

Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. RERC/2057/2022

Petition filed under section 47, 86 and other applicable provisions of the Electricity Act, 2003 seeking provision of security in the form of furnishing Bank Guarantee/Letter of Credit in lieu of cash deposit.

Coram:

Dr. B.N. Sharma, Chairman

Shri Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

Petitioner : M/s Hindustan Zinc Limited

Respondent : Ajmer Vidyut Vitran Nigam Limited

Date of hearing : 01.12.2022 & 16.02.2023

Present : 1. Mr. Anand K. Ganeshan, Advocate for petitioner
2. Ms. Parinitoo Jain, Advocate for Respondent

Order Date : 20.03.2023

Order

1. M/s Hindustan Zinc Limited (hereinafter also referred to as "Petitioner") had filed a petition No. 2057/2022 on dated 18.10.2022 under section 47, 86 and other applicable provisions of the Electricity Act, 2003 seeking provision of security in the form of Bank Guarantee/Letter of Credit in lieu of cash deposit.
2. Ajmer Vidyut Vitran Nigam Limited (hereinafter also referred to as "Respondent" or "Discom" or "AVVNL") is the licensee in the area for distribution of electricity.
3. The matter was heard on 01.12.2022. The Petitioner requested for adjournment and sought time to file their rejoinder on the reply of Respondent AVVNL. Commission grants four weeks time to Petitioner for filing the rejoinder.
4. The Principal Secretary (Energy), Govt. of Rajasthan was also made respondent by the petitioner. As principal Secretary (Energy), Govt. of Rajasthan is not a necessary party, Commission deleted his name from the list of respondents.

5. The Matter was finally heard on dated 16.02.2023. After hearing all the parties, order was reserved.

Petitioner's Submission:

The Petitioner in its petition, written submissions and during the course of hearing(s) submitted as under:

6. The petition is preferred for seeking directions from the Commission to enable consumers such as Petitioner who has entered multiple Agreements with AVVNL to furnish security under Section 47 of the Electricity Act, 2003 in the form of bank guarantee/letter of credit as against cash deposit which is presently accepted by the Respondent licensee.
7. As per Section 47 of the Electricity Act, 2003, the distribution licensee may require security to be furnished by any person, to secure the payment of money which may become due in respect of electricity supply by the licensee, Section 47, inter alia reads as under:

“(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him –

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.....”
8. Section 47 is not a source of tariff revenue for the distribution licensee. The purpose is that the consumer ought to provide some security to the enable the distribution licensee to recover the amounts that become due for the electricity supplied and that the distribution licensee is not put to loss or driven to litigation on account of non-payment of electricity bills by the consumer.
9. The distribution licensee is also has an obligation to pay interest, at a minimum rate equivalent to the bank rate for the security furnished, as provided in Section 47(4) of the Electricity Act, 2003.
10. In exercise of the powers granted under Section 43 to 48, 50, 55 and 56 read with section 181 of the Electricity Act, 2003, and all other powers

enabling the Commission in this behalf, it has framed and notified the RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 (hereinafter also referred to as Supply Code Regulations, 2021) inter-alia providing for the terms and conditions on which electricity supply is to be given by the distribution licensee to the consumer in the State of Rajasthan.

11. Chapter 8 of the Supply code Regulations, 2021 deals with security to be furnished by the consumer to the licensee. Regulation 8.1 and 8.2, which deals with quantum of security to be granted reads as under:

8.1 Provisional security

The provisional amount of security for payment to a licensee of monies which may become due to him in respect of electricity supplied to a person applying for supply of electricity under Chapter-6 shall be:-

(a) equivalent to a sum worked out on the basis of Rs. 250/kW, Rs. 500/kW and Rs. 750/kW of connected load applied for by domestic, non-domestic and Public Street Light consumers respectively.

(b) equivalent to two months fixed charges for agriculture and other consumers.

Provided that in case of industrial consumers who opt for fortnightly billing, the provisional amount of security shall be equivalent to one and a half month's fixed charges amount.

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8.2 Final security

a) The provisional security deposited initially shall be reviewed on the basis of average monthly consumption of first twelve months after commencement of supply based on consumption equivalent to 2 months in general and 1-1/2 or 1 month in case of fortnightly billing, as the case may be and shortfall, if any, from the security furnished under sub-regulation 8.1 shall be intimated by the licensee to be deposited by the consumer.

