

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND
4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001

Appeal No. EOJ/11/2009

Dated- 21st August, 2010

M/s Balajee Electrosteels Ltd.	Appellant(s)
	Versus	
Damodar Valley Corporation & others	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Ajit Kumar	Counsel for the appellant
Shri Vijay Gupta	Advocate for the appellant
Shri S.B. Gadodia,	Sr. Counsel for the respondent
Shri Tapash Kabiraj	Advocate for the respondent

J U D G E M E N T

1. This appeal has been filed against the Judgement/order dated 04/09/2009 passed in case no. 01 of 2009 by the Electricity Consumer Grievances Redressal Forum (In short to be referred as C.G.R.F.), Damodar Valley Corporation (In short to be referred as D.V.C.), Maithon by which the prayer of consumer/appellant M/s Balajee Electrosteels Ltd. for enhancement of contract demand from 12.2 M.V.A. to 16 M.V.A. and further for a direction upon the respondents/D.V.C. to give benefit of off-peak tariff as well as benefit of T.O.D. and for a direction upon the respondents/D.V.C. to revise its monthly energy bills since July, 2005 on the basis of the T.O.D. tariff till date in as much as because of non-allocation of required load, the additional load is being allocated to the petitioner on shift basis and because of which, the T.O.D. benefit which is to be granted to the petitioner as per the 2000 tariff schedule of the respondent is not being allowed, were rejected. Hence this appeal has been filed by the appellant/consumer for allowing

the aforesaid relief of the consumer/appellant after setting aside the aforesaid order of the C.G.R.F./D.V.C., Maithon.

2. The case of the consumer/appellant in brief is that the appellant/consumer had taken the contract demand of 5500 K.V.A with the respondents/D.V.C. and appellant had also executed an agreement on 5th November, 1999. Thereafter the appellant's contract demands from 5500 K.V.A. were enhanced to 9.2 M.V.A. Because of the enhancement in the product of the appellant and also because of good market response with regard to product manufactured, the consumer also requested the respondents/DVC for enhancing its contract demand from 9.2 MVA to 16 MVA by virtue of several letters (Annexure –I). But the enhancement was not allowed to the appellant but only ad-hoc allotment of contract demand upto 16 MVA for a fixed period was allowed to the appellant/consumer which had resulted into various disallowances of benefit, which were available to the appellant/consumer. Subsequently, the load of the appellant was enhanced to 12.2 MVA and a fresh agreement was also executed between them vide letter dated 11th March, 2008 (annexure-III). The consumer/appellant received a letter from respondents/D.V.C. for enhancing of its contract demand from 9.2 MVA to 12.2 MVA but the consumer/appellant will not be availing the facility of T.O.D. metering system and the appellant was directed by the respondents/DVC to reduce the outstanding dues to Rs. 4.00 crores. The appellant also received a letter dated 1st April, 2008 (annexure – IV) from the respondents/DVC to comply with various terms and conditions as was mentioned in the letter and the appellant was also directed to change the metering scheme from T.O.D. to non-T.O.D. with effect from 2nd April, 2008 from the respondents/DVC by which the appellant was informed that if the appellant wants to avail T.O.D. facility, the appellant has to surrender the enhanced contract demand of 3 MVA and the contract demand of appellant would again be restricted to 9.2 MVA. As such, according to the appellant, the aforesaid restrictions can not be sustained in the eye of law because the appellant wants to avail TOD facility which is also mentioned in the tariff schedule of the respondents as such the contract demand of the appellant can not be reduced so as to disadvantage the facility/benefit which are available to the appellant in accordance with the tariff order. In view of Clause 6 of the tariff schedule, the consumer is liable to make payment of the minimum guaranteed charges and the consumer having TOD meter, the

