

**BEFORE THE FORUM**  
**FOR REDRESSAL OF CONSUMER GRIEVANCES**  
**IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI**

**On this the 25<sup>th</sup> day of September' 2020**  
**C.G.No:157/2019-20/ Ongole Circle**

**Present**

**Sri. Dr. A. Jagadeesh Chandra Rao**

**Chairperson**

**Sri. A. Sreenivasulu Reddy**

**Member (Finance)**

**Sri. V. Venkateswarlu**

**Member (Technical)**

**Sri. Dr. R. Surendra Kumar**

**Independent Member**

***Between***

Sri. V.R. Raguraman,  
C/o. Chemfab Alkalies Limited,  
Plot No.558 7559, APIIC Growth Center  
Gundlapalli (V),  
Maddiadu (M),  
Prakasham Dt.

Complainant

***AND***

1.CGM/R&IA/APSPDCL/Tirupati

Respondents

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**ORDER**

1. Complainant filed this complaint seeking 3 reliefs which are:-

- 1) Request for Waiver and refund of demand charges of Rs.139.84 Crores collected by APSPDCL during the period from 11.7.2018 to 30.11.2018.
- 2) Waiver and refund of late payment/ penalty charges of Rs.29.94 Lakhs which has been levied between May'2018 and Oct'2018.
- 3) Directions to APSPDCL to expedite the credit note for Rs.406.41 Lakhs which is due against the captive consumption of power directly from M/s. SBQ Steels Limited and refund of the amount with interest.

Complainant filed rejoinder, additional written statement just 1 day prior to the date of personal hearing through virtual Google meet and also subsequently after respondents filed

**DESPATCHED**

**DATE**

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additional written submissions after hearing through virtual Google meet. The contents of all the submissions made by the complainant in brief are:-

Complainant is having a CMD of 8000 KVA bearing installation ONG-413. They have been settling monthly bills regularly.

Complainant herein entered into an Agreement on 15<sup>th</sup> April' 2017 for supply of energy under a Short Term Open Access (STOA) Agreement with M/s. SBQ Steels Limited. They have entered into an agreement for a period of supply from 15.04.2017 to 31.03.2018 (Para 1. Period of supply at page.No.5 of the Agreement).

There is a delay in issuing credit note by APSPDCL to the extent of 4.06 Crore against the Captive Consumption of the Power which resulted in strained financial position and subsequently resulted in disconnection of supply in the month of July'2018.

Licensee has not considered their request of waiver of payment of Demand charges and penalty during the period of disconnection from 11.7.2018 to 30.11.2018.

APSPDCL is not a party for the Agreement between the complainant and M/s. SBQ Steels Ltd. So also there is no tripartite agreement among complainant herein, M/s. SBQ Steels Ltd. and APSPDCL. In the absence of any specific agreement to the effect that the amounts payable to M/s. SBQ Steels Ltd, could be collected by APSPDCL, the action of APSPDCL in raising bill and collecting the energy charges payable to M/s. SBQ Steels Ltd. is contrary to the provisions of the Electricity Act,2003 and Indian Contract Act, 1872. APSPDCL choose not only to raise a bill for units supplied by the M/s. SBQ Steels but also choose to collect Tariff fixed by Commission (which was higher). Further electricity duty was collected along with the other charges payable .There are no specific provisions under the conditions of licensee for carrying out business in the nature of collecting open access amounts on behalf of OA supplier even if there is a contract between supplier of Electricity and Distribution Company. Reference to insolvency petition pending before any authority is not material to the agreement entered into between CCAL (complainant herein) and APSPDCL.

Complainant became a defaulter not by choice but because of collection and retention of amount which APSPDCL was not legally entitled.

The Hon'ble APERC by virtue of powers conferred under Section.15 of the Electricity Act, 2003 granted license to APSPDCL for conducting licensed business. The activities of the licensee are provided in Clause. 5 of the license.

