual figures with reference to the audited accounts of the licensed activity for the previous year. Further, the Respondent has become a deemed licensee only during the year 2014-15. Before this, the Respondent was drawing power from the Mangalore Electricity Supply Company as a consumer. The contentions of the Petitioner that the tariff determination shall be based on the business plan of the past period (namely FY2012 and onwards) has no basis. Hence the request to direct the Petitioner to submit the business plan for the period prior to the Petitioner becoming a deemed licensee, does not stand to reason. As already pointed out, the tariff determination is based on the provisions of the Act, Regulations framed thereunder etc., and hence the contention to direct the Respondent to submit the Business Plan for the past period has no relevance for fixing the tariff and hence the request is not sustainable.

- b. Further, for the purpose of determination of Tariff, the Commission is guided by the provisions of the Electricity Act, Tariff Policy and Tariff Regulations issued by the Commission.
- c. The Petitioner has relied upon the judgements of the Hon'ble Supreme Court in the case of *Ajay Kumar D. Amin Vs Air France*, reported in (2016) 12 SCC 566 and another case of *Vaishali Abhimanyu Joshi Vs NA Nasahee Gopal Joshi*, reported in 2017(4) SCC 373 regarding non-production of documents. This ruling is not applicable to the instant case, since the

Commission finds that the documents demanded to be produced are not relevant, because as per MYT Regulations, the Respondent has to submit prospective plan which contains Solar forecast, power procurement plan and capital investment plan for the Control Period. The question of drawing adverse inference would arise only in the case of non-production of a relevant document for the relevant year, i.e., passing of the Tariff Order dated 14.05.2018. Hence the question of drawing adverse inference for the failure of the Respondent to produce such a record does not arise.

- d. The Respondent has also relied upon the provisions of the SEZ Act, which basically deal with creation of infrastructure within the SEZ area. The provisions of the SEZ Act are not applicable in so far as the determination of tariff, by this Commission, is concerned. While the Electricity Act, 2003 provides for regulating the power sector including determination of tariff by the State Commission, the SEZ Act deals with the creation of infrastructure for the industrial units within the SEZ area. Hence the question of the SEZ Act, having an overriding effect on the Electricity Act does not arise.
- e. Hence, the Commission is of the considered view that demand of the Petitioner to direct the Respondent to produce the business plan for the period prior to the Respondent becoming a deemed licensee, is unreasonable and not sustainable. Also for the reasons explained above, the production of Business plan for the past period has no relevance for the determination of the tariff payable by the Petitioner.
- f. Hence, we answer Issue No. (1) above, in negative.

17. **ISSUE No.(2)** : *Whether the Petitioner is bound to pay the electricity charges as per the earlier agreement entered into with the SEZ developer or otherwise?*

a. The Petitioner is one of the consumers of the Respondent Mangalore SEZ and has entered into a Power Supply Agreement (PSA) on 4th July, 2017 with the Respondent. Clause-5 of the PSA reads as under:

“5. TARIFF AND PAYMENT OF ELECTRICITY CHARGES:

From the date of this Agreement comes into force, the consumer shall be bound by and shall pay the licensee, Fixed Charges, Energy Charges and Additional Security Deposit in accordance with the tariffs approved by the Commission and the Conditions of Supply, from time to time for the appropriate class of consumers. The Consumer shall pay the Licensee the tax on electricity charges as determined by the Government of Karnataka from time to time. In case even after disconnection, if the dues remain unpaid, then the Licensee shall be entitled to take recourse to the provisions stipulated in the “Conditions of Supply” and other laws for the time being in force to recover the charges”

b. From the above clause of the PSA entered into with the Respondent, we find that the Petitioner is bound to pay the tariff as determined by the Commission and the Respondent is entitled to take recourse to disconnection of the installation of the Petitioner, in case the dues remain unpaid. Hence, the contention of the Petitioner that he is entitled to pay the electricity charges as per the earlier agreement entered into with the developer is incorrect.

c. Hence, we answer Issue No. (2) above, in negative.