minimum guaranteed charges calculated is based on the maximum demand for the month whichever is higher and the power factor at the rate of 0.85%. The rebate is allowed on the basis of the consumption over and above the minimum guaranteed energy consumption in terms of the agreement. The appellant/consumer vide its several letters to the respondents/DVC claimed those benefits which are allowable to the appellant/consumer in accordance with the tariff schedule, but the respondents/DVC did not pay any heed which has resulted a recurring loss of Rs. 8.00 lakhs per month to the appellant/consumer. Towards the end of year of 2007 ad hoc supply to consumer was discontinued and a fresh agreement for 12.2.MVA was executed. The requirement of the appellant's company was 16 MVA; therefore the consumer/appellant had requested to continue with the ad hoc supply, which was refused by the respondents on the ground that they do not have carrying capacity in the conductors of the feeder. Therefore the consumer/appellant has asserted that this ground has been made by the respondents only to disadvantage of the appellant/consumer. Since last three years the respondents was supplying 16 MVA to the appellant but the respondents suddenly found the conductors not having the carrying capacity in respect of power supply to the company of the appellant/consumer. The appellant has further alleged that the respondents discontinued to give the extra power to the appellant company which it required, since that time it has given power to another company, namely, Tulsian Metals from the same feeder from which the company of the appellant the power was to be supplied. The appellant has further asserted that the feeder was constructed at the cost of appellant's company as well as another company namely M/s Super Steel Casting Ltd. from which the supply was initially provided to the appellant for which the appellant had given more than Rs. 35.00 lakhs for construction of the feeder from which the respondent is now being denied for supply of power from the same feeder.

3. The appellant has also asserted that the appellant was being given the benefit of off peak tariff as well as benefit of TOD. In view of the tariff of DVC the peak hour of supply is from 4.00 P.M. to Midnight and the off peak hour is from midnight to 4.00 P.M. The consumer has liberty to avail 25% more power than its contract demand during the off- peak hours i.e., Midnight to 4.00 p.m. The other benefit of TOD is of load factor i.e; if the load factor is above 70% then certain incentive is granted in terms of the tariff. But

no incentive is being given to the appellant in respect of TOD and penalty is also being leveled if the contract demand is increased in the off peak hour. Since the execution of a fresh agreement earlier this year by the appellant which is against the provisions of the tariff because till the end of the 2007, the respondents was extending the benefit of off-peak tariff i.e., in case of 25% of the availing of power more than the contract demand as well as the TOD facility but there is no reason as to why the DVC has denied those facilities to the consumer/appellant.

4. In course of hearing the consumer/appellant on 24/04/2010 has also filed a supplementary affidavit-cum-proposal for alternative relief in which the appellant/consumer has asserted that the appellant is even ready to limit its consumption to the extent of 13.7 MVA which it is allowed upto 16-17MVA with direction to respondent to allow TOD benefits with even said condition of load to the appellant. In other words the said financial benefits of off-peak consumption can not be denied to the appellant. The appellant/consumer has further asserted in its supplementary affidavit-cum-proposal for alternative relief dated 24/04/2010 that the appellant even has proposed that the respondent be directed to permit TOD extra load facility to the appellant to the tune of 113% (in place of 125% as available to others) i.e., upto a maximum limit of 13.7 MVA in place of normal permissible 15.25 MVA but in any case the financial benefits of TOD must be allowed to the appellant. The consumer/appellant has further undertaken at paragraph (19) of his supplementary affidavit dated 24/04/2010 that whenever any load restriction shall be imposed, it will abide by that and it will always co-operate with respondents. On the aforesaid ground the appellant has prayed to allow the appeal of appellant.