The above said clause do not permit the Licensee to conduct activities in the nature of acting as a collection agency on behalf of open access supplier i.e. M/s. SBQ Steels Ltd. in the present case. Licensee choose to raise a bill for the quantum of energy supplied by the third party for which they are not legal owners of the goods. Licensee violated the terms and conditions of the license.

Licensee choose to raise a bill at the rates fixed in the tariff order issued by the Commission in excess of unit price agreed between M/s. SBQ Steels Ltd. and complainant herein which is legally not sustainable.

Regulation No.5/2004 as amended upto 01.11.2015 is issued in respect of Electricity Supply Code. Clause. 3 is related to recovery of electricity charges from consumers. Clause. 4.2 provides the information to be furnished in the body of the bill.

The above provisions clearly shows that the Complainant is falling within the meaning of consumer given under Section. 2 of definition in the Electricity Act, 2003. Licensee has raised bills contrary to the provisions of supply code by including electricity charges payable to Open Access supplier thereby the present complaint is billing dispute falling within the jurisdiction of the Forum.

Dispute is not relating to quality, quantum of energy, wheeling charges, banking charges and transmission charges but limited to billing disputes between the complainant and licensee. Had there been any dispute between complainant and Open Access supplier, M/s. SBQ Steels Limited or the respondent, there would arise occasion for filing of complaint with SLDC. It is frivolous to state that the matter can only be adjudicated by SLDC. Regulation No. 2/2006 provides for interim balancing and settlement code for Open Access transactions. The reading of the Clause.No.7 of Regulation.02/2006 clearly shows that the licensee's role is very limited for taking monthly Readings re-conciliation should be taken care of by SLDC as provided in the Regulation.

Complainant is not a party to the proceedings before NCLT and the official liquidator. In the absence of any decree in favor of licensee nothing binds the complainant to make good the debt on behalf of company under liquidation.

Neither the Complainant nor the Respondent pleaded before this forum issues relating to the matters before NCLT or proceedings before official liquidator since the issue before this forum are specifically relates to billing and retention of Open Access Energy charges without the Authority in Law.

2. CGM/R&IA/APSPDCL/TPT Respondent herein, filed written submissions. In brief they are:-

That as per Clause No.5.9.4.3 of GTCS, the consumer is liable to pay 4 months monthly minimum charges from the date of disconnection. Accordingly the CC bills were issued from Aug'2018 to Nov'2018 for a tune of Rs.139.84 Lakhs. Service was re-connected on 4.02.2019.

There is no provision in GTCS for waiver and refund of late payment penalty charges of Rs.29.94 Lakhs levied from May'2018 to Oct'2018.

Open Access Generator M/s. SBQ steels limited has entered a short Term Open Access Agreement to avail the Transmission wheeling services offered by APTRNSCO and APSPDCL from its location at Ankalapaturu village of Nellore District to Complainant herein ONG - 413 and M/s. Kusalava International Limited, VJA – 505 for the period from 02.05.2017 to 31.10.2017.

Energy settlement communicated by SLDC from time to time for the period from 02.05.2017 to 31.07.2017 and they were already adjusted to the above scheduled consumers in their bills.

Insolvency petition for an amount of Rs.35,36,42,971/- claimed against M/s. SBQ Steels Ltd., was filed on 23.01.2018 . The final energy settlement were received from CE/SLDC/APTRANSCO/VJA for the period from 01.08.2017 to 31.10.2017 after filing of the Petition. Hence credit note was not given to the consumer as per approved orders of the CMD of the Licensee. The case is still pending before liquidator in Chennai. The same amount was also not admitted by the liquidator while admitting the claim of APSPDCL. Hence the settlements were not done for the period from 01.08.2017 to 31.10.2017 to the complainant herein. There is no possibility to pass on the credit to the complainant.

Respondent in additional written statement filed after hearing the case stating that the Hon'ble APERC issued Regulation No. 2/2005 Dt : 01.07.2005 which came into force on 01.12.2006.

The said Regulation has given definitions of Open Access Generator, Distribution Licensee and scheduled consumer.