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12. There is no dispute whatsoever on the quantum of security as specified by the Commission in the above Regulations, the Supply Code Regulations, 2021 by themselves do not provide for the form and nature of the security to be deposited by the consumers.
13. In the absence of any specific provision providing for the mode of payment towards security deposit to be made by the consumer, the only form of security that is presently accepted by the Respondent licensee is in the form of cash deposit.
14. The Petitioner is consumer of the Respondent licensee and has a total contract demand of 334.60 MVA of six locations viz. CLZS, Dariba,

Agucha, Debari, Zawar and Kayad and In terms of quantum of security as specified in the Supply Code Regulations, 2021, the Petitioner has been required to provide a cash deposit to the tune of about Rs. 77 crores.

15. The purpose of the security deposit is only to secure the amounts that become due and payable in the periodic electricity supply bills raised by the licensee and is not intended to be source of revenue or working capital for the distribution licensee, it is submitted that keeping in view the objective behind the provision of security deposit in terms of Section 47 of the Electricity Act, 2003, the provision of a bank guarantee or letter of credit would satisfy the purpose and intent of the Section 47.
16. Furthermore, in light of Section 47(4) of the Electricity Act, 2003 which provides for an obligation to pay interest, at a minimum rate equivalent to the bank rate for the security furnished, clearly indicates that intent behind provision of security deposit is not to generate revenue for the distribution licensee and not to create an onerous obligation on the consumer blocking the said amount towards security deposit and create constraint on its utilization.
17. Therefore, acceptance of Bank Guarantee or Letter of Credit as mode of security would not only serve the objective of securing the interest of distribution licensee but would also ensure that working capital margins of the consumer are not unreasonably constrained. Bank Guarantee/letter of credit are universally accepted as liquid securities, which are equivalent to cash for the purpose of securing the amounts which may become due and payable.
18. Many Electricity Regulatory Commissions in the country including the states of Maharashtra, Punjab, Goa, Jharkhand, Delhi and West Bengal have specifically provided for an option of such liquid securities in the form of bank guarantee/letters of credit to be provided for, by the consumers.
19. Acceptance of such mode of payments (Bank Guarantee or Letter of Credit) would be in compliance with the requirements of Section 47 of the Electricity Act, 2003. The Supply code Regulations, 2021 itself does not limit the mode of security to only be in the form of cash, rather is silent on the same. In these circumstances, it is open to the Commission to issue directions on the nature and mode of security which is to be furnished under Section 47 of the Electricity Act, 2003.
20. It is submitted that provision for furnishing bank guarantee/letter of credit would greatly facilitate the consumers in the State of Rajasthan and

provide a level playing field to the industrial consumers as against other states in the country as well as the same would also be in alignment with the policy of Ease of Doing Business.

21. As per well accepted financial principles and accounting standards, cash and cash equivalent would include Bank Guarantee, T-Bills and other instruments which could easily be converted cash.
22. As on date, the difficulties is in providing huge sum of security as cash deposit which in turn is casting financial constraints on the petitioner and similar placed companies.
23. Regulation 14.1 of the Supply Code Regulations, 2021 empowers the Commission to issue all such directions as may be necessary to remove any difficulty in the implementation of the Supply Code either suo-moto or brought to its notice by any person, by general or special order.

Respondent's submission:

Respondent Discom in their reply submitted as under:

24. The mode of security is in accordance with the TCOS 2021 which have been issued by the Hon'ble RERC in exercise of powers conferred by the Electricity Act, 2003. The said TCOS, 2021 is in super session of TCOS 2004 and has come into force from 25.02.2021. The TCOS is in conformity with Section 47 of the Electricity Act, 2003.
25. Section 47 of the Electricity Act, 2003, clearly states that the distribution licensee may require any person who requires the supply of electricity, to give a reasonable security as determined by regulations. Further, the TCOS 2021 Clause 8 deals with the mode, amount and the manner of the security. It is reiterated that the TCOS 2021 is in pursuance of Regulation issued by the Hon 'ble RERC in pursuance of Section 47 of the Act.
26. Section 47 specifically states that if the person fails to give such security, the distribution licensee may refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues. Therefore, the security deposit is not mere formality but is mandatory. The importance of deposit of security can further be appreciated by this Hon'ble Commission by perusing Section 47 of the Act wherein it has been further clarified by the legislature that if the person fails to give such security, the distribution licensee is empowered to discontinue the supply of electricity till the period the failure continues.

