

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO.221 OF 2021

Dated: 09.07.2024

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

**M/s HNV Castings Private Limited
(Formerly Known as Garima Overseas Ltd)
Through its General Manager (Accounts & Finance),
B-146, EPIP, NH-8,
Neemrana- 301705 ... Appellant(s)**

VERSUS

- 1. RAJASTHAN ELECTRICITY REGULATORY COMMISSON**
Through its Secretary,
Vidyut ViniyamakBhawan,
Saharkar Marg,
Near State Motor Garage,
Jaipur – 302001 ...Respondent No.1
- 2. JAIPUR VIDYUT VITRAN NIGAM LTD.,**
Through its Chief Engineer (CA-HQ),
Vidyut Bhawan,
Jaipur (JVVNL/Jaipur Discom) - 302005 ...Respondent No.2
- 3. STATE POWER COMMITTEE,**
Through Secretary Cum Chief Engineer (NPP & RA),
Rajasthan VidyutPrasaran Nigam Ltd.,
Vidyut Bhawan, Jyoti Nagar,
Jaipur (SPC) – 302005 ...Respondent No.3
- 4. RAJASTHAN VIDYUT PRASARAN NIGAM LTD.,**
Through its The Chief Engineer (LD),
Heerapura, Jaipur (SLDC) – 302024 ... Respondent No.4

Counsel on record for the Appellant(s) : S. Vallinayagam for App. 1

Counsel on record for the Respondent(s) : for Res. 1

Sandeep Pathak
Archana Pathak Dave for Res. 2
Preetika Dwivedi for Res. 3
Preetika Dwivedi for Res. 4

JUDGMENT

PER HON'BLE SMT. SEEMA GUPTA, TECHNICAL MEMBER (ELECTRICITY)

1. The instant appeal is preferred challenging the order dated 15.10.2019 passed by the Rajasthan Electricity Regulatory Commission ("**RERC/Respondent No 1/State Commission**") in RERC-1483 of 2019, whereby the Commission has upheld the charges levied by Distribution licensee, being in accordance with the Rajasthan Electricity regulatory Commission (Terms and Conditions for open Access) Regulations, 2016 (in short "**RERC OA Regulation, 2016**") on the Appellant.

2. The Appellant- HNV Castings Private Limited (formerly M/S Garima Overseas Ltd) is an HT consumer of JVVNL with a Contract Demand of 6500 KVA (prior to 23.04.2017 Contract Demand – CD was 4980 KVA) at 33 KV.

3. Respondent No. 2 is Jaipur Vidyut Vitran Nigam Limited (for short "**JVVNL/Jaipur Discom/Distribution Licensee**") is a distribution Licensee, Respondent No. 3 is the State Power Committee (for short "**SPC**") and Respondent No. 4, the Rajasthan Vidyut Prasaran Nigam Ltd ("**SLDC**") is the Nodal Agency for grant of No Objection

Certificate/Concurrence/ prior standing clearance approving the open Access capacity under the Regulation 12 (6) of RERC OA Regulation, 2016.

4. The Appellant, besides consumer of Respondent No 2, is also availing power under Open Access through Indian Energy Exchange (IEX) as per the schedule approved by the 4th Respondent- SLDC.

a) Two types of open access are involved in the transaction.

(i) Intra State open access for using the transmission network of the state transmission network under RERC OA Regulations.

(ii) Inter State open access for using the transmission network of the central transmission network under CERC OA Regulations.

5. The Learned counsel for the Appellant submitted that Appellant had applied for NOC with the SLDC on 19.04.2016 for the period 25.04.2016 to 24.05.2016 for purchasing power from IEX, which was granted by SLDC vide approval dated 28.04.2016 for the period 28.04.2016 to 24.05.2016. Similarly, the Appellant applied for NOC with the SLDC on 21.06.2016 & 24.06.2016 for the period 25.06.2016 to 24.07.2016 for purchasing power from IEX, which was granted by SLDC vide approval dated 27.06.2016 for the period 27.06.2016 to 24.07.2016. Therefore, there was no NOC from SLDC for bidding power from IEX for the delivery dates 26.04.2016 and 25.06.2016 for the Appellant. Present adjudication pertains to charges imposed by Respondent No 2 with regard to overdrawal from Grid for 26.04.2016 & 25.06.2016.