5. On the other hand the case of respondents/DVC in brief is that the appellant is enjoying the contract demand of 12.2. MVA and not 9.2 MVA as mentioned in their affidavit. The appellant/ M/s Balajee Electrosteels Ltd is drawing power from the common feeder with M/s Super Steel Casting Ltd. (2.7 MVA) and M/s Tulsayan Metals Pvt. Ltd. (3.25 MVA) in T-off mode (Single Circuit). The appellant/consumer entered into power purchase agreement with DVC for a contract demand of 5.5.MVA in the year 1999 and the quantum of contract demand was increased to 9.2.MVA and after that 12.2. MVA on their request. The appellant/consumer was also enjoying TOD facility from

May, 2001 till March, 2008 as opted by the appellant. The contract demand in respect of appellant was revised from 9.2 MVA to 12.2. MVA with changed metering scheme from TOD to non-TOD with effect from 02/04/2008 by virtue of appellant's letter dated 03/03/2008 addressed to the Secretary to DVC and subject to the terms and conditions accepted by the appellant by virtue of appellant's letter dated 29/03/2008 in response to letter no. CM/Agr/2007-08/BEL/3863 dated 11/03/2008 and as such the enhancement of contract demand from 9.2 MVA (TOD) to 12.2 MVA (non TOD) with effect from 02/04/2008 was met on specific request of appellant and after surrendering the TOD facility by the appellant by virtue of appellant's letter dated 29/03/2008. According to the respondents/DVC that the basic difference between ad-hoc and CD (contract demand) is that to meet the CD of the consumers is the contractual obligation of DVC whereas allocation of ad-hoc power is done on request of consumers on temporary basis on the terms and conditions that ad-hoc power may be withdrawn at any time with prior intimation of two hours and secondly such allocated ad-hoc power may be withdrawn by DVC if there system is constraint/system over loading if there is non-availability of power. Further ad-hoc is also granted when there is already any sanctioned load in the feeder and power supply is not commenced to a committed consumer.

6. The further case of respondents is that enhancement of contract demand from 9.2 MVA (TOD) to 12.2 MVA (Non-TOD) with effect from 02/04/2008 was made based on appellant/consumer specific request and specially after surrendering TOD facility by the consumer. This has been done by the appellant after the meeting with the Secretary, DVC on 04/03/2008 when they agreed to reduce its outstanding dues to Rs. 4.00 crores and to withdraw TOD facility. Therefore further claim of availing TOD facility does not arise till the appellant surrenders the enhanced 3 MVA.

7. According to the respondents/DVC as per power purchase agreement executed by and between the respondents/DVC and M/s Balajee Electrosteels Ltd. the minimum guaranteed energy charges calculation as per schedule of tariff is based on the maximum demand of the whole month of the consumer or the contract demand of the consumer, whichever is higher. The consumer/appellant having the facility of TOD scheme are not benefited for the calculation of Minimum Guaranteed Energy (MGE) Charges.

8. The further case of respondents/DVC is that during July, August, 2007 ad-hoc allotment of contract demand upto 2.3 MVA (over and above 9.2. MVA) was allowed to appellant and subsequently, allocation of ad-hoc power upto 6.8 MVA over and above of CD 9.2 MVA was also allowed which was acted and based on the DVC system capability for the said feeder together with specific request of the consumer. In the mean time M/s Tulsian Metals Pvt. Ltd. was also extended the power through the same feeder was for 3.25 MVA which was made available to M/s Tulsian Metals Pvt. Ltd. in November, 2007. Therefore the ad-hoc allocation to appellant/consumer was stopped in order to restrict the system capability load within permissible limit.

9. According to respondents/DVC the enhancement of contract demand from 12.2.MVA to 16MVA is not possible at present due to infrastructural problem/technical constraint of DVC system because the conductor used in this line is ACSR-DOG. Considering optimum loading of the said conductor to be 291 Amp. (Equivalent to 17 MVA app.) the line will be loaded beyond its capacity and will result in voltage drop and if the overload continues, then it may result failure in the line at any moment. The respondents is also asserted that in accordance with the Clause-2 (a)(iii) of bilateral agreement executed by and between the appellant and respondents is a service line and apparatus although paid for by the consumers is the property of DVC and DVC is entitled to supply power from such service line. The appellant has surrendered TOD facility therefore the appellant is not eligible to enjoy facilities related to TOD tariff namely availing of 25% more power during off peak hours, concessional tariff at 65% of energy charge during off-peak hours if load factor is 0.7 and power factor is 0.92 for the quantum of energy above 70% L.F. during off-peak period.

