IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.02.2020
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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 3093 of 2013
and M.P.Nos.2 and 3 of 2013

M/s. Globecast Steel Ltd.,
(formerly known as Kaleidoscope Energy Ltd)
No.1F, Century Plaze,
No.560-562, Anna Salai,
Teynempet, Chennai - 600 018.
Rep. by its Director. ...Petitioner

-vs-

1. The Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO), Rep. by its Chairman & Managing Director, No.144, Anna Salai, Chennai - 600 002.

2. The Chief Financial Controller/Revenue, The Tamil Nadu Generation and Distribution Corporation Ltd.(TANGEDCO), No.144, Anna Salai, Chennai - 600 002.

3. The Superintending Engineer, The Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO), Vellore Electricity Distribution Circle, Gandhi Nagar East, Vellore - 6.

4. The Deputy Financial Controller, The Tamil Nadu Generation and Distribution Corporation Ltd., Vellore Circle, Vellore. ... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 3rd respondent herein in Lr.No.SE/TANGEDCO/DFC/AS/A1/F.1281/2012 dated 30.11.2012 and the proceedings of the 2nd respondent herein in LR.No.CFC/REV/FC/REV/AAO/REV/F.HT/D.883/12 dated 28.12.2012 in respect of the petitioner's HTSC No.1281 situate at SIPCOT Industrial Estate, Ranipet, Vellore District and the Bill dated 31.1.2013 of the 4th respondent in respect of HTSC No.1281 of the petitioner and quash the same in so far as it relates to the demand charges at 100% of the monthly minimum charges and consequently forbear the respondents herein from, in any manner, demanding or collecting monthly minimum charges above 20% of the billable demand or the actual recorded demand and the actual consumption charges with effect from April 2012 and direct the respondents herein to adjust the amounts collected in excess of the same against the future bills of the petitioner in respect of HTSC No.1281 situate at SIPCOT Industrial Estate, Ranipet, Vellore District.

For Petitioner : Mr.AR.L.Sunderesan,
Sr. Counsel for Ms.AL.Ganthimathi
For Respondent : Mr.M.Varun Kumar [R1 to R4]

ORDER

Heard Mr.AR.L. Sunderesan, learned Senior Counsel for Ms.Al.Ganthimathi, learned counsel for petitioner and Mr.M.Varun Kumar, learned counsel for respondents 1 to 4.

2. With consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. The petitioner is aggrieved by the letter sent by the 3rd respondent dated 30.11.2012 in response to the petitioner's representation dated 22.11.2012. In the said representation, the petitioner stated that they were running foundry unit in Ranipet with a sanctioned demand of 975 KVA and have been allotted demand quota of 575 KVA due to R & C orders with which their unit with frequent power interruptions could not run since it was a foundry unit having electric induction furnace. The petitioner would further state that required demand was not available and therefore, they could not operate their foundry and hence, they had resorted to temporary closure of the unit since 01.04.2012. The petitioner referred to the meter reading since 01.04.2012 to substantiate their stand. The petitioner believed that the power crisis will end soon and therefore, they were keeping their unit under temporary closure. The petitioner intend to commence the operation from 01.07.2013 or when power is provided with minimal interruption, whichever is earlier.

4. However, the petitioner would state that they have been regularly paying the monthly bills, which are only the minimum demand charges and they understand that as per Clause of the Tamil Nadu Electricity Supply Code, 2004of TNERC (hereinafter referred to as 'the Code) they are liable to pay only 20% of the billable demand during the temporary closure period. Therefore, the petitioner requested that their November, 2012 bill may be given as per Clause 6 of the Code and excess amount paid by them from April, 2012 may be adjusted against their future power bills. This representation has been rejected by the 3rd respondent by the impugned communication stating that Clause 6 of the Code will be

applicable only for the disconnected services.