6. Learned counsel for the Appellant submitted that an inadvertent mistake was made by the lower staff of the appellant for scheduling power from IEX for above dates and intimated the same to Respondent No.2 – Jaipur DISCOM, SLDC and RDPPC. However, in the absence of NOC for the referred dates, IEX did not communicate any schedule for the Appellant to SLDC for approval. Hence, there was no "approved schedule" given by SLDC for the two dates 26.04.2016 and 25.06.2016 for the Appellant. The case of the Appellant is that based on the inadvertent request made by the lower staff of the Appellant, for scheduling/drawing power for these two dates, the distribution licensee wrongly determined the admissible demand relying on Regulation 26 (7) of RERC OA Regulations, 2016 and levied a penalty for over capacity utilisation on 26.04.2016 and 25.06.2016 amounting to Rs 8,61,857/- & Rs.11,95,348/-. Aggrieved by the charges imposed by the Distribution Licensee, the Appellant approached the Respondent No.4-SLDC on 16.04.2018 under Regulation 30(1) of RERC OA Regulations 2016, which passed the following order dated 30.05.2018, which reads as under:

"M/S Garima Overseas Ltd, Neemrana (presently known as HNV Castings Pvt Ltd.) did not follow the given total admissible drawl schedule of dated 26.04.16, 25.06.16 & 29.06.2017 and utilised the excess capacity Over total admissible drawl in the time block 22:45 hours to 23:00 hours , 16:00 hours to 16:15hours & 11.15 hours to 11.30 hours on these dates respectively.

Hence the penalty calculated. & imposed by Jaipur Discom as per Regulations 21(v) & 26(8) of RERC (Terms & conditions of open access Regulations 2016 are in order."

7. Subsequent thereto, the Appellant approached Respondent No.3-SPC, however, the SPC upheld the SLDC decision vide its order dated 15.03.2019. Thereafter, the Appellant filed a petition being RERC-1483 of 2019 before Respondent No. 1-RERC. The Respondent No.1 vide its order dated 15.10.2019 upheld over-capacity utilization charges observing as follows –

“In view of the above, Commission is of considered view that the charges levied by Respondent Discom on the Petitioner are in accordance with the provisions delineated within the OA Regulations, 2016. Therefore, the Commission deems it appropriate not to intervene in the decisions of SLDC and SPC and the prayers of the Petitioner cannot be granted.”

8. Challenging the order dated 15.10.2019 passed by Respondent No.1, the Appellant has preferred the instant appeal. Learned counsel of the Appellant contended that it is not an intra-state Open Access consumer as it has never availed power from anyone other than JVVNL within the State as well as provisions of RERC OA Regulation 2016 shall apply to it when the appellant is granted NOC by the SLDC of the State and permitted to use the intra-state network in conjunction with the inter-state network to get power from outside the State i.e., from IEX. It is a fact that SLDC did not issue NOC for 26.04.2016 & 25.06.2016 so in the absence of NOC, the appellant did not have permission to use the intra-state network in conjunction with the inter-state network. Consequently, the appellant is not an open-access consumer and is only a consumer of the distribution licensee JVVNL. Learned counsel of Appellant further submitted that there was no ‘approved schedule’ granted to it by SLDC for drawl of power from IEX for 26.04.2016 and 25.06.2016, calculation of over drawl and imposition of penalty on the Appellant is not justified

as Regulation 21 (v) of RERC OA Regulation 2016 mandates schedule approved by the SLDC for calculating the unscheduled interchange pricing. In the absence of an “approved schedule” by SLDC for the above-said two dates, Unscheduled Interchange Pricing cannot be determined under Regulation 26 (8) r/w Regulation 21 (v) and consequently no penalty could be imposed.

9. It is further contended by the learned counsel of Appellant that Regulation 27 (8) of RERC OA Regulation 2016, prescribes the procedure for the collection of charges from open-access consumers under the RERC OA Regulation 2016. Respondents SLDC and JVVNL did not bring on record any document showing compliance with the above Regulation. The non-compliance with the above Regulation establishes the fact that neither SLDC nor JVVNL considered the appellant as an open-access consumer for collection of charges.

