

BEFORE THE MEGHALAYA STATE ELECTRICITY REGULATORY
COMMISSION, SHILLONG

MSERC Case No. 1 of 2022

Dalmia Cement (Bharat) Limited
Plant at Umsoo Mootang
Village Thangksai P.O. Lumshnong
Dist. Jaintia Hills
Meghalaya-793200

... .. **Petitioner**

-Versus-

Meghalaya Non-Conventional and Renewable Energy Development Agency
(MNREDA)
Near BSF Camp, P.O. Mawpat
Shillong-793012
Meghalaya.

... .. **Respondent**

Coram:

P.W. Ingty, IAS (Retd.) Chairman, MSERC

Roland Keishing, District & Sessions Judge

(Retd), Member, MSERC

Counsel for the Petitioner : Mr. Aveak Ganguly

: Ms. Pooja Agarwal.

Counsel for the Respondent : Mr. P.M. Sangma, Director

: Mr. D.N. Sangma, Asst. Director Planning.

Date of Hearing : 14.06.2022

Date of Order : 20.06.2022

ORDER

Heard through video conferencing

1. The Petitioner Dalmia Cement (Bharat), has filed a petition under clauses 22, 23, 24 of the MSERC (Renewable Energy Purchase Obligation & its Compliance) Regulations 2018 read with Clause 26 of the MSERC (Conduct of Business) Regulations 2007 and other applicable provisions of the Electricity Act 2003, praying for appropriate orders and directions to set-off its Renewable Purchase Obligation (RPO) against the electricity generated and consumed from its 5.6 MW Waste Heat Recovery Boiler(WHRB) or alternatively, to exempt the petitioner to the extent of its RPO when the power generated and consumed from its Waste Heat Recovery Boiler is in excess of the RPO target. The Petitioner Dalmia Cements affirms that it is a company incorporated under the Company's Act 1956, and is in the business of manufacturing cement as well as in the business of generation of power, and is having its registered office in Dalmiapuram, Tiruchilapalli District, Tamil Nadu. The petitioner has a cement factory in Thangksai village, Jaintia Hills, Meghalaya. To meet its power consumption requirements the petitioner has set up a 25 MW thermal power plant on captive basis and is wheeling the power from the said plant to its cement factory. The aforesaid captive power plant (CPP) was established on 7th December 2010. In addition the petitioner states that it is in the process of installing a Waste Heat Recovery Boiler (WHRB) of 5.6 MW to utilize the waste heat from the process of manufacturing of cement to generate electricity.
2. The Petitioner also states that the Respondent MNREDA is the designated State Agency accrediting and recommending registration of eligible entities to Central Agency in terms of Clause 9 of the MSERC (Renewable Energy Purchase Obligation & its Compliance) Regulations 2018. As per clauses 8.1 and 9.1 of the aforesaid Regulations, it is also responsible for collecting data from the Obligated Entities in respect of their renewable energy purchase obligation compliance and also to maintain settlement of accounts in respect of their Renewable Energy Certificates (REC) respectively.
3. The Meghalaya State Electricity Regulatory Commission in line with the provisions of Sections 61, 66, 86(1) (c) and 181 of the Electricity Act, 2003, has framed MSERC (Renewable Energy Purchase Obligation & its Compliance) Regulations 2018, prescribing mandatory purchase of power generated from renewable energy sources. Every obligated entity is to purchase a minimum percentage of electricity from renewable energy sources as determined in the

Regulations. The RPO framework stipulated under the aforesaid Regulations is applicable to Obligated Entities as well as distribution licensees, captive users and open access consumers, during the respective control period from 22.10 2018 to 31.3.2021. The percentage of non-solar and solar energy to be purchased as per the trajectory is as shown below:-

FY	Minimum quantum of purchase from renewable energy sources (in terms of energy in kWh)		
	Solar	Non-Solar	Total
2018-19	0.75%	3.25%	4%
2019-20	1%	4%	5%
2020-21	1.25%	4.75%	6%

