BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISISON
GANDHINAGAR

Petition No. 1988 of 2021

In the matter of:

Petition under Clause 3.46 of Consumer Grievances Redressal Forum and Ombudsman Regulations, 2019, Notification No. 2 of 2019 for non-implementation of the Order passed by the Electricity Ombudsman Ahmedabad in Case No. 24 of 2020 on the expiry of 30 days period from the date of receipt of the Order by the Respondent Executive Engineer, Division Office, Anjar, Kutch.

Petitioner: M/s Manaksia Coated Metals & Industries Ltd.
Represented by: Adv. Aditya Dave with Pinakin Joshi

V/s.

Respondent: Exe. Engineer, Division Office, Paschim Gujarat Vij Company Limited
Represented by : Adv. Dipak Dave with M. R. Dhamecha

CORAM:
Anil Mukim, Chairman
Mehul M. Gandhi, Member
S. R. Pandey, Member

Daily Order
Date: 10/10/2023

1. The matter was listed for hearing on 01.09.2023.
2. Adv Aaditya Dave, appearing on behalf of the Petitioner, at the outset apprised the Commission about issue of the Petition and submitted that the Petition is filed for implementation of the Order of the Electricity Ombudsman. He submitted that due to

unavailability of officer of the Respondent due to Biparjoy cyclone work, argument could not be advanced during last hearing.

2.1. He advanced the argument and submitted that the Petitioner has been charged for minimum bill on 4100 kVA contract demand on deemed release basis from July, 2018 even though supply was not released. Aggrieved with this, the Petitioner approached the CGRF and then Ombudsman where the Ombudsman vide order dated 15.03.2021 observed that RoW disputes were raised before the Collector and Order on the said disputes was passed by the Collector on 03.08.2019 and this period is required to be excluded from the timeline for the Petitioner to complete the erection work and accordingly directed the Respondent to refund minimum charges recover for 4100 kVA contract demand on deemed release basis till the date of the Order of the Collector and also directed to provide 60 days notice to the Petitioner to avail the supply, after expiry of period of 180 days and after the expiry of the said 60 days notice period, the Respondent should recover minimum charges for 4100 kVA contract demand, however, the Respondent instead of implementing the Order of the Ombudsman, is still recovering bill on 4100 kVA contract demand. He argued that the present petition has been filed for implementation of the order of the Ombudsman.

3. Adv. Dipak Dave requested to grant permission to submit Vakalatnama for the Respondent. He submitted reply on Petition. He submitted that the Petition is in regard to implementation of the Order of the Ombudsman, wherein the Ombudsman directed not to recover minimum charges till the period of release of additional power supply. The power supply of the Petitioner was released before one year the Petitioner is availing power supply, hence the bill is being raised by the Respondent accordingly. Thus, question of implementation of the Order of the Ombudsman now does not arise.

3.1. He argued that the Petition is not maintainable under Clause 3.49 of the GERC Consumer Grievances and Redressal Forum and Ombudsman Regulations, as the Order of the Ombudsman is under challenge before the Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat while passing interim order observed that the Commission proceed with this petition and outcome decided by the Commission of this Petition would be subject to final order of Hon'ble High Court. Referring to Clause 3.49 of the said GERC (Consumer Grievances and Redressal Forum and Ombudsman Regulations) Regulations, he submitted that intent and purpose of this Clause is that Order of the Ombudsman cannot remain idle and the party aggrieved against the order may file either review of the Order of the Ombudsman or challenge the Order before the Hon'ble High Court of Gujarat. In the present case, the order of the Electricity Ombudsman is still pending where the

Hon'ble High Court of Gujarat through interim order decided that outcome of this petition decided by the Commission is subject to final order of the Hon'ble High Court of Gujarat.

3.2. On a query of refund of minimum bills recovered for the period prior to release of additional power supply, he submitted that during the said period, the Petitioner's maximum demand during the said period was higher than the contracted load.

4. Adv. Aaditya Dave, on behalf of the Petitioner, referring to the Order of the Ombudsman, submitted that as per the Order of the Ombudsman, the Respondent cannot recover minimum bill till 03.08.2019 i.e. till the date of Order of the Collector on RoW issues, however, inspite of the said Order of the Ombudsman, the Respondent started recovering minimum bill for contract demand of 4100 kVA on deemed release basis from July 2018 and till date is recovering on contract demand of 4100 kVA and therefore, the Respondent cannot argue about the period for which refund of the minimum charges recovered should be sought.

4.1. He further argued that during the pendency of proceedings before the Hon'ble High Court of Gujarat, the Commission directed the Respondent to obtain a stay from Hon'ble High Court of Gujarat, however, the Hon'ble High Court of Gujarat has clarified that no stay is granted and the Commission may proceed with this petition and further, the Respondent after challenging the Order of the Ombudsman before the Hon'ble High Court of Gujarat vide SCA is putting efforts to prolong the matter.