10. In reply to supplementary affidavit-cum-proposal for alternative relief which was filed on behalf of the appellant dated 24/04/2010, the respondents/DVC has asserted that the appellant is drawing power from a common feeder with M/s Super Steel Casting Ltd. (2.7 MVA) and M/s Tulsian Metals Pvt. Ltd. The conductor used in this line is ACSR-DOG and load carrying capacity is 17 MVA approx. At present, the line is already loaded beyond its capacity which may result in voltage drop in this line. During last one year combined consumed load of other two consumers namely M/s Super Steel Casting Ltd. and M/s Tulsian Metals Pvt. Ltd. (started November, 2007) are around 5.4 MVA to 5.6

MVA. and considering 12.2 MVA (Non TOD) load of appellant, the aforesaid line is already overloaded (total 17.6 to 17.8 MVA). After commissioning of M/s Tulsayan Metals Pvt. Ltd. (November, 2007) no ad-hoc was sanctioned to appellant till date and for the last one year the aforesaid line is running with continuous over-loading and in order to grid stability may be endangered. On the aforesaid ground the respondents have prayed for dismissal of appeal of appellant.

11. After hearing arguments of the learned lawyers of both sides and pleadings of both the sides and on perusal of documents produced in this case, the following issues are framed for decision thereon :-

Issues

- (1) Issue no. 1- Whether the appellant/consumer is entitled to enhance the contract demand from 12.2 MVA (non TOD) to 12.2 MVA with TOD off-peak period
- (2) Whether the respondents can be directed to revise its monthly energy bills since July, 2005 on the basis of TOD tariff till date or not.
- (3) To what relief/relieves the consumer/appellant is entitled thereof.

FINDINGS

12. **Issue no. 1-** In the memo of appeal the appellant/consumer has prayed for enhancing its contract demand from 12.2 MVA to 16 MVA with TOD facility during off-peak hours. But in supplementary affidavit-cum-proposal for alternative relief dated 24/04/2010 the appellant has prayed for extension of contract demand of 13.7 MVA with TOD benefit, extra load facility to the appellant to the tune of 113% upto a maximum limit of 13.7 MVA . On this issue it has been argued by Sri Ajit Kumar, learned Advocate appearing on behalf of appellant/consumer that the appellant/consumer was getting 16 MVA power out of which contract demand was of 9.2 MVA and ad-hoc power to the tune of 6.8 MVA and at that time the respondents had not difficulty but when the appellant/consumer is demanding the contract demand at 12.2 MVA with TOD benefit, the same irks the respondents. In view of the contract demand of 12.2 MVA, the appellant shall be entitled to consume further 25% load/MVA during off peak hours which will make the total load to the tune of 15.2 MVA which will be below 16MVA which the appellant was getting earlier by way of ad-hoc arrangement which was infact