27. The only exception under Section 47 is subsection 5 wherein it has been categorically stated that if the person requiring the supply is prepared to take the supply through a pre-payment meter then the requirement of security is done away with. Therefore, the security deposit is mandatory.
28. In consonance and in pursuance of the Section 47 (4) of the Act, TCOS also states about payment of interest on security deposit vide clause 8.7(a). It is pertinent to mention here that the Nigam pays interest on the security deposit of the consumer at the bank rate prevailing as on first April of the financial year.
29. Petitioner has reproduced Clause 8 of Supply Code Regulations, 2021 concerning the security deposit, which is incomplete. The relevant clauses left out by the petitioner are being reproduced hereunder:

8.4 Annual review of security amount

a) The nigam may review at the beginning of each financial year the requirement of security from a consumer to cover actual average consumption for the period applicable to him, on the basis of his average actual consumption of electricity for the preceding twelve months and intimate the consumer.

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8.7 Payment of interest on security deposit

a) The Nigam shall pay interest on security deposit (SD) of the Consumer at the Bank Rate prevailing as on 1st April of the Financial Year for which interest is due and the amount of interest on security deposit payable shall be rounded off to the nearest Rupee.

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30. The perusal of clause 8.2 (a) will reveal that the petitioner falls in the category of the security deposit of two months. Further, as per clause 8.4(a), the Nigam is required to review at the beginning of each financial year the requirement of security from a consumer to cover actual average consumption on the basis of his average actual consumption for the preceding 12 months and thus accordingly the security deposit is required to be made by the petitioner. Further, as per clause 8.7(a) the Nigam shall pay the interest of security deposit of the consumer at the prevailing bank rate as on first April of the financial year. It would be appreciated that para 8.7(a) mandates the payment of interest on security deposit which means that the payment has to be made in cash which is also in consonance with Section 47(4) of the Act.
31. The form of the security has to be in cash i.e. why Section 47(4) and clause 8.7(a) directs/mandates the Nigam to pay interest on the security deposit to the consumer. It is pertinent to mention here that had the form of security deposit been different in nature then there was no necessity of including the provision of paying interest on the security

deposit amount to the consumer. Therefore, the legislature was clear while legislating Section 47(4) and consequently the Hon'ble Commission has followed Section 47(4) in its letter and spirit and therefore, there is no ambiguity in Section 47(4) and Clause 8.7(a) that the security deposit has to be in cash only.

32. The respondent is following/abiding by the provisions of the Act and TCOS. It is absurd to submit that the security deposit is a source of revenue/working capital for the distribution licensee. The distribution licensee is not working on the basis of the meager amount of the security deposit which would not suffice the revenue for working capital requirement of the distribution licensee.
33. The legislature has not envisaged the bank guarantee/ Letter of Credit in terms of section 47 because in neither of the case, interest is payable by the distribution licensee. Further, as per Section 47(4) it has been made mandatory and obligatory for the distribution licensee to pay interest to the consumer on amount of security deposit in cash.
34. The petitioner may challenge the provisions of Section 47 and also the TCOS 2021 for the amendment of the provisions by which the modes of security be amended and the provision of paying of interest by the distribution licensee be omitted/deleted.
35. There is no such provision u/s 47 for bank guarantee/ Letter of Credit and therefore, it is wrongly stated that bank guarantee/ Letter of Credit would be compliance of the Section 47.
36. Distribution licensee is bound by the Regulations framed by the Hon'ble Commission.
37. The mode of security deposit may amount to a policy decision of the State as well. Since the distribution licensee has undertaken the responsibility of providing infrastructural facility, therefore it is for the state to take a policy decision.
38. Therefore, the petition deserves to be dismissed in view of submissions made in the forgoing paras.

Commission view:

39. Commission has considered the submissions, replies and oral arguments on behalf of the Petitioner and Respondent.
40. The Petitioner in its petition has mainly prayed for :
 - I. Issue directions to Respondent Distribution Licensee to accept Security deposit under Section 47 of the Electricity Act, 2003 in the

form of bank guarantee/letter of credit in lieu of cash deposit from the consumers.

