



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: R. DAMODAR

Friday, the Sixteenth Day of September 2016

Appeal No. 31 of 2016

Preferred against Order Dt. 25-04-2016 of CGRF In

CG.No: 138 /2016 of Mahaboobnagar Circle

Between

M/s Salasar Iron and Steels PVT. Ltd. Flat No. 101, 1st Floor, Satya Sarovar
Complex, High Court Road, Hyderabad - 500 002. Cell No. 93910 33606.

... Appellant

AND

1. The SAO/OP/Mahaboobnagar/TSSPDCL/Mahaboobnagar Dist.
2. The DE/OP/Gadwal/TSSPDCL/Mahaboobnagar Dist.
3. The SE/OP/MBNR Circle/TSSPDCL/Mahaboobnagar Dist.
4. The CGM/Finance/TSSPDCL/Corporate Office/Hyderabad.

... Respondents

The above appeal filed on 17.05.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 10.08.2016 at Hyderabad in the presence of Sri. Ravi on behalf of the Appellant Company and Sri. B. Sammaiah - SAO/OP/MBNR, Sri. S. Sunil Kumar - ADE/EBC/TSSPDCL for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a consumer with SC No. HT - MBN - 1088 having CMD of 4990 KVA for supply of energy and now seeking rectification of wrong billing for the month of Feb,2016. According to the Appellant, the 1st Respondent/SAO/MBNR issued HT CC bill dt.26.2.2016 for Rs 1,32,86,798/- for the month of Feb,2016, claiming an amount of Rs 23,59,186/- in excess over the bill amount. The Appellant purchased energy of 18,02,035 (units) from open access and it is entitled to credit of 2502.83 KVA demand. But the Respondents have not adjusted this and claimed demand charges on total RMD of 4869 KVA and raised an excess amount of Rs 3,24,490/- towards demand charges normal rate.

2. The Appellant stated that as per the orders dt.26.2.2016 in WP No. 6383 of 2016 of the Hon'ble High Court, the cross subsidy charges have to be claimed at Rs 0.30/KWH while the Respondents claimed the charges at Rs 1.29/KWH and thus, the Respondents claimed an excess amount of Rs 17,84,015/- towards the cross subsidy charges.

3. The Appellant further claimed that the Respondents have raised late payment charges of Rs 25,764/- and ACD surcharge of Rs 2,00,907/- which is not applicable and sought withdrawal of the total amount of Rs 23,59,186/- terming it as excess claimed.

4. The 1st Respondent SAO/O/MBNR through a letter dt.4.4.2016 stated that the Appellant was issued an open access final settlement bill for the month of February,2016 for Rs 1,32,86,798/- by considering 15,35,445 KVAH units (total KVAH 33,37,480 - Open Access 18,02,035 = 15,35,445) for billing in accordance with the proceedings of ERC dt.4.5.2013 for demand and energy settlements. The 1st Respondent further stated that the Appellant was adjusted open access energy i.e. off peak KVAH, KVA and peak KVAH in the CC bill as follows:

| | Total Consumption | Open Access Adjustment | Difference billed |
|-------|--------------------------|-------------------------------|--------------------------|
| KVAH | 3337840 | 1802035 | 1535445 |
| KVA | 4875(RMD) | 6 | 4869 |
| TKVAH | 574380 | 308142 | 266238 |

The 1st Respondent/SAO further stated that the Appellant was levied cross subsidy surcharge of Rs 23,24,625/- while allowing Rs 24,010/- towards unscheduled interruption charges in the CC bill for the month of February,2016. The cross subsidy charges are levied on the open access consumption as per the Tariff Order 2015-16 at Rs 1.29ps/unit. The Appellant preferred WP No.. 6323 of 2016 regarding levy of cross subsidy surcharge wherein the Hon'ble high court passed interim orders as follows:

“ In the circumstances, there shall be interim direction to the Respondents 2 to 4 not to collect cross subsidy charge on the rate fixed by the first respondent. However, it is open to the Respondents 1 to 4 to collect 0.30 paise in respect of the petitioner until further order.”

5. The 1st Respondent claimed that the order in the writ petition was complied with and an amount of Rss 17,84,015/- levied towards cross subsidy surcharge representing the balance due (Rs 1.29-33ps) has been transferred to the court cases in the books of accounts.