18. **ISSUE No.(3)** : *Whether the Petitioner is entitled to the reliefs sought on the ground that the infrastructure created is far in excess of the requirement of usage of power by various consumers and that he is not liable to pay for the deficits towards the fixed costs of the infrastructure loaded only to the existing consumers?*

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- a. We find that as per the letter dated 18.11.2016, enclosed to the petition at Annexure-C, the payment of fixed cost to MSEZL by OMPL commences from FY2017-18 to 2021-22 for non-availment of the minimum of 70 MU of power consumption per year on fulfilment of certain conditions, as agreed to between MSEZL and OMPL. Here, the Petitioner has raised objections regarding the non-recovery of the gap in revenue, in the form of energy charges pertaining to FY16 and FY18. Since, the financial year 2016 falls before to the letter dated 18.12.2016 and since FY18 is already completed, the question of non-recovery of the fixed charges from the OMPL will not affect the tariff already determined. In the event of the recovery of fixed costs from the OMPL, the resultant revenue gap for the year will come down and the all the consumers, including the Petitioner would get the benefit thereof. Therefore, the Petitioner's contention of non-collection of fixed charges from OMPL for not consuming the minimum agreed power has no relevance.
- b. We find that an amount of Rs.0.60 Crores being the difference in power purchase cost was approved by the Commission in the order on RP No.08/2017 dated 26th October, 2017. On the Review Petition filed by the MSEZL, as per the revised APR for FY16, revised power purchase cost was computed by taking the actual quantum of power drawn by the MSEZL from MESCOM at interface point and not based on the quantum of power as agreed to between the parties. Further, while examining the review petition filed by the MSEZL, based on the additional documents submitted by the Petitioner, the Commission has revised the approved ARR for FY18 and arrived at a revenue gap of Rs.3.30 Crores and has ordered recovery of the said amount in the ARR and retail supply tariff for FY19. Accordingly, the Commission has given effect to its order in Review Petition No.08/2017 Dated 26th October,2017 in the Order dated 14.05.2018, which pertains to determination of retail supply tariff approved for FY19.
- c. The MSEZL had filed its application before the Commission on 30.11.2017 for the approval of APR for FY17 and for approval of ARR and retail supply tariff for FY19. In the said application, MSEZL has also requested to allow it to

recover the difference of gap in revenue ordered to be recovered in Review Petition No.08/2017, dated 26th October,2017 along with the revised retail supply tariff to be approved for FY19. The Commission, while approving the APR for FY17 and the ARR for FY19, has considered the total revenue to be realised and the expenditure to be incurred, in the distribution activity of the licensee, as per the audited account and the provisions of MYT Regulations. The deficit found in the ARR is allowed to be recovered through the retail supply tariff, as per provisions of the MYT Regulations.

- d. In order to supply quality and uninterrupted power to the existing as well as the prospective consumers, the Commission expects from the distribution licensee to create adequate distribution network. The network cannot be constructed as and when required, when the new consumers apply for power supply. The network system, within the SEZ area having industrial consumers, need to be robust and cannot be compared with the network system in MESCOM area. Thus, the Commission while approving the APR/ARR of MSEZL, has considered the total cost of the infrastructure created by the MSEZL to supply power to its consumers and accordingly has considered the depreciation and interest on capital loan thereon as per the provisions' of MYT Regulations. This approach was adopted right from the first tariff order issued during the year 2015. The Petitioner has accepted this approach all these years. It is only now that the Petitioner has raised the issue of creation of assets disproportionate to the current level of energy consumption. While fixing the retail supply tariff applicable to the MSEZL consumers, the Commission has always ensured that the tariff so fixed is less than the tariff applicable to similar consumers in MESCOM area.
- e. Regarding the contention that, over the years the entire deficit of the MSEZL is being passed on to the existing consumers is not true considering the fact that the MSEZL has been absorbing a part of the deficit either on its own or on being directed by the Commission. The details of the deficits absorbed by the MSEZL (since 2014) are as follows:

Tariff Order & date	Year of APR/ ARR	Amount absorbed by the MSEZL Rs. Crores	Remarks
Tariff Order dated 03.03.2015 ARR Of FY16 (First Order)	Deficit of FY14	1.11	The Commission has not validated this amount since the same pertains to the period prior to FY16
Tariff Order dated 30.03.2016 APR Of FY15	Deficit of FY15	2.57	The Commission has not validated the amount since the same pertains to the period prior to FY16
Tariff Order dated 05.05.2017 APR Of FY16 & ARR of FY18	Deficit of FY16	0.33 (50% of total deficit of Rs.0.67 Crore)	After absorbing Rs.0.33 Crs. remaining deficit of 0.34 Crs. Was carried forward to ARR of FY18)
Tariff Order dated 05.05.2017 APR Of FY16 & ARR of FY18	Deficit for FY17	3.70	Rs.3.02 Crs. towards RoE + Rs. 0.68 Crores towards interest on loans