5. Subsequently, the petitioner has given another two representations dated 03.12.2012 and 07.12.2012 to the 3rd respondent requesting for sanction of minimum charges payable during the temporary closure period. In response to those two communications, the 2nd respondent by communication dated 28.12.2012 addressed the 3rd respondent stating that the 3rd respondent can consider the request of the petitioner from the date of intimation i.e., 22.11.2012 subject to submission of certificate obtained from the Labour Officer. It appears that the petitioner did not submit requisite certificate and consequently notice of disconnection dated 10.01.2013 was issued.

6. Subsequently, the petitioner addressed the 3rd respondent by letter dated 23.01.2013 enclosing a demand draft for Rs.2,04,013/-(Rupees Two lakhs Four Thousand Thirteen only) towards their current bill and made a request to conclude the earlier requests at the earliest, before the next billing cycle. Thereafter, the bill for the month of January, 2013 was raised on 31.01.2013 demanding a total sum of Rs.1,68,819/-(One lakh sixty eight thousand and eight hundred and nineteen only),of which, the major amount is towards the demand charges at Rs.300/- per KVA for Rs.1,42,290/- (Rupees One Lakh Fourty Two Thousand Two Hundred and Ninety only) was demanded. The petitioner challenged this order by way of this writ petition and an interim injunction was granted and the order of injunction is in force till today.

7. The respondents have filed a counter affidavit justifying their demand. On a perusal of the counter affidavit, the stand taken by the respondent is justified, because the petitioner's electricity supply was not disconnected and the allocated amount of energy i.e., 474KVA i.e., 90% of the 527 KVA has been set apart for the petitioner and even if the petitioner has not utilised it, the demand charges may be required to be paid.

8. The learned Senior Counsel for the petitioner seeks to bring their case under the first proviso to Clause 6(b) of the Code. The said proviso states that where the Licensee is prevented from supplying electricity owing to cyclone, floods, storms, fire, strike or lockout in the Licensees establishment or other occurrences beyond the control of the Licensee, or if the Licensee is satisfied that the consumer (petitioner) has been prevented from consuming electricity either in whole or in part for similar reasons, the Licensee may recover from the consumer (minimum charges) at 20% of the billable demand or recorded demand, whichever is higher, besides charges for the actual consumption of electricity.

9. If the petitioner seeks to bring their case under Clause 6(b) of the Code then the onus in on them to establish that they were prevented from consuming electricity owing to any one of the circumstances, which have been stated above. On a plain reading of Clause 6(b), it is seen that those are all force majeure conditions, whereas, it appears that the petitioner's case is not a force majeure condition. In any event, this aspect was not placed before the 3rd respondent by the petitioner earlier and placed before this Court for the first time. Since this ground raised by the petitioner requires interruption of Clause 6(b) of the proviso, this Court is inclined to give one opportunity to the petitioner to go before the 3rd respondent raising such a plea, who shall consider it on merits.

10. In the light of the above, the writ petition is disposed of by granting one opportunity to the petitioner to file a fresh representation before the 3rd respondent raising the aforementioned contentions and producing documents to substantiate their stand. If the petitioner does so within period of two(2) weeks from the date of receipt of a copy of this order, the 3rd respondent shall consider the same and pass a speaking order on merits and in accordance with law. However, if the petitioner fails to avail this opportunity granted by this Court then the benefit of this order will not enure to the petitioner and the writ petition will automatically stand dismissed.

In the result, the writ petition stands disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
Rep. by its Chairman & Managing Director,
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Vellore Electricity Distribution Circle,
Gandhi Nagar East, Vellore - 6.

4. The Deputy Financial Controller,
The Tamil Nadu Generation and Distribution Corporation Ltd., Vellore Circle, Vellore.

+1cc to M/s.AL.Gandhimathi , Advocate SR.No. 10736
+1cc to Mr.M.Varun Kumar , Advocate SR.No. 10462

W.P.No.3093 of 2013
and M.P.Nos.2 and 3 of 2013

A.SK(17/03/2020)