10. Learned Counsel for Appellant submitted that, State commission has not dealt with the issue of there being no approved schedule by SLDC and its implication on the imposition of penalty under Regulation 21 (v). State commission has wrongly held the scheduling of power on 26.04.2016 & 25.06.2016 even without NOC holding that admissible drawl from the DISCOM gets automatically reduced and an open access consumer is liable to pay penal charges for over-drawl above the admissible drawl. Whereas, the penal provision under Regulation 21 (v) recognizes only the “schedule approved” by the SLDC to calculate over-drawl and not ‘admissible drawl’. In fact, in the last paragraph of the impugned order, the Regulatory Commission directs the SLDC to develop a suitable effective mechanism to ensure that as per Regulations, the ‘approved schedule’ is communicated to open access

consumers immediately so that such types of disputes do not arise again. Accordingly the Appellant has prayed for the following reliefs:-

(i) Admit the appeal and set aside the order dated 15.10.2019 passed by the Rajasthan Electricity Regulatory Commission in RERC-1483 of 2019; and

(ii) Pass any other order or orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts of the case.

11. Per Contra, Learned counsels for Respondent submitted that Appellant is a regular short Term open Access customer since 2015 and has all facilities like ABT Meters etc. and has been availing power under open Access and has been granted NOC from time to time. It is a fact that Appellant did not have NOC for scheduling power from open access on 25.04.2016 and 25.06.2016, yet the Appellant not only gave schedule to SLDC and DISCOM but also submitted bid with the exchange. Learned counsel for Respondent rebutted the claim of the Appellant that in the absence of NOC, it is not covered by RERC OA Regulations 2016, but only under CERC Open Access Regulation, firstly this ground was not canvassed before State Commission as well as Regulation 3 of RERC OA Regulation 2016, clearly stipulates that these regulations shall apply to open- access customers for use of intra State transmission system and/or the distribution system of Licensee in the State including when such system is used in conjunction with inter-state system. As per Regulation 7(3) of the RERC OA Regulation 2016, Term "Short Term Open access customer" is a person who has availed or intends to avail access of inter-state transmission system and therefore Appellant cannot now say it is not an Open Access Customer of RERC OA

regulations as for the referred dates it did not have the NOC. The Appellant has been availing power under open Access regularly and thus the Appellant is an open Access customer under RERC OA Regulations 2016.

12. Learned counsels for Respondents submitted that Regulation 21 of RERC OA Regulation 2016 states that the payment settlement for mismatch between the schedule and the actual drawal/injection in both intra-state and inter-state transactions by customers connected to the transmission/distribution network of the State licensees shall be governed by the pricing mechanism as specified therein. This will squarely apply to the Appellant. Further Regulation 26(6) of the RERC OA 2016 Regulations provides that the short-term open access customer shall provide the injection/drawal schedule for intra-state transaction every day to SLDC/DISCOM and RDPPC. Regulation 26(7) states that the consumer shall intimate the block-wise maximum power to be scheduled from inter-state open access each day to SLDC, RDPPC and DISCOM. The Regulation 20(4) of the CERC Regulations, 2008 states that any mismatch between scheduled and actual drawal points and scheduled and actual injection at injection points for the intra-state entities shall be determined by the SLDC.

13. Learned Counsel for Respondent 4 submitted that there has been no default on the part of SLDC. Regulation 8(3)(c) of the 2008 Regulations state that SLDC is required to communicate NOC within 3 days of the receipt of the application and Defects in application, if any, within 2 days of such receipt. The said timelines were complied with in the present case. Application for NOC dated 19.04.2016 was received by SLDC on 25.04.2016. NOC was granted on 28.04.2016 i.e. within 3

days. Likewise, Application dated 21.06.2016, was received on 21.06.2016. Defects were notified on 23.06.2016 (i.e. within 2 days). NOC was again requested for on 24.06.2016 and same was given on 27.06.2016 (within 3 days). At the stage that consumer gives schedule to SLDC, SLDC is under no obligation to speculate if IEX will approve schedule and to what extent with respect to each consumer. The schedule so given by the customer is taken 'as is' to calculate the admissible drawl from DISCOM. Under Clause 2.4 of the Procedure for Scheduling, NOCs are reviewed on quarterly basis only.

14. Learned counsel for Respondents also submitted that under Regulation 26(7) (ii) of the RERC (Terms and Conditions for Open Access) Regulations, 2016, the short-term open access customer is required to intimate in writing, the block wise maximum power to be scheduled from inter-state open access every day to the SLDC, RDPCC and the Discom before 10:00AM of the day preceding the day of drawl. As per Regulation 26(7)(iv), schedule given by consumer is used to calculate block wise admissible drawl from DISCOM. If actual schedule approved is less, then total admissible drawl (admissible drawl from DISCOM + approved drawl from IEX) stands reduced. The expression "admissible drawal shall be reduced to that extent" in Regulation 26(6)(v) must necessarily mean "total admissible drawal" and not admissible drawal from DISCOM. The regulations use the specific expression "admissible from DISCOM" where it is so intended. Under no circumstance, the admissible drawal from DISCOM, once calculated, can vary. If actual drawl is more than the total admissible drawl, under Regulation 21(v), it is assumed that over-drawl is from DISCOM and the excess capacity utilized is billed under Regulation 21(v). Regulation