6. The 1st Respondent claimed that the late payment charges of Rs 25,764/- were levied in the bill of February,2016 as CC bills for the month of December,2015 consumption were paid on 11.1.2016, while the due date fell on 9.1.2016.

7. Before the CGRF, on behalf of the Appellant, it has been claimed that during the February,2016 billing month, the Appellant consumed 33,37,480(units) while securing Open Access energy of 18,02,035 units. The RMD was 4875 KVA. The Respondents adjusted 18,02,035 units (mentioned wrongly as KWH in impugned order) as per Clause 8.1 of Regulation 2 of 2006 while not adjusting the 2,502.83 KVA of open access as per Clause 8.2 which has to be adjusted and a revised bill for February,2016 has to be issued.

8. The 1st Respondent SAO/O/MBNR stated that the Appellant was given adjustment of 18,02,035 units and adjusted 6 KVA representing open access, as per the deviation settlement mechanism 2014 issued by the Central Electricity Regulatory Commission(CERC).

9. The CGRF after going through the record, directed the Respondents to educate the Appellant and collect the amounts as per the bill, through the impugned orders.

10. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal seeking withdrawal of total excess claim of Rs 23,59,186/- from the bill including Rs 3,24,490/- representing demand charges normal rate, Rs 17,84,015/- representing cross subsidy surcharge, Rs 25,764/- representing late payment charge and Rs 2,00,907/- representing ACD surcharge, revision of the February,2016 bill and set aside the impugned orders.

11. In this Appeal, the 1st Respondent/SAO submitted a reply dt.7.6.2016 to the effect that the Appellant was issued open access final settlement bill for the month of February,2016 for an amount of Rs 1,32,86,798/- by considering 15,35,445 KVAH units (33,37,480 - 18,02,035) for billing after deducting 18,02,035 units availed through open access. The Appellant was issued final settlement bill according to the proceedings dt.4.5.2013 of ERC for demand and energy settlements and the Appellant was adjusted open access energy i.e off peak KVAH, KVA and peak KVAH in the CC bill in accordance with the deviation settlement mechanism issued by the Central Electricity Regulatory Commission as follows:

| Total Consumption | Open Access Adjustment | Difference billed (by DISCOM) |
|--------------------------|-------------------------------|--|
| KVAH(Total) 3337840 | 1802035 | 1535445 |
| KVA 4875(RMD) | 6 | 4869(RMD) |
| TKVAH 574380 | 308142 | 266238 |

The 1st Respondent/SAO further repeated what he stated before the CGRF regarding cross subsidy charges on Open Access consumption as per Tariff Order 2015-16 and about the Appellant filing WP No. 6323 of 2016 and obtaining orders to collect only Rs 0.30 ps in respect of the Appellant until further orders. He further repeated the claim about late payment charges, ACD surcharge etc.

12. The Appellant filed rejoinder to the reply filed by the SAO/O/MBNR alleging additionally as follows:

a. Clause 3 of deviation settlement mechanism Regulation of 2014 is not applicable in respect of settlement of energy and demand of scheduled consumer of open access and the objective of this Regulation is only to maintain Grid discipline and Grid security.

b. As per the Tariff Order for FY 2013-14, annexure B2 at pages 225 to 228 there is a direction that “all the DISCOMs are directed to take into account 90% of scheduled energy and corresponding demand, procured by the consumers through inter state open access(bilateral or through exchange) for the purpose of provisional monthly settlement for the sake of billed energy/demand from the DISCOM’s side.”

c. As per the proceedings of ERC dt.4.5.2013 in para 7, the method of arriving at the open access demand based on consumption of energy is in 15 minutes block for demand settlement for Open Access Consumers.

d. The claim of demand charges on total RMD without adjusting the demand availed from open access facility amount to double billing on the part of demand charges. The Respondents should deduct the quantum of demand consumed by the Open Access Consumer from the total RMD recorded and bill the balance demand charges. This is also clarified by the ERC vide proceedings dt.4.5.2013.