permanent in nature and without any restrictions or withdrawal from the side of the respondents. It has been further contended on behalf of appellant that when the respondents/DVC were permitting load of 16 MVA to the appellant in the name of ad-hoc arrangement but now the respondents are refusing to grant TOD benefits to the appellant even upon 12.2 MVA which will entitle the appellant to avail maximum of 15.2 MVA during off peak hours. It has been argued by the learned Sr. Counsel of the respondents that if the appellant/consumer is allowed TOD benefits of 25% upon 12.2 MVA and other consumers namely M/s Super Steel Casting Ltd. which is having contract demand of 2.7 MVA avails upto 3.37 MVA and M/s Tulsian Metals Pvt. Ltd. who has a contract demand of 3.25 MVA avails upto 4.06 MVA, the total load on the line shall be 22.68 MVA which shall be much excess. The aforesaid figure as advanced by the learned Sr. Counsel of the respondents is far from reality because for the past one year consumption of M/s Tulsian Metals Pvt. Ltd. has been 3130 KVA and that of M/s Super Steel Casting in the past one year has been 2565 KVA, thus the total load upon the line if the appellant's maximum permissible load is also included should have been not more than $3.13 \text{ MVA} + 2.56 \text{ MVA} + 15.25 \text{ MVA} = 20.94 \text{ MVA}$ whereas the respondents have permitted load upto tune of 22.23 MVA under same system. It has been further argued on behalf of appellant/consumer that the appellant has agreed to avail the maximum load to the tune of 113% of 12.2 MVA which will make the maximum consumption of the appellant as $12.2 \text{ MVA} + 1.57 \text{ MVA} = 13.7 \text{ MVA}$ only and other way the load upon the system shall be much less than what was earlier supplied at. The appellant has also proposed at paragraph (16) of his supplementary affidavit-cum-proposal for alternative relief dated 24/04/2010 that the respondents be directed to permit TOD extra load facility to the appellant even to the tune of 113% (in place of 125% as available to others) i.e., upto a maximum limit of 13.7 MVA in place of normal permissible 15.25 MVA but in any case the financial benefits of TOD must be allowed to the appellant. The appellant has further undertaken in paragraph (19) that whenever any load restriction shall be imposed, it will abide by that and it will always co-operate with the respondents. Since, the appellant has limited its load well within 12.2 MVA till now therefore argument of respondents regarding extra unbearable load etc. is highly untenable and there can be no rational why on that basis and particularly when the appellant is limited its load to the

said extent only, the financial benefits of consumption during off peak period can be denied to the appellant.

13. On the other hand Sri S.B. Gadodia, Learned Senior Counsel of respondents has argued that the appellant's company was earlier provided with contract demand of 5.5 MVA in the year 1999 and subsequently this contract demand was increased to 9.2 MVA and after that 12.2 MVA on their request and the appellant Farm was also enjoying TOD facility from May, 2001 till March 2008 as opted by the company, the appellant/consumer was allowed ad-hoc power supply till the new consumer M/s Tulsian Metals Pvt. Ltd. (3.25 MVA) comes into the system. He has further contended that the difference between the ad-hoc and contract demand is that to meet contract demand of the consumer is the contractual obligation of respondents/DVC whereas allocation of ad-hoc power is done on the request of the consumers on temporary basis when there is excess power in the system of DVC. It has been also argued on behalf of respondents that enhancement of CD from 9.2 MVA (TOD) to 12.2 MVA (Non-TOD) with effect from 02/04/2008 was made on the specific request of the consumer/appellant and after surrendering TOD facility to the appellant in order to restrict system capability within the permissible limit. The conductor used in this line is ACSR-DOG and load carrying capacity of the conductor is 17 MVA approx. The appellant's Company as well as M/s Super Steel Casting Ltd. (2.7 MVA) and M/s Tulsian Metals Pvt. Ltd. are drawing power from a common feeder and those line is already beyond its capacity which may result in voltage drop in this line. The appellant has also complained regarding voltage drop of their system. According to the respondents, the combined consumed load of other two customers i.e., M/s Super Steel Casting Ltd. and M/s Tulsian Metals Pvt. Ltd.(started November, 2007) for the last one year are around 5.4 MVA to 5.6 MVA. After considering 12.2 MVA (non TOD) load of appellant, the aforesaid line is already overloaded (total 17.6 to 17.8 MVA). No ad-hoc was sanctioned to appellant after commissioning of M/s Tulsian Metals Pvt. Ltd. and for the first one year the aforesaid line is running with continuous over loading.