21(v) is excess capacity charges and not penalty. Learned counsel reiterated that under no circumstance, the admissible drawl from DISCOM stands increased, once calculated, as approval of schedule by IEX happens at a later stage. Procedure for Grant of Open Access laid down by RERC also reiterates the same.

15. Regulation 49(m) of the CERC (Indian Electricity Grid Code) Regulations 2023, provides for procedure for scheduling of collective transaction. Scheduling is time sensitive. These provisions relating to Unscheduled Interchange Pricing are for the purpose of maintaining grid discipline and grid security. It is in the nature of charges for consuming in excess of admissible drawl. DISCOMS also further assess their day-ahead requirement. Drawl Schedule of DISCOM is prepared, amongst other things, on the basis of the requirement assessed by the DISCOM. Any deviation by DISCOM, makes it also liable for Deviation Charges. Hence, deviation by individual customers has a cascading effect. Reliance is placed on “**Central Power Distribution Co. v. CERC,**” (2007) 8 SCC 197, Para 10, 11.

16. Learned counsel of Respondents submitted that Appellant claim of inadvertent mistake in giving schedule to DISCOM is not tenable as Appellant is regularly availing power under Open Access and inspite of knowing it does not have a NOC, yet submitted a bid and schedule for 24.06.2016 and 25.06.2016. It was speculative and therefore no exemption should be granted to the Appellant. Acceptance of submission of the Appellant will lead to absurd results. An honest consumer who may have *bona-fide* submitted bid and submitted day-ahead schedule, but is denied power by IEX, will be liable to pay UI charges. On the other hand, a consumer like the Appellant, who was

fully aware he did not have NOC for the requisite dates and yet submitted a bid and schedule, will be exempted from payment of UI Charges. The latter compromises grid safety and walks away without payment for even unscheduled power drawn from DISCOM, if the submission is accepted. The state commission has rightly held that schedule of power is done on the basis of schedule given by consumer. The whole exercise being time sensitive the SLDC cannot venture into the reasons for IEX not approving the bid of individual customer.

17. It has been further contended by learned counsel of Respondents that Power Exchanges furnish detailed breakup of each injection and drawal to SLDC; SLDC then approves the open-access schedule. Under the 2016 Regulations, SLDC also approves the admissible drawal from DISCOM. The purpose of imposing UI Charges are (i) to maintain grid discipline and ensure consumers comply with schedules given by them (b) charges are payable for deviation from final schedule i.e. any drawl in excess of schedule. The expression “actual schedule approved in inter-state transactions” is used in Regulation 26(6)(v) and the expression “schedule approved by SLDC” in Regulation 21(v). Regarding the contention of Appellant, that since no open-access schedule was approved by IEX/SLDC with respect to the appellant, no UI charges can be imposed on it, learned counsel submitted that such interpretation of the Regulations, defeats the purpose of the Regulation. The meaning attached to the aforesaid phrase, therefore is that any open access consumer, submitting a bid in the Exchange and day-ahead schedule to SLDC, who breaches the schedule given by IEX and approved by SLDC, is liable to pay charges under Regulation 26 read with Regulation 21. This would apply even in a case where his bid is rejected by the IEX

or not considered by the IEX, for any reason and his name does not find mention in the final schedule approved by SLDC. Payment is for breach of schedule given by consumer himself and thus, excess drawal from DISCOM, where IEX rejects bid/does not consider his bid. Learned counsel further contended that a legislative instrument ought to be interpreted in a manner that achieves the objective of the instrument and the purpose of the legal text. Purposive construction may be given “to iron out the creases”.Reliance is placed on “**Vivek Narayan Sharma v. UOI**”, (2023)3 SCC 1, Para 133-148 and 156.