For total 33,37,480 KWH consumption ----- the RMD is 4875 KVA

For 1802035 KWH ----- ?

$$\frac{1802035 \times 4875}{3337480} = 2632 \text{ KVA}$$

3337480

Hence, 2632 KVA of open access demand has to be deducted from the RMD of 4875 KVA to arrive at the demand consumption by the Respondents. Thus the claim of the Respondents for Rs 23,24,625/- in February,2016 billing month towards cross subsidy surcharge and again charging demand charges on total quantum of RMD amounts to double billing.

e. The late payment charges are not attracted in the present case, because the amount payable for the month of January,2016 billing month has been paid on due date i.e. on 9.2.2016.

f. The claim regarding half of the ACD surcharge is not maintainable because of the directions of the Hon'ble High court in WP No. 373713 of 2014 and batch dt.26.8.2014 to the effect that "the Respondents are directed to install prepaid meters to all the HT consumers, who require the supply through a prepaid meter, within a period of six months from the date of receipt of a copy of this order. Till such time, the petitioners shall pay half of the additional consumption deposit amount demanded by the respondents which shall be refunded to the petitioners as soon as the prepaid meters are installed."

13. Both sides submitted written submissions.

14. In view of the keen contest and no meeting point on the issues involved, the efforts at mediation failed to succeed. Hence the matter is being disposed of on merits.

15. On the basis of the record and submissions, the following issues arise for disposal:

i. Whether the CC bill issued to the Appellant for the month of Feb,2016 for

Rs 1,32,86,798/- is not correct?

ii. Whether the cross subsidy surcharge cannot be claimed in view of the directions of the Hon'ble High Court in WP No. 6383 of 2016?

iii. Whether the levy of late payment surcharge of Rs 25,764/- is not maintainable?

iv. Whether the ACD surcharge to the extent of 50% is not maintainable, in view of the directions of the Honble High Court in WP No. 373713 of 2014 dt.26.8.2014?

v. Whether the Respondents levied excess demand charges of Rs 3,24,490/-

ignoring the fact that the Appellant purchased energy through Open Access and thus, the demand charges can be claimed only on 2632 KVA demand after

deducting Open Access demand and not on total 4869 KVA?

16. Issue No.iv: ACD Surcharge

The Appellant has claimed that ACD surcharge of Rs 2,00,907/- was wrongly levied. During the hearing, the Appellant has submitted that the Hon'ble High Court has passed an order in WP No. 373713 of 2014 dt.26.8.2015 to the effect that “ **the respondents are directed to install prepaid meters to all the HT consumers, who require the supply through a prepaid meter, within a period of six months from the date of receipt of a copy of this order. Till such time, the petitioners shall pay half of the additional consumption deposit amount demanded by the respondents which shall be refunded to the petitioners as soon as the prepaid meters are installed**” and in view of this order of the Hon'ble High Court, as on 7.3.2016 i.e the date of raising CC charges of February,2016, half of the ACD amount was not due for payment and accordingly, the surcharge is also not attracted. This argument will not hold good for the reason that as per Clause 6.1 of Regulation 4 of 2006, the ACD amount became first due in the month of Sep,2015 only and only later the ACD surcharge was levied as per Clause 6.3 of Regulation 6 of 2004.

17. The Appellant took a stand that a WP No. 37713/2014 has been filed by the Appellant and others and as per the orders, the Appellant paid 50% of the ACD amount. It is represented that the connected WA No. 968/2015 and batch were disposed of by orders dt.19.5.2016 upholding the right of the Respondents to collect ACD amount as per the Regulation 6/2004. Under these circumstances, in view of the fact that the Appellant failed to support the contention that the Respondents are not entitled to collect ACD amount and further in view of Clause 6(3) of the Regulation No.6/2004 which enables the DISCOM to levy ACD amount, it is held that the Respondents are entitled to collect ACD surcharge amount of Rs 2,00,907/- from the Appellant. The issue is answered accordingly.