5. Ld. Adv. Dipak Dave on behalf of the Respondent submitted that the Respondent has filed its reply and copy of the same is provided to the Petitioner The Petitioner's contention for refund of bill amount paid is disputed by the Respondent. The order of the Electricity Ombudsman is under challenge before the Hon'ble High Court of Gujarat wherein no final order passed by the Hon'ble High Court of Gujarat and has decided that the outcome of the present petition is subject to final decision of Hon'ble High Court of Gujarat. Hence, the plea of the Petitioner to refund the amount is not valid. The Petitioner if desires, may file rejoinder reply, if any, thereafter matter may be fixed for hearing.

5.1. Ld. Adv. Dipak Dave, appearing on behalf of the Respondent, in response to arguments of the Petitioner, submitted that as the Petitioner has started availing power supply of 4100 kVA from September, 2022 and therefore, from that day no question of refund of any amount arises. Further, proceeding in SCA is pending before the Hon'ble High Court of Gujarat, wherein, the Hon'ble High Court of Gujarat has observed that outcome of this Petition would be subject to final order of the Hon'ble High Court of Gujarat, till the issuance of the final Order of the Hon'ble High Court of Gujarat. Therefore, the issue of

refund of bills paid by the Petitioner on which the Petitioner is seeking decision and refund sought by the Petitioner is subject matter of issuance of the final Order of the Hon'ble High Court of Gujarat. Hence, the Respondent's action may not be considered in contempt of the Order of the Ombudsman. He suggested that the disputed amount by the Petitioner may be put in Fixed Deposit by the Respondent till the issuance of final Order of the Hon'ble High Court of Gujarat which can be recovered by either entity based on the final outcome of the Hon'ble High Court of Gujarat. He further argued that in case an amount disputed is refunded and at later stage if it is decided that recovery of disputed amount is legal and valid and in that case, if the Petitioner fails to refund the amount due to any reasons, the Respondent will be deprived from its legal rights.

5.2. Vehemently opposing the aforesaid submission of the Respondent, Adv. Aaditya Dave, on behalf of the Petitioner, submitted that question of Fixed Deposit does not arise as Hon'ble High Court of Gujarat has not granted any stay against the implementation of the Order of the Ombudsman and has already observed that final outcome of the proceedings before the Commission will be based on the final order of the Hon'ble High Court of Gujarat.

6. Heard the Parties. We note that the present petition is filed for implementation of the Order of the Ombudsman by the Petitioner. We also note that the Respondent has challenged the Order of the Ombudsman before the Hon'ble High Court of Gujarat vide SCA No. 14431 of 2021 where no stay has been granted and Hon'ble High Court of Gujarat has observed that final Order of the Commission in this Petition will be subject to outcome of the SCA No. 14431 of 2021 filed before the Hon'ble high Court of Gujarat. We note that the Respondent has filed its reply in the matter. The Respondent has suggested to open account and kept Fixed Deposit of amount for the disputed amount, if any, refundable by the Respondent for the period of dispute so that the Respondent cannot be under contempt of the Order of the Ombudsman/ Commission till final order of the Hon'ble High Court of Gujarat. He further argued that in case of refund of amount if the Petitioner at later stage is not able to refund the amount then in that condition, the Respondent is deprived of its rights to recover the legal amount. We take a note that the Petitioner has vehemently opposed this suggestion. We note that this suggestion made during the course of hearing is not submitted in reply filed during the hearing and therefore, we direct the Respondent to file additional submission inclusive of the said suggestions.

6.1. We further note that during the course of hearing the Respondent, on a query of the Commission raised, has submitted that the Petitioner's maximum demand has been higher than the contract demand during various months recorded during the disputed period and

the Petitioner is liable to pay the charges accordingly and impact of crossing of contract demand also needs to be seen and verified as per the Regulations and Order of the Commission. This aspect is required to be looked into and therefore, Petitioner is directed to submit details about maximum demand during the period of July 2018 till September 2022 and Respondent is directed to submit details about maximum demand recorded during the said period and also details about whether maximum demand crossed the contract demand and the implications of the same. We direct the Petitioner and Respondent to submit the said required details and any pleadings that the parties want to file, within 15 days from the date of this Order and provide copy of the said submissions to each other. We also note that the Respondent has filed its reply, hence, the Petitioner is at liberty to file its Rejoinder in reply, if any, with a copy to the Respondent within 10 days from the date of receipt of this Order. Further, based on the arguments penned out during the hearing, it is appropriate to conduct further hearing and accordingly we accordingly adjourn the matter.

7. Next date of hearing will be intimated separately.
8. Order accordingly.

Sd/-	Sd/-	Sd/-
(S. R. PANDEY)	**(MEHUL M. GANDHI)**	**(ANIL MUKIM)**
MEMBER	**MEMBER**	**CHAIRMAN**

Place: Gandhinagar
Date: 10/10/2023