4. The MSERC (Renewable Energy Purchase Obligation & its Compliance) (1st Amendment) Regulations 2018 dated 16.04.2021 extended the control period applicable to obligated entities upto FY 2023-24. The percentage of non-solar and solar energy to be purchased as per the trajectory as amended is shown below:-

FY	Minimum quantum of purchase from renewable energy sources (in terms of energy in kWh)		
	Solar	Non-Solar	Total
2018-19	0.75%	3.25%	4%
2019-20	1%	4%	5%
2020-21	1.25%	4.75%	6%
2021-22	1.50%	5%	6.50%
2022-23	1.75%	5.25%	7%
2023-24	2%	5.50%	7.50%

5. The Petitioner as a captive user and obligated entity is required to fulfill the RPO requirements as prescribed in the aforesaid Regulations. The Petitioner states that it has been complying with its RPO obligations either by purchasing renewable energy from conventional sources or by purchasing RECs from the Exchange. In order to utilize the waste heat generated from the manufacturing process of cement the petitioner is installing a waste heat recovery boiler (WHRB) of 5.6 MW capacity towards utilizing the waste heat as a result of an industrial process for generating electricity. WHRBs are held to be cogeneration power plants. The petitioner

states that the Electricity Act, 2003 defines “cogeneration” as “a process that simultaneously produces two or more forms of useful energy (including electricity) and the electricity generated by the WHRB falls within the definition of cogeneration as defined in the Electricity Act and the Regulations.

6. The Hon’ble Appellate Tribunal for Electricity (APTEL) and various State Commissions upon representations being made by Obligated Entities consuming power generated by WHRB have exempted such Obligated Entities from purchasing RPO requirement or allowed a set-off against their RPO requirement. In pursuance of the landmark judgment of the Hon’ble APTEL several State Commissions have made necessary amendments to their RPO Regulations. The gist of a few orders passed by the Hon’ble APTEL are as follows :-
 - (i) In the case of Century Rayon versus Maharashtra Electricity Regulatory Commission, Appeal No.57 of 2009(2010), APTEL No. 37 held that co-generating unit cannot be fastened with any obligation to purchase power generated by a renewable energy source of energy, particularly when the co-generation of power and generation of electricity from renewable source of energy are meant to be promoted under Section 86 (1)(e) of the Electricity Act 2003.
 - (ii) Thereafter the Hon’ble APTEL upheld the findings in Century Rayon versus Maharashtra Electricity Regulatory Commission, in a number of subsequent cases namely- Emami Paper Mills Limited versus Odisha Electricity Regulatory Commission Appeal No.54 of 2012(2013) APTEL No.74; similarly in Vedanta Aluminium Limited versus Odisha Electricity Regulatory Commission Appeal No. 59 of 2012(2013) APTEL No. 76; similarly in Hindalco Industries Limited versus Uttar Pradesh Electricity Regulatory Commission in Appeal No. 125 of 2012(2013) APTEL No.40, and other cases.
7. APTEL has issued a direction to State Commissions which reads as follows:- “ We would, therefore, direct the State Commission to enforce the Renewable Purchase Obligation of captive consumers who meet the specified percentage of energy from the captive co-generation plant using any fuel and exempt them from RPO obligation in consonance with the findings of the Tribunal in Century Rayon case in relaxation of its Regulations. Accordingly directed.”
8. The Petitioner affirms that it would be pertinent to note that the captive users having co-generation plants utilize the flue gas like waste heat, blast furnace, pressure gas and steam emanating from its operations. If the heat generated from their operations is not channelized, it

would damage the environment. Therefore, the petitioner is in good faith installing the WHRB to generate 5.6 MW of power.