18. Issue No.iii: Late payment surcharge

The Appellant contended that an amount of Rs Rs 2,04,01,651/- was remitted on 9.1.2016 to the DISCOM through Punjab National Bank towards January,2016 monthly bill through RTGS, which the 1st Respondent claimed was credited to their account by the bank on 11.1.2016 and hence the DISCOM has levied late payment charge of Rs 25,764/-

The Appellant claimed that the Respondents levied late payment charges of Rs 25,764/- over CC charges wrongly and on the other hand, the Respondents claimed that the late payment charges of Rs 25,764/- were raised in February,2016 representing delay in payment of consumption charges for the month of Dec,2015, which were paid on 11.1.2016 which fell due on 9.1.2016 and therefore, the delay payment charges were levied. The amount of CC bill for December,2015 was remitted through RTGS(Real Time Gross Settlement) through bank by the Appellant . The amount was due on 9.1.2016 according to the Respondents. The record shows that 09.1.2016 and 10.1.2016 were Second Saturday and Sunday and both being bank holidays, the funds were credited by the bank on 11.1.2016. If the bank had not transferred the amount, it is not the fault of the Appellant. The amended Clause 4.3.5(ii) of Regulation 5 of 2004 says “any amount by NEFT (National Electronic Funds Transfer System)/RTGS(Real Time Gross Settlement)/or by cheque/banker's cheque/DD payable at par of any scheduled bank as indicated on the electricity bill.” Amended Clause 4.3.5(iii) of Regulation 5 of 2004 says “any consumer who wants to pay by way of crossed cheque shall present the cheque to the licensee at least three working days before the due date of payment”.

The Clause 4.3.5(iii) cannot be applied to the present case, because the Appellant remitted the amount by way of RTGS and not by cheque. Payment by way of RTGS attracts Clause 4.3.5(ii) of Regulation 5 of 2004.

19. Clause 4.3.3 of Regulation 5 of 2004 says that “if due date/disconnection date for default indicated in the bill for payment of the amount is a Sunday or a Public Holiday, the succeeding working day shall be treated as the due date or disconnection date for default.”

It is clear from the above, if the public holidays intervene, the succeeding working day shall be treated as the due date and in the present case also, the amount was remitted by way of RTGS on the due date, which should be treated as proper payment and the intervening holidays, Second Saturday and Sunday cannot be taken as leading to delay in payment of the bill. Thus the contention of the Appellant that there is no delay in payment of CC bill is upheld and the surcharge amount of Rs 25,764/- levied by the Respondents is found to be not maintainable and set aside. The issue is answered accordingly.

20. Issues. i,ii & v:

The Appellant claimed that they were levied excess demand charges of Rs 3,24,490/- ignoring the purchase of energy through Open Access. It is stated that they have

purchased energy through Open Access 18,02,035 KWH units and in turn, they are entitled for deduction of 2632 KVA demand and whereas the Respondents laid demand charges on total RMD of 4869 KVA and adjusted only 6 KVA.

21. The Appellant has relied on Regulation 2 of 2006 (Interim Balancing and Settlement code for Open Access transactions) and ERC proceedings dt.4.5.2013 (Open Access metering and Demand Settlement - FSA Billing on Minimum Energy) and fresh directions on open Access by ERC in the Tariff Order 2013-14 in support of the aforementioned contention.

22. The Respondents submitted that the total units for the month of Feb,2016 were 33,37,480 and open access units were 18,02,035 and after deducting the Open Access units from the total units, the actual billed units came to 15,35,445 and hence, they have billed accordingly and issued the bill in accordance with the directions given in APERC/Secy/25/2013 dt.4.5.2013, which defines the procedure for demand settlement for open access consumers.

23. The ADE/EBC while supporting the bill issued in the month of February,2016 stated that it is in line with deviation and settlement mechanism of CERC, 2014 which is applicable for interstate open access transactions. The deviations (over drawal/under drawal) for each time block of 15 minutes period are arrived at and the deviation charges are calculated as per the rates mentioned in the said CERC regulations and adjusted in the monthly bills of the consumer. He further stated that the Appellant has wrongly submitted that the energy consumed from open access was adjusted by the Respondents as per clause 8.1 of Regulation 2 of 2006 but not the entitled demand as per the Clause 8.2 of that Regulation.

24. As per the Clause 8.2 of the Regulation No. 2 of 2006, the scheduled demand shall be calculated by dividing the scheduled capacity (kw) by the power factor for the time block. As per clause 8.4 of the said regulation, the scheduled demand or the actual demand made available to a consumer from open access generator in a time block whichever is less, shall be deducted from the recorded demand. The balance demand for each time block shall be deemed to have been consumed from DISCOM and shall be paid for as per terms of supply agreement with the DISCOM.