18. Learned counsel for Respondent No 2 submitted that Appellant is regularly availing power under Open Access and despite having no NOC for 26.04.2016 and 25.06.2016, not only submitted schedule to SLDC and DISCOM but also submitted bid with Exchange (IEX). The contracted demand of Appellant was 4980 KVA for the dates under consideration and according to the schedule submitted to the Discom, as per the RERC Open Access Regulations, 2016, the admissible drawl from the Discom for the concerned dates became 3635 KW on 26.04.2016 and 3629 KW on 25.06.2016 and DISCOM is obligated to reduce the admissible drawl. As per Regulation 26(7)(iv) of RERC OA Regulations 2016, the schedule provided by the consumer is utilized to compute the permissible drawl from the DISCOM on a block-by-block basis and as per regulation Rule 26 (7)(v), if actual schedule approved in inter-State transactions is less, then the admissible drawal shall be reduced to that extent. However, since the Appellant’s actual drawl was more than the admissible drawl then as per Regulation 28 of RERC OA Regulations 2016, charges were laid.

19. Learned counsel for Respondent No2 also submitted that DISCOM like normal consumers takes part in normal day to day bidding process.

Since the transaction for bidding of electricity for subsequent day is executed in one-on-one basis i.e., directly between consumer and IEX, there is no means available with DISCOM to ascertain whether a consumer's bid was successful or not due to various factors. The definitive indication of a successful bid occurs when payment is deducted from the consumer's account, a process for which the DISCOM lacks any viable method which can confirm the same. It is a matter wherein Consumer directly hears back about the success / failure of his transaction without depending upon others. If a consumer draws power in excess of the permissible limit, consequences ensue as prescribed under the RERC OA Regulations, 2016. Notably, there exists no provision within the Regulations to condone any error on the part of an open access consumer.

20. Respondent No2 also supported the arguments put forth by Respondent No 3 & 4 regarding the applicability of RERC OA regulations 2016 for the period when it did not have NOC. Learned counsel of Respondent No2, emphasised that DISCOM is also governed by the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014 and as per which the Respondent Discom is also liable to pay charges whenever there is a deviation for all the time-blocks. As per Regulation 5, the charges for the deviation for all the time blocks shall be payable for overdrawal by the buyer and under-injection by the seller and receivable for under drawal by the buyer, and shall be worked out on average frequency of the time block at specified rate. Learned counsel for Respondent No 2 further submitted that Respondent Discom as a whole has to submit a schedule for any injection (in case of excess power) and drawl (in case the power requirement is more) and if deviates from its schedule, UI

(Unscheduled interchange) will be charged from the Respondent Discom for over drawl and under injection. In case Respondent No. 2 is charged for over drawl as per the CERC Regulations, 2014 then same will have to be recovered from the Appellant himself. That it is important for the Consumers and the Discoms to adhere to their respective schedules to maintain the grid security. The Appellant should not have drawn more energy than what was sent as a schedule by him to not to attract the UI charges. Respondent No. 2 cannot be held liable to compensate Appellant in terms of payment of charges for this over drawl which was solely done by the Appellant deliberately according to his own wish & full knowledge. In case Appellant's plea is upheld then it would lead to contrasting treatment between an honest consumer, who, despite acting in good faith, is held liable for UI charges if denied power by the IEX, and the Appellant, who knowingly lacked the necessary NOC yet seeks exemption from such charges. Such a scenario not only jeopardizes grid safety but also permits the Appellant to evade payment for unscheduled power drawn from the DISCOM. Therefore, in the interest of maintaining fairness and upholding the integrity of the power distribution system, it is imperative to dismiss the Appellant's appeal and uphold the order of the RERC.

Discussion and Analysis

We have heard learned counsels on both sides and perused various documents and following issues needs consideration to decide the Appeal:

- (a) Applicability of RERC Open Access Regulations on Appellant.

(b) Reason for Non-Availability of NOC for 26.04.2016 & 25.06.2016

(c) Levying of Overdrawal charges for 26.04.2016 and 25.06.2016 based on schedule submitted by Appellant even when NOC was not there

Issue: Applicability of RERC Open Access Regulations on Appellant.

21. Learned Counsel for the Appellant has contended that provisions of RERC open Access Regulations apply to the Appellant only when the appellant is granted NOC by SLDC and permitted to use Intra State network in conjunction with the inter-state network to get power from outside the State, in this case from IEX. As Appellant neither had NOC for 26.04.2016 & 25.06.2016 to get power from outside the State nor has availed open Access within the State; it is not an open access customer and is only the consumer of distribution licensee JVVNL, provisions of RERC open Access Regulations do not apply and accordingly overdrawal charges are not applicable on it.