9. The Petitioner states that in view of Section 86 (1) (e) of the Electricity Act, 2003, co-generating plants (like that of the petitioner) are to be treated at par with renewable energy generating plants for the purpose of RPO obligations. In fact, as per the settled legal position, no RPO obligation shall be fastened on generators who generate electricity through waste heat recovery for their own purpose and consume it, subject to the condition that generation from waste heat recovery plant is in excess of the total RPO required to be complied with by the CPP or otherwise, they can be allowed to set-off against the RPO targets as notified by the RPO Regulations. The Petitioner submits that it cannot be obligated to fulfill its RPO target to the extent of the electricity generated by the Petitioner's WHRB. In other words, the Petitioner's RPO target can be adjusted against the power generated by the Petitioner's co-generation unit, i.e. WHRB and thereby consumed by the petitioner.
10. The Petitioner requests the Hon'ble Commission to take into consideration, the earlier mentioned judgments of APTEL and the orders passed by other State Commissions in similar petitions and to allow the petitioner to set-off its RPO target as prescribed by the RPO Regulations 2018, against the electricity generated and consumed from its WHRB from the date of its commissioning to the FY 2023-2024, i.e the period during which the 2018 Regulations (as amended) are applicable.
11. The Petitioner also prays that the Hon'ble Commission apart from deciding the present petition also respectfully consider commencing suo moto proceedings for amendment of the RPO Regulations to bring the same in line with the legal position enunciated by the Hon'ble APTEL and several State Commissions as mentioned in the petition.
12. The Petitioner prays that the Hon'ble Commission in order to remove the difficulties exercise the inherent powers conferred on the Commission under Clauses 22, 23, 24 of the 2018 Regulation which reads as shown below :-

“...22.0 Power to relax

22.1 The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.

22.2 If any difficulties arise in giving effect to the provisions of any of these regulations, the Commission may by order relax the provisions to such extent as it deems necessary to remove the difficulty.

23.0 Power to amend

The Commission shall have the power to review and to amend these regulations for any provision thereof.

24.0 Miscellaneous

24.1 Nothing in these regulations shall be deemed to limit or otherwise affect the power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuse of process of the Commission.

24.2 Nothing in these regulations shall bar the Commission from adopting a procedure in conformity with the provisions of the Act, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstance of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to deal with such matter or class of matters...”

13. The Petitioner therefore seeks relaxation of the provisions of 2018 Regulations in such a manner that will allow the Petitioner to set-off Petitioner’s RPO against the power generated by the Petitioner’s WHRB as stated above, or alternatively, exempt the Petitioner from fulfilling its RPO

target as long as the power generated and consumed from its WHRB is more than its RPO target.

14. The Respondent, Director of Meghalaya New & Renewable Energy Development Agency (MNREDA), in responding to the petition submitted by Dalmia Cements, states that MNREDA has examined the petition filed by M/s Dalmia Cement (Bharat) supported by the evidences therein and would like to be in favour of recommending “Waste Heat Recovery Boiler (WHRB)” to set-off Renewable Energy Purchase Obligation (RPO) subject to fulfillment of prevailing regulations/Act in vogue.
15. The Commission has examined all materials and facts submitted by the Petitioner and also perused the response submitted by the Respondent. Hearing was held on 14th of June 2022 via video conference in which both parties were present. On hearing and perusal, the Commission is convinced that the matter is genuine.
16. After examining all facts and circumstances concerning this matter and in view of the position mentioned in Para 15 above, the Commission now decides to exercise the powers conferred upon it under Clause 22 of the MSERC (Renewable Energy Purchase Obligation and its Compliance) Regulations 2018, and read with relevant provisions of the Electricity Act 2003, and move to relax the provisions of the 2018 Regulations, so as to remove difficulties in such a manner that will allow the Petitioner M/s Dalmia Cement (Bharat) to set-off the Petitioner’s RPO against the power generated by the Petitioner’s WHRB and to exempt the Petitioner from fulfilling its RPO target as long as the power generated and consumed from its WHRB is more than its RPO target.
17. This order giving relief to the Petitioner will be subject to the fulfillment of other relevant provisions of MSERC Regulations and the Electricity Act 2003.

Sd/-

Roland Keishing
Member

Sd/-

P.W.Ingty
Chairman