25. Under Clause 8 of ERC proceeding dt.4.5.2013, the DISCOMS were directed to arrive at 15 minutes block wise demand by deducting open access demand from recorded demand for all the 2880 time blocks in a month. The result would be 2880 demand

readings of 15 minutes blocks consumed from the DISCOM. Of all the 2880 demand readings, the maximum demand (MD) should be billed as per the tariff order.

26. Accordingly, the maximum demand of all the 2880 15 minute block readings consumed from the DISCOM is 4869 KVA which occurred on 19.1.2016 at 10.15-10.30 Hrs time block, on 23.1.2016 at 22.00 -22.15 Hrs time block and on 6.2.2016 in two spells i.e. 10.00-10.15 and 10.15-10.30 Hrs time blocks. The Open Access demand schedules in the respective time blocks are 0 due to non purchase of power by the consumer.

27. The SAO/OP/MBNR gave the details of the open access billing as follows (being repeated for clarity):

| | Total consumption | Open access adjustment | Difference Billed |
|-------|-------------------|------------------------|-------------------|
| KVAH | 33,37,480 | 18,02,035 | 15,35,445 |
| KVA | 4875(RMD) | 6 | 4869 |
| TKVAH | 5,74,380 | 3,08,142 | 2,66,238 |

28. The Appellant contended that the claim of the Respondents over levy of Open Access energy in accordance with Central Electricity Regulatory Commission (deviation settlement mechanism and Related Matters) regulation of 2014 is not correct. It is seen that the objective of these Regulations as per clause 3 is “to maintain grid discipline and grid security as envisaged under the grid code through the commercial mechanism for Deviation Settlement through drawal and injection of electricity by the users of the grid” only. Hence, the said Regulation is not applicable in respect of settlement of energy and demand of scheduled consumer of open access and further reiterated that the settlement of energy/demand at exit point to the schedule consumer of open access is to be done as per the Clause 8.1,8.2 and 8.3 of Regulation 2 of 2006 dt.11.08.2006.

29. The proceedings of ERC dt.4.5.2013 on Open Access metering and Demand Settlement categorically explain and direct that the Demand Component of Open Access has to be deducted from the Recorded Demand before bills were raised. Clause 7 of the proceedings reproduced below for clarity, wherein it is clearly explained with examples how the demand settlement for open access consumer shall be done.

Clause 7. The procedure to consider Open Access (OA) demand component for billing is explained below:

For each time block, total recorded energy and total recorded demand is available in the meter. Similarly for each time block, power availed through open access for both energy and demand is also available from Energy Balancing Centre (EBC).

Detailed method of arriving Maximum Demand (MD) consumed from DISCOM in a month is explained with the help of table shown below for nine time blocks:

To get Demand consumed form DISCOM shown in column (8), deduct the OA recorded Demand (Shown in Column 7) from total Recorded Demand 9RD) (Shown in column 5).

I.e. Demand consumed from DISCOM = (Total Recorded Demand - OA Recorded Demand)

| Sl No | DISCOM CONTRACTED DEMAND | OA Contracted demand | Total Demand from all sources | Total recorded Units in 15 minutes | Total Recorded Demand (RD) | OA units in 15 minutes | OA recorded Demand (KVA) | DISCOM Recorded Demand (KVA) Col(5)-Col(7) |
|-------|--------------------------|----------------------|-------------------------------|------------------------------------|----------------------------|------------------------|--------------------------|--|
| | Col (1) | Col (2) | Col(3) | Col (4) | Col (5) | Col (6) | Col (7) | Col (8) |
| 1 | 600 | 400 | 1000 | 200.0 | 800 | 98 | 392 | 408 |
| 2. | 600 | 400 | 1000 | 200.0 | 800 | 88 | 352 | 448 |
| 3. | 600 | 400 | 1000 | 197.5 | 790 | 98 | 392 | 398 |
| 4 | 600 | 400 | 1000 | 197.5 | 790 | 98 | 392 | 398 |
| 5 | 600 | 400 | 1000 | 202.5 | 810 | 78 | 312 | 498 |
| 6 | 600 | 400 | 1000 | 195.0 | 780 | 75 | 300 | 480 |
| 7. | 600 | 400 | 1000` | 194.5 | 778 | 69 | 276 | 502 |
| 8. | 600 | 400 | 1000 | 195.0 | 780 | 93 | 372 | 408 |
| 9. | 600 | 400 | 1000 | 205.0 | 820 | 84 | 336 | 484 |

Of all the nine demands of Column(8) the Maximum Demand in 502 KVA mentioned in row(7). The same logic can be extended for 2880 time blocks (15 minutes) in a month.