22. Lets look at various provisions of RERC OA Regulations 2016 as enumerated below:

“2(g) *Open access Customer (i) a consumer permitted by the State Commission to receive the supply of electricity from a person other than Distribution Licensee of his area of supply.*

2(h) *“ Open Access consumer’ means a consumer permitted by the Commission to receive completely or partly for its consumption the supply of electricity from a person other than Distribution Licensee of his area of supply”*

“3. Extent of Application

These Regulations shall apply to open access for use of intra-State transmission system and/or the distribution systems of licensees in the State, including when such system is used in conjunction with Inter-State transmission system.

7. Categorisation of inter-state open Access customers

7 (3) Short term open access customer

a person who has availed or intends to avail access of intra-State transmission system and/or distribution system under these Regulations for a period upto one month at a time.”

23. There is no dispute that, Appellant has been a regular open access consumer, availing power from IEX. Regulation 2 (g) and 2 (h) of RERC OA Regulations only assigns definition to ‘Open Access Customer’ and ‘Open Access consumer’ while as per Regulation 7(3), any person who has availed access of intra State Transmission system and/or distribution system under RERC OA Regulations shall be categorised as short term open access customers. Thus, the Appellant being regular open access consumer in the past, absence of NOC for the dates under consideration does not give any leeway to the Appellant for excluding it from the provisions of RERC OA Regulations for that period and in our opinion the Appellant is an Open Access Customer under RERC OA Regulations.

Issue: Reason for Non-Availability of NOC for 26.04.2016 & 25.06.2016

24. It is important to analyse the reasons for non-availability of NOC for two dates; as dispute in present lis is based on non-availability of NOC leading to Levy of overdrawal charges for the two dates, though submitting the schedule to DISCOM was an inadvertent mistake as

claimed by Appellant. Learned counsel for Respondent No 4 submitted that though the Appellant has contended that it has applied for issuance of NOC on 19.04.2016 for the period 25.04.2016 to 24.05.2016, but the application was received by SLDC on 25.04.2016. The Appellant did not submit any documentary evidence to rebut the claim of Respondent No 4 so it can be taken that NOC got applied on 25.04.2016 for the period 25.04.2016 to 24.05.2016. As per Regulation 8 (3) (c) of CERC (Open Access in inter-State Transmission) Regulations 2008, SLDC is required to give its concurrence or no objection, as the case may be, within three (3) working days of receipt of application. In the instant case, NOC dated 28.04.2016 was issued for the period 28.04.2016 to 24.05.2016 within 3 days of receipt of application.

25. Learned counsel for Respondent no 4 also submitted that the Appellant again applied for NOC on 21.06.2016 for the period 25.06.2016 to 24.07.2016; upon receipt of the application on 21.06.2016, within 2 days SLDC communicated deficiencies vide letter dated 23.06.2016 (Regulation [(3A)] provides that deficiencies if any to be communicated within two days) and Appellant applied again on 24.06.2016. NOC was granted on 27.06.2016, within three days for the period 27.06.2016 to 24.07.2016.

26. From the above, it can be easily concluded that Respondent No 4, SLDC has complied with the time lines provided in CERC (Open Access in inter-State Transmission) Regulations 2008, in pointing out the deficiencies and issuing NOC. As such, learned counsel for the Appellant has also not pointed out any deficiency/ procedural delay in issuing of NOC by SLDC. Thus in our opinion, it is Appellant's own deficiency that NOC was not obtained on time for dates under consideration i.e. 26.04.2016 and 25.06.2016.

Issue: Levying of Overdrawal charges for 26.04.2016 and 25.06.2016 based on schedule submitted by Appellant even when NOC was not there

27. Learned counsel for the Appellant has contended, that schedule was inadvertently submitted to Discom and bid were submitted to IEX for purchasing power under open access for the dates 26.04.2016 and 25.06.2016, but in the absence of NOC for these dates, IEX did not process their bid and there was no schedule in DAM market for above referred dates and as such no schedule was approved by SLDC, which is the main requirement for levy of unscheduled interchange charges under Regulation 21(v) of RERC OA Regulations 2016. Thus, they are not liable to pay any unscheduled interchange charges. Learned counsel for the Appellant has also contended that the procedure prescribed in Regulation 27 (8) of RERC OA Regulation 2016 for collection of charges from open Access consumers has not been followed by SLDC and Discom as they never considered the Appellant as an open access consumer for collection of charges.