- II. Pass such other further order(s) as the Commission deem just in the facts of the present case.
41. Petitioner submitted that Petitioner is consumer of the Respondent licensee and has a total contract demand of 334.60 MVA. In terms of quantum of security as specified in the Supply Code Regulations, the Petitioner is required to provide a cash deposit to the tune of about Rs. 77 crores.
42. The Petitioner further submitted that in the absence of any specific provision, the only form of security that is presently accepted by the Respondent licensee is in the form of cash deposit and Section 47(4) of the Electricity Act, 2003 which provides for an obligation to pay interest, clearly indicates that intent behind provision of security deposit is not to generate revenue for the distribution licensee and not to create an onerous obligation on the consumer blocking the said amount. Therefore acceptance of Bank Guarantee or Letter of Credit as mode of security would not only serve the objective of securing the interest of distribution licensee but would also ensure that working capital margins of the consumer are not unreasonably constrained. Bank Guarantee/letters of credit are equivalent to cash and are universally accepted for the purpose of security.
43. Petitioner also submitted that Provision for furnishing bank guarantee/letter of credit would greatly facilitate the consumers in the State of Rajasthan and provide a level playing field to the industrial consumers as against other States in the country as well as the same would also be in alignment with the policy of Ease of Doing Business.
44. Further, the Petitioner also mentioned about difficulty in providing huge sum of security as cash deposit which in turn is casting financial constraints on the petitioner and similar placed companies.
45. Per contra, the Respondent submitted that the mode of security is in accordance with RERC (Supply Code and Connected Matters) Regulations, 2021 issued by the Commission in pursuance of Section 47 of the Electricity Act, 2003. Section 47, clearly states that the distribution licensee may require any person who requires the supply of electricity, to give a reasonable security as determined by Regulations. Further, there is no provision under Section 47 of the Act for bank guarantee/Letter of Credit and therefore, it is wrongly stated that bank guarantee/ Letter of Credit would be required for compliance of the Section 47.

46. The Commission observes that Section 47 of the Electricity Act, 2003 which is reproduced as under:-

Section 47. (Power to require security): --- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him –

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

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47. A harmonious reading of section 47(1) to 47(4) of the Electricity Act, 2003 makes it clear that the Commission is empowered to make Regulations for determination of Security and the consumer is entitled for interest on the consumption deposit equivalent to the bank rate or as may be specified in the Regulations and the provision of a bank guarantee or letter of credit would not satisfy the purpose and intent of the Section 47 regarding deposition of security & payment of interest.
48. The Commission has framed Supply Code Regulations, 2021 pursuant to the section 47 of the Act and the Regulations do not have any provision regarding acceptance of Security deposit in the form of bank

guarantee/Letter of Credit in lieu of cash deposit. Relevant provisions of the Regulation no. 8.1, 8.2, 8.4 (a) & 8.7(a) of the Supply Code Regulation, 2021 are reproduced as under:

8.1 Provisional security

The provisional amount of security for payment to a licensee of monies which may become due to him in respect of electricity supplied to a person applying for supply of electricity under Chapter-6 shall be:-

(a) equivalent to a sum worked out on the basis of Rs. 250/kW, Rs. 500/kW and Rs. 750/kW of connected load applied for by domestic, non-domestic and Public Street Light consumers respectively.

(b) equivalent to two months fixed charges for agriculture and other consumers.

Provided that in case of industrial consumers who opt for fortnightly billing, the provisional amount of security shall be equivalent to one and a half month's fixed charges amount.

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8.2 Final security

a) The provisional security deposited initially shall be reviewed on the basis of average monthly consumption of first twelve months after commencement of supply based on consumption equivalent to 2 months in general and 1-1/2 or 1 month in case of fortnightly billing, as the case may be and shortfall, if any, from the security furnished under sub-regulation 8.1 shall be intimated by the licensee to be deposited by the consumer.

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8.4 Annual review of security amount

a) The licensee may review at the beginning of each financial year the requirement of security from a consumer to cover actual average consumption for the period applicable to him, on the basis of his average actual consumption of electricity for the preceding twelve months and intimate the consumer.

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8.7 Payment of interest on security deposit

a) The Licensee shall pay interest on security deposit (SD) of the Consumer at the Bank Rate prevailing as on 1st April of the Financial Year for which interest is due and the amount of interest on security deposit payable shall be rounded off to the nearest Rupee.

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49. After careful consideration of arguments of the petitioner, respondent, and provisions of the Electricity Act, 2003 & RERC (Electricity Supply Code and Connected Matters) Regulations, 2021, the Commission observes that there are no specific provisions in the Act as well as the Regulations for accepting Security deposit in the form of bank guarantee/Letter of Credit.

50. Thus, in absence of suitable provisions in the Regulations, no relief can be granted to the petitioner.
51. Petition stands disposed of accordingly. No order as to cost.

(Dr. Rajesh Sharma)
Member

(Sh. Hemant Kumar Jain)
Member

(Dr. B. N. Sharma)
Chairman