30. The Appellant has further given an additional ground in their claim on wrong billing pointing towards the fresh directives in Clause 16 of Annexure B2, given by the ERC during FY 2013-14 which is as follows:

*“all the DISCOMs are directed to take into account 90% of **Scheduled Energy and corresponding Demand**, procured by the Consumers through inter - state Open Access*

(Bilateral or through exchange), for the purpose of provisional monthly settlement for the sake of billed energy/demand from the DISCOMs side.”

In support of its claim, the Appellant has also produced directions of CGRF - 1 in a similar case of M/s Suguna Metals Ltd to implement Clause 8.2 of Regulation 2 of 2006, for settlement of Open Access Demand.

31. The Appellant has thus, mainly relied on:

- i. Clause 8.2, 8.3 of Regulation 2 of 2006.
- ii. Para No. 16 of Annexure B2 of fresh directions of APERC FY 2013-14.
- iii. Para 7 & 8 of ERC Proceedings dt.4.5.2013
- iv. CGRF- RR South Circle, directions in C.G. No.649 of 2015-16.

for arriving at Open Access demand settlement.

32. The Appellant, in support of his claim of wrong billing, calculated the consumption to be billed as follows:-

For total 3337480 KWH consumption ----- the RMD is 4875 KVA

For 1802035 KWH ----- ?

1802035 X 4875 = 2632 KVA

3337480

Therefore, the Appellant claimed that 2632 KVA of Open Access demand has to be deducted from the RMD of 4875 KVA to arrive at the demand consumption from the DISCOM.

33. It is necessary to reproduce Clause 8.2 & 8.3 of the **Regulation 2 of 2006** issued by ERC towards Interim Balancing and Settlement Code for open access transactions for assessing the energy relating to Open Access Demand Settlement:

Clause 8.2 . **The scheduled demand** at exit point shall be calculated by dividing the scheduled capacity(kw) at exit point by the power factor for the time block, for which purpose the power factor shall be equal to the recorded kWh divided by kVah.

Clause 8.3 **The scheduled energy** of a scheduled consumer from and OA Generator for each time- block shall be deducted from the recorded energy (in inter -se order of such Generators, as and if intimated by the consumer, in case the consumer is availing of energy from more than one Generator) as a first charge. The balance energy shall be deemed to have been supplied by the DISCOM and shall have to be paid for as per the terms of the supply agreement with the DISCOM.

Provided that where there is a deviation between the scheduled capacity and actual capacity being injected at an Entry point in a time block, the shortfall, if any, in the capacity allocated to the scheduled consumer shall be deemed to have been drawn by the

scheduled consumer from the DISCOM and the energy corresponding to such shortfall shall be paid for by the party which has contracted for the Open access capacity with the Licensee to the DISCOM as per the energy tariff applicable for the same consumer category of the DISCOM under which the scheduled consumer would normally fall.

34. Generally any consumer opting to purchase through open access can opt through IntraState which is within the state or inter state which is between the two states through power exchanges (IEX). The intra state open access transactions are governed by the directions given from time to time through Regulations, proceedings etc from the State Electricity Regulatory Commission such as, TSERC. The inter state open access transactions are governed by the directions given from time to time by the CERC (Central Electricity Regulatory Commission). Presently, the Appellant has been consuming power from the Licensee along with Open Access during the relevant time through interstate transactions from the power exchange guided by the CERC Regulations.

35. The contention of the Appellant is that Clause 8.2 & 8.3 of the Regulation 2 of 2006 of ERC were not complied with by the Respondents for settling the open access transactions during the month of Feb,2016.