28. Lets us briefly touch upon the issue of Grid Discipline & Grid Stability in the context of levy of UI charges. Grid stability is the ability of an electric system to maintain a state of equilibrium under normal and disturbed conditions. Grid Stability is crucial for avoiding blackouts, ensuring efficient power delivery and supporting economic and societal functions dependent on reliable electricity. Grid frequency indicates the over or under-generation of electric power, and deviations therein signify an unstable power system. Therefore, to have a stable system, load and generation should always be in equilibrium. Grid Discipline has a crucial role to play in ensuring grid stability and it refers to the adherence to rules, procedures, and standards designed to ensure the efficient and

stable operation of electrical grid. It encompasses the behaviours and actions of all the entities connected to the grid. It is understood that levy of charges for unscheduled power interchange is one such step in maintaining grid discipline. As per Regulation 26 of RERC OA Regulation 2016, compliance and procedure has been prescribed for Open Access consumer with the main objective to maintain Grid Discipline, which includes:

“26 (3) The open access consumer shall restrict the sum of his total drawal from all sources including open access and distribution licensee up to total sanctioned contract demand with the Distribution Licensee”

“26(7) The power purchase under short term inter-State open access including Transactions through power exchange shall be subject to the following:

(i) The consumer shall schedule power from open access for complete 24hours of the day.

(ii) The consumer shall intimate in writing the block wise maximum power to be scheduled from inter-State open access each day to the SLDC, RDPPC and Distribution licensee before 10:00AM of the day preceding the day of drawal.

(iii) The schedule so given shall be uniform at least for a period of eight hours and the minimum schedule during the day shall at any time not be less than 75% the maximum schedule of the day.”

(iv) The schedule so given shall be used to calculate the block wise maximum admissible drawal from the Discom.

(v) If actual schedule approved in inter-State transactions is less, then the admissible drawal shall be reduced to that extent

29. In the instant case, for both the referred dates, the Appellant has indicated schedule not only to Discom but also submitted the bid to IEX, inspite of not having NOC for the referred dates. In terms of Regulation 26(7)(iv) the schedule so given is used to calculate the block wise maximum drawal from the Discom. Thus, indicating a schedule by open access consumer to DISCOM, is to make them aware about their reduced requirement from Discom for next day, as it intends to meet part of its demand from open Access. We take note that the DISCOM like any other normal customer also takes part in day-to-day bidding process. It is also understood that since the transaction for bidding of electricity for subsequent day is executed in one-on-one basis i.e directly between consumer and IEX, there is no means available with Discom to ascertain whether a consumer's bid was successful or not due to various factors. Thus, based on the schedule so submitted by various open Access consumers, including the Appellant, Discom has to plan its requirement for next day including that from Open Access.

30. We find force in the submissions of Respondent No 2 that DISCOM as a whole has to submit a schedule for any injection (in case of excess power) and drawl (in case the power requirement is more) and if it deviates from its schedule, UI (Unscheduled interchange) will be charged from the Discom for over drawl or under injection, as per Regulation 5 of Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014.

“(1) The charges for the Deviations for all the time-blocks shall be payable for over-drawal by the buyer and under-injection by the seller and receivable for under-drawal by the buyer [and over-injection by the seller, except for wind and solar generators which are regional entities, and shall be worked out on the average frequency of a time-block at the rates specified in the table below as per the methodology specified in clause (2) of this regulation”:

31. The UI charges so payable by Discom is to be recovered from defaulting entity (s) including the Appellant. Thus, it is important for the Consumers and the Discoms to adhere to their respective schedules to maintain the Grid Stability.

32. Let's assume a case that some bonafide Open Access consumer submits a schedule to Discom as well as submit bids in IEX and for any reason its bid is not approved then also UI charges shall be applicable in case it draws power more than the admissible drawal after reducing its maximum contracted demand from the schedule so given. Thus, as per existing Regulation, there is no differentiation whether there is inadvertent mistake in giving schedule to DISCOM and IEX or for any reason schedule given in IEX is not approved. The Appellant is a regular open Access consumer and is well aware of the provisions of the Regulation that once it gives schedule to DISCOM, it shall be used to calculate maximum admissible drawal and associated consequences of applicability of UI charges in case it draws more power than admissible drawal so worked out.

33. In our opinion, the Appellant being fully aware of the provisions of RERC OA Regulations 2016, being regular open Access Consumer, should not have drawn more energy than the admissible drawal considering the schedule given by him, even inadvertently, so as not to attract the UI charges.