14. But I do not find force in the aforesaid contentions made by the respondents/DVC because the respondents/DVC has itself stated in its counter affidavit dated 14/01/2010 that the appellant's company was enjoying TOD facility from May, 2001 till

March, 2008 on contract demand of 12.2 MVA. I also do not find any force in the contention of the respondents that the line of the respondent is running with continuous overloading because M/s Tulsian Metals Pvt. Ltd. was commenced in November, 2007 but even thereafter till March, 2008 the respondents used to provide TOD facility on 12.2 MVA to the appellant. Earlier the appellant was allowed up to 16-17 MVA which had continued for long and without any restriction. The total consumption in the last one year of M/s Tulsian Metals Pvt. Ltd. has been 3130 as stated at paragraph (10 & 11) and that of M/s Super Steel Casting Ltd. for past one year has been 2565 KVA. As such the total load upon the line if the appellant's maximum permissible load is also included, shall not be more than 20.94 MVA whereas earlier respondent has permitted load upto the tune of 22-23 MVA on the same system. So far as the contention of respondent is concerned that the TOD facility was withdrawn from the company of appellant on request of appellant himself. This in my view is misconceived by the respondents as well as by the learned CGRF/DVC, Maithon because the appellant since May 23, 2008 (annexure- R/1) and vide letters dated April 14, 2008, June 24, 2008 & June 05, 2008 and others are demanding TOD facility during off peak hours even on contract demand of his 12.2 MVA. On the other hand, the respondent authority had compelled the appellant to forgo the TOD facility and to deposit Rs. 4.00 crores which the appellant had accepted the condition imposed by the officers of the DVC and it can not be considered to be a binding affect in not allowing the TOD facility in off peak period on 12.2 MVA as such findings of the CGRF/DVC on this issue is set aside and I am led to hold that the appellant/consumer is entitled to get TOD facility during off peak period on 12.2 MVA from the respondents/DVC to the tune of 113% and at the same time the respondents will be at liberty to make any such load restriction imposed by the respondents/DVC if they required and accordingly this issue No.- 1 is decided in favour of appellant and against the respondents/DVC.

15. **Issue No. 2** - On this issue it has been submitted by the learned lawyer of the appellant that the consumer is liable to make payment of minimum guaranteed charges but at the same time the consumer having TOD metering the minimum guaranteed energy charges calculated is based on the maximum demand for the month whichever is higher and the power factor at the rate of 0.85%. The rebate is allowed on the basis of

consumption over and above the minimum guaranteed energy consumption in terms of the agreement. But on the other hand it has been submitted on behalf of respondents that as per power purchase agreement executed between both the parties, the minimum guaranteed energy charges calculation as per schedule of tariff is based on the maximum demand of the whole month of the consumer or contract demand of the consumer, whichever is higher . As such consumers having the facility of TOD schemes are not benefited for the calculation of minimum guaranteed energy charges. I also find force in the aforesaid contentions of the learned Sr. Counsel of the respondents and I also find myself in agreement with the findings recorded by the learned CGRF/DVC, Maithon on this point and I am led to hold that the appellant/consumer was enjoying TOD facility from May, 2001 to March, 2008 as opted by the company itself and the respondents/DVC is raising monthly power supply bill based on joint meter reading statement as per bilateral agreement executed between the appellant and the respondents, therefore no question of revision of energy bills as prayed by the appellant/consumer can be allowed and accordingly this issue is decided against the appellant and in favour of respondents/DVC.

16. In the result, this appeal is partly allowed and the Judgement/order dated 04/09/2009 passed in case No. 01 of 2009 passed by the Learned CGRF/DVC, Maithon is modified and in accordance with the decision on issue No. 1. The respondents/DVC is directed to execute an agreement, enhancing the contract demand of consumer/appellant of 12.2 MVA with TOD benefit during off peak period, extra load facility to the appellant to the tune of 113% and the respondents/DVC will be at liberty to make any load restriction as and when required within one month from the receipt of the order failing which the appellant/consumer will be at liberty to move this Forum for implementation of this order. As decided in issue No. 2 the appellant/consumer is not entitled for revision of energy bills as prayed on behalf of appellant/consumer. Accordingly this appeal is disposed off.

Let a copy of this order be served on both the parties.

Sd/-
Electricity Ombudsman