36. Clause 8.4 of Regulation 2 of 2006 explains how the demand availed from DISCOM has to be derived which is reproduced here for clarity:

“The scheduled demand at any exit point or the actual demand made available to a consumer from each OA Generator at that exit point in a time block whichever is less, shall be deducted from the recorded demand(in the inter se-orders of such generators as confirmed by the SLDC while finalising the day-head schedule, in case the consumer is availing of energy from more than one Generator). The balance demand for each time-block shall be deemed to have consumed from the DISCOM and shall be paid for as per the terms of supply agreement with the DISCOM”,while the CERC Regulation 2014 ensures maintenance of grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement through drawal and injection of electricity by the users of the grid.

37. As per Clause 6 of CERC regulation Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 dt. 6th January,2014, the sellers have to provide generation schedules for each 15 minutes time block per day and the buyers will be required to communicate the schedule drawals for each 15 minutes time block wise by the exchange. The deviations between the scheduled injection and actual injection by the seller and scheduled drawal and actual drawal by the

buyer will be reckoned accordingly. Hence, both the energy and demand are to be settled as per the time block wise. It is emphasised that the time block wise accounting is to maintain the grid discipline and grid security which is of paramount consideration.

38. Further ERC proceedings vide APERC/Secy/25/2013 dt.4.5.2013 vide Clause 7 in clear terms explains with illustration, the method for arriving at the Open Access demand based on consumption of energy in 15 minutes block for demand settlement for open access consumers in clear terms. Clause 8 of the proceedings dt.4.5.2013 further specify the DISCOM to arrive at 15 minutes block wise demand by deducting the Open Access demand from the recorded demand for all the 2880 time blocks(there are 96 blocks of 15 minutes duration in a day, these 96 blocks for 30 days will be 2880 blocks) in a month. The result would be 2880 demand readings of 15 minute blocks consumed from the DISCOM. Of all the 2880 fifteen minute block demand readings, the Maximum Demand (MD) reading should be billed as per the Tariff Order.

39. The Appellant claimed that the Respondents adjusted only 6 KVA against its entitled 2632 KVA derived through simple mathematical calculation:

Total 3337480 KWH(Units) consumption ----- RMD is 4875 KVA,
For 1802035 KWH(Units)(Open Access)----- ?
1802035(Units) X 4875 = 2632 KVA for billing from the DISCOM
3337480

Initially, in the CGRF, the Appellant claimed for 2502 KVA for billing and now the claim is revised to 2632 KVA as stated above.

40. The Clauses 8.1, 8.2 and 8.3 of the Regulation 2 of 2006 do not specify such calculation to be adopted while settling the open access demand. Clause 8.1 mandates that the scheduled energy for each time block from the scheduled capacity has to be arrived at by multiplying with the period of time block in hours. Clause 8.2 mandates that the scheduled demand shall be calculated by dividing the scheduled capacity by the power factor for the time block. Clause 8.3 gives the procedure for evaluating energy supplied by the DISCOM. Clause 8.4 gives the procedure for evaluating the demand supplied by the DISCOM.

41. The Appellant has been purchasing the power through Open Access from the power exchanges through **interstate** open access transactions guided by CERC, and is relying on the Regulation 2 of 2006 issued by the ERC, which is applicable to **intra state open access transaction only** (within the state).

42. The calculation through which the Appellant arrived at 2632 KVA as quantum of demand, is not guided by any Regulations and Proceedings or any Guidelines prescribed under the open access by any State or Central ERC. The calculation for arriving at 2632 KVA as energy consumed is based on simple mathematical formula, which is not applicable to the present case to the face of the Clause 8 of ERC proceedings dt.4.5.2013 which in clear terms explains the procedure for billing the Maximum Demand.

43. It is relevant here to go through the CC bill of Feb,2016 issued by the DISCOM to know how the bill amount is arrived at:-

Total Maximum Demand = 4875 KVA(which includes OA demand and Demand availed from DISCOM). This is the maximum recorded demand attained out of 2880 (15 minutes) blocks. Similarly of the total 2880 (15 minutes) blocks, after adjusting Open Access demand time block wise procured by the Appellant, the Maximum Demand attained is 4869 KVA. Hence 4875 KVA - 4869 KVA = 6 KVA deducted(representing Open Access to the credit of the Appellant).