34. Another contention raised on behalf of the Appellant is that in the absence of approved schedule by SLDC, Regulation 21 (v), imposing liability to pay UI charges is not applicable on him; further Regulation 27 (8), prescribing procedure for collection of charges from open access consumer has also not been complied with.

35. As per Regulation 26 (7)(iv), the schedule so given by open access consumer to Discom shall be used to calculate the maximum admissible drawal from the Discom; Regulation 26 (7)(v) if “actual schedule approved” in inter- state transaction is less than the admissible drawal then same shall be reduced to that extent. According to Regulation 21 (v), any over drawal with respect to the “schedule approved by SLDC’ by an open access, who is also a consumer of Distribution licensee of his area of supply, shall be considered as the drawal from the Discom and the open access consumer shall be required to pay charges for the excess capacity utilized. The Appellant has contended to differentiate between the phrase “Schedule approved by SLDC” in Regulation 21(v) with that of “actual schedule approved” in Regulation 26 (7) (v).

36. The basic purpose of imposing UI Charges is to maintain grid discipline and to ensure that consumers comply with schedules given by them and charges are payable for deviation from final schedule i.e. any drawl in excess of schedule. We note from the submissions of Respondents that Power Exchanges furnish detailed breakup of each injection and drawal to SLDC, and SLDC then approves the open-access schedule. Under the 2016 Regulations, SLDC also approves the admissible drawal from DISCOM. Therefore, in our opinion, different meanings can't be assigned to words “schedule approved by SLDC” in Regulation 21 (v) and “actual schedule approved in inter-state Transaction” in Regulation 26 (7)(v). In our view, as per RERC OA Regulation, any open access consumer submitting a bid in the Exchange and day-ahead schedule to SLDC, who breaches the schedule given by IEX and approved by SLDC, is liable to pay charges under Regulation 26 read with Regulation 21. This would apply even in a case where

consumer bid is rejected by the IEX or not considered by the IEX, for any reason, and consumer name does not find mention in the final schedule approved by SLDC. Payment is for breach of schedule given by consumer himself and thus, excess drawal from DISCOM, where IEX rejects bid/does not consider the consumer's bid can't be differentiated for the purpose of levy of UI charges. Supreme Court, in its judgement in "**Central Power Distribution Co. V CERC**" (2007) 8 SCC 197, has held:

"that UI charges are a commercial mechanism to maintain Grid Discipline. UI charges penalise whosoever caused Grid indiscipline, whether generator or distributor, is subject to payment of UI charges who are not following schedule. UI charges are not payable if appellants maintain drawal of electricity consistent with the schedule given by themselves."

37. In addition, a legislative instrument ought to be interpreted in a manner that achieves the objective of the instrument and the purpose of the legal text. Purposive construction may be given "*to iron out the creases*". Reliance is placed on "**Vivek Narayan Sharma v. UOI,**" (2023) 3 SCC 1. In the instant case, the Appellant has deviated from the schedule given, thus, in our view, it is liable for payment of UI charges.

38. The Appellant has also disputed the amount levied as UI charges on being not in accordance with the procedure prescribed under Regulation 27(8) of RERC OA Regulations 2016. However, Appellant has disputed the unscheduled interchange charges levied upon him before State Power Committee under Regulation 30(2) of RERC OA Regulations 2016 as well as before State Load Despatch centre mainly on the ground that as it did not have NOC for the referred dates and there was no approved schedule by SLDC, so it is not liable to pay UI

charges. Subsequently, the Appellant did not raise the ground of UI charges not being in consonance with the regulation 27(8) in his petition before the RERC. It was only at the Appellate stage in front of this tribunal, that the appellant has raised this ground qua Regulation 27(8) in appeal as a question of law. It is infact not a pure question of law but a mixed question of fact and law, in which facts has not been adjudicated at State Commission level, being not raised before them. We have already held above that the Appellant is an open access consumer and for deviation from the prescribed schedule, relevant Regulations are applicable on him. As the Appellant has not sought permission to raise these contentions at the time of the Appellate stage, we find no reason to examine these contentions.

39. In view of the above deliberations, we do not find any error or infirmity requiring our interference with the impugned order of the Commission i.e. the Respondent No 1. No merit is found in the appeal and the same is hereby dismissed. All the pending IAs shall stand disposed of. No order as to costs.

Pronounced in open court on this 9th Day of July, 2024

(Seema Gupta)

Technical Member(Electricity)

(Justice Ramesh Ranganathan)

Chairperson

REPORTABLE/NON-REPORTABLE

ts/ag