- f. In addition to the above, in Tariff Order, 2018 dated 14.05.2018, the Commission has issued specific directions to absorb an amount of Rs.2.95 Crores towards the deficit for FY19. The Commission's conclusion on "Deficit for FY19" [Para-7(c) of the said Order], is extracted below:

"As per the approved ARR for FY19, the net deficit to be recovered through tariff, for FY19, is Rs.4.88 Crores (Table-2.19 of this Order). In line with the increase in retail supply tariff approved in respect of other consumers in the State, the Commission has revised the tariff of consumers of MSEZL and the total additional revenue thereon works out to Rs. 1.93 Crores, thus leaving an unrecovered gap of Rs. 2.95 Crores. The Commission is not in favour of carrying forward this unrecovered gap of Rs.2.95 Crores to subsequent years, since it would amount to carrying forward the deficit as a Regulatory Asset, which is not permissible under the Tariff Policy of the Gol. The Commission is of the view that the same should be absorbed by the MSEZL, in view of the fact that the initial investment made by it on the assets are not in proportion to sales it has achieved for the last couple of years. The initial investments made on the assets was to meet a demand of over 80 MU annually but the actual sales upto FY17 are less than 25% of the anticipated sales. In case, the entire cost of RoE and interest on borrowing is passed on to

the existing consumers, the retail supply tariff would be much higher than the tariff of similarly placed consumers in ESCOMs. In view of this, the existing consumers cannot be made to bear the burden of entire cost of financing disproportionate assets created by MSEZL, which ought to have been borne by a larger number of consumers as per the sales anticipated by the MSEZL. Hence, the unrecovered deficit of Rs.2.95 Crores shall be absorbed by the MSEZL."

The above directions of the Commission that "the existing consumers cannot be made to bear the burden of entire cost of financing the disproportionate assets created by MSEZL, which ought to have been borne by a larger number of consumers as per the sales anticipated by the MSEZL", clearly indicates that the existing consumers have not been burdened with the entire cost of infrastructure. The revenue deficits for the earlier periods and also for the last three financial years have also been absorbed by the Respondent as indicated in the above Table. Hence, the Petitioner's contention that he is highly aggrieved by the Order of this Commission dated 14.05.2018, in so far as it permits the Respondent to recover the entire deficit from the petitioner for FY16 and FY18 is not true. The Commission has endeavoured to protect the interest of the consumers by ensuring that the tariff chargeable to the SEZ consumers is less than the tariff charged to similarly placed consumers of MESCOM. The difference in tariff, ordered by the Commission, is only towards higher power purchase cost incurred by the MSEZL and since the same is an uncontrollable expenditure, the consumers have to bear the extra cost to the extent of power consumed by them, in terms of the MYT Regulations.

- g. Regarding the Petitioner's contention to increase the demand charges from Rs.200 per kVA/month to Rs.250/- per kVA/month, the Commission, in the retail supply tariff approved in respect of all the distribution companies in the State for FY19, keeping in view improved power supply conditions in the State and the under-recovery of the fixed expenditure, has decided to increase the minimum billing demand from the current level of 75% of the contract demand to 85% of the contract demand and thereby has

allowed the distribution licensees in State to recover certain portion of the fixed expenditure. The Commission, to avoid the high burden of tariff to the consumers in one year, has decided to move, towards full recovery of the demand/fixed charges gradually by increasing the fixed cost in a reasonable manner, year on year basis.

h. For the above reasons, the Petitioner is not entitled to any relief as his contentions are not sustainable. The Petitioner shall pay the tariff as fixed by the Commission in terms of the PSA entered into by him with the deemed Licensee.

d. Hence, we answer Issue No.(3) above, in negative.

19. **ISSUE No.(4)**: *What Order?*

For the foregoing reasons, we pass the following:

ORDER

In terms of the findings of the Commission, as discussed above, the Review Petition is hereby dismissed.

Sd/-
(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-
(H.M. MANJUNATHA)
MEMBER

Sd/-
(M.D. RAVI)
MEMBER