44. In the 2880 time blocks, demand from DISCOM arrived at is 4869 KVA, the maximum reading obtained during the four instances of 15 mnts blocks(taken from MRI data) filed by the Appellant are given below:

| Date | Time Block | Recorded Demand(Total) | Scheduled Demand(Open Access) | DISCOM Demand | Demand Billed |
|------------|-------------|------------------------|-------------------------------|---------------|---------------|
| 19.1.2016 | 10:15-10:30 | 4.869 | 0.000 | 4.869 | 4.869 |
| 23.1.2016 | 22:00-22:15 | 4.869 | 0.000 | 4.869 | 4.869 |
| 06.02.2016 | 06:00-06:15 | 4.869 | 0.000 | 4.869 | 4.869 |
| 06.02.2016 | 06:15-06:30 | 4.869 | 0.000 | 4.869 | 4.869 |

The ADE/EBC submitted the timings as 10:00 to 10:15 & 10:15 to 10:30 hours on 6.2.2016, which is not correct. As per the MRI data produced, the actual timings are 06:00 to 06:15 & 06:15 to 06:30 hours.

The HT services tariffs are two part tariffs at specified rates of the Tariff Order 2015-16.

The demand is billed at 4869 KVA

The energy billing is done as follows:

| | |
|------------------------------|--------------------------|
| Total Consumption | = 33,28,540 Units |
| Less Open Access Consumption | = <u>18,02,035 Units</u> |
| Units consumed from DISCOM | = <u>15,35,445 Units</u> |

45. Hence, the energy is billed for 15,34,445 units. The billing of Open Access is done as per the proceedings mandated by the ERC. The method of calculation through which the Appellant claimed entitlement of 2632 KVA is not based on any set of directions from the ERC either in the Tariff Order, Regulations or instructions.

46. The ERC directives for FY 2013-14 on Open Access directed the DISCOMs to take into account 90% of the scheduled energy and corresponding demand for the purpose of provisional monthly settlement for the sake of billed energy/demand from the DISCOM side. This directive does not support the claim of the Appellant to deduct 2632 KVA towards the Open Access Demand. The calculation of the Appellant in arriving at 2632 KVA as the consumption to be billed by the DISCOM is not tenable and legal in view of the aforementioned reasons. Thus the claim of the Appellant on the issue Nos 1,2&5 is negated. The issues 1,2 & 5 are answered accordingly.

47. The Appeal is disposed of directing:

i. The CC bill issued to the Appellant for the month of February,2016 for Rs 1,32,86,798/-(less Rs 25,764/- Late Payment Surcharge) is found to be correct and legal.

ii. On the claim of the Appellant regarding cross subsidy surcharge, pending decision in WP No. 6383/2016, it is held that no finding can be given.

iii. The claim of the Appellant that the Respondents claimed excess demand charges of Rs 3,24,490/- is found as untenable and not correct.

iv. The claim of the Appellant that ACD surcharge to the extent 50% is not maintainable, is found as untenable and not correct.

v. The claim of the Appellant that the levy of Rs 25,764/- towards late payment surcharge is found tenable and the demand is set aside.

vi. The impugned order is found to be devoid of reasons, discussion on merits and held as such.

48. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in Clauses 3.38, 3.39 and 3.42 of the Regulation No. 3/2015 of TSERC.

TYPED BY CCO, Corrected, Signed and Pronounced by me on this the 16th day of September, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Salasar Iron and Steels PVT. Ltd. Flat No. 101, 1st Floor, Satya Sarovar Complex, High Court Road, Hyderabad - 500 002. Cell No. 93910 33606.
2. The SAO/OP/Mahaboobnagar/TSSPDCL/Mahaboobnagar Dist.
3. The DE/OP/Mahaboobnagar/TSSPDCL/Mahaboobnagar Dist.
4. The SE/OP/MBNR Circle/TSSPDCL/Mahaboobnagar Dist.
5. The CGM/Finance/TSSPDCL/Corporate Office/Hyderabad.

Copy to:

6. The Chairperson, CGRF -1, TSSPDCL, GTS Colony, Vengal Rao Nagar, Erragadda, Hyderabad.
7. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.