SLDC has to finalize energy account of Open Access transaction of a billing month with the assistance of EBC and arrive at the deviations for each time block and the consequent adjustments integrated over the month in respect of all Open Access Generators, Scheduled consumers and OA consumers in accordance with the procedures specified.

Regulation No. 2/2005 and Regulation No. 2/2006 authorized the licensee to enter in to Open Access Agreements.

CGRF is constituted as per Regulation No. 3/2016 issued by Hon'ble APERC and the powers vested in CGRF are provided in Regulation No.3/2016

The present dispute is related to settlement of Open Access accounts. Hence this forum has no power to entertain the dispute.

This dispute relates to settlement of Open Access accounts, as such the dispute has to be referred to SLDC for resolution as per Regulation.No.2/2005 and Regulation 2/2006 and the decision of SLDC is binding on all the parties.

The adjustable amount related to the complainant herein was recovered by the liquidator of M/s. SBQ Steels Ltd, Open Access Generator while admitting the claim amount of dues of APSPDCL.

3. Personal hearing was conducted on 28.07.2020 through virtual Google meet.
4. The points for determination are:-
  1. Whether the complainant is entitled for waiver and refund of demand charges of Rs.139.84 Crores collected by APSPDCL during period from 11.07.2018 to 30.11.2018?
  - 2) Whether the complainant is entitled for waiver and refund of late payment/ penalty charges of Rs.29.94 Lakhs. Which has been levied between May'2018 and Oct'2018?
  - 3) Whether the complainant is entitled for issue of directions to APSPDCL to expedite the credit note for Rs.406.41 Lakhs which is due against the captive consumption of power directly from M/s. SBQ Steels Limited and refund of the amount with interest?

Admitted facts in this case are complainant herein (Scheduled Consumer) entered into power purchase Agreement with M/s. SBQ Steels Ltd. (OA Generator) on 15<sup>th</sup> April 2017.

Open Access Generator (M/s. SBQ Steels Ltd. entered into Short Term Open access Agreement to avail the Transmission Wheeling services offered by APTRANSCO and APSPDCL from Ankalapaturu (V) of Nellore District to Complainant herein ONG-413 and with M/s. Kusalava International Limited, VJA-505 from 02.05.2017 to 31.10.2017 .

SLDC is authorized for Meter reading, Energy accounting and settlement as per Clause. No. 7 of 2006 (as amended Regulation 1 of 2013 dt: 22.4.2013 Regulation 2 of 2014

dt: 01.04.2014, Regulation 2 of 2016 dt:8.1.2016 and Regulation 4 of 2019 dt:11.3.2019) issued by Hon'ble APERC for Interim balancing and settlement code .

As per Clause. No. 7.4 of the above Regulation:-

***“SLDC shall finalize the energy account of the open access transaction of a billing month with the assistance of EBC and arrive at the deviations for each time block and the consequent adjustments integrated over the months in respect of all open access generators, scheduled consumers and OA consumers in accordance with the procedures specified herein “***

Clause 13 of above said Regulation:-

**“13” Dispute Resolution**

***“All disputes and complaints shall be referred to the SLDC for resolution, which shall not decide a matter without (first affording an opportunity to the concerned parties to represent their respective points of view). The decision of the SLDC shall be binding on all parties”.***

According to the respondents the procedure for issuing bills in case of scheduled consumers is similar to that of the procedure adopted for issuing bills to the normal consumers. At first instance the bill will be issued for the entire consumption of the scheduled consumer. Later SLDC will account for the energy consumed by the scheduled consumers from Open Access Generator. After receipt of account settlement from SLDC, a credit note will be issued in favor of the scheduled consumer and subsequently the credit note amount will be adjusted from the bills on hand/ immediate future bills payable by the scheduled consumer.

In this case the final settlement report was furnished by the CE/SLDC/Vijayawada on the following dates:-

Claim for the months	May'2017	June'2017	July'2017	August'2017	Sep'2017	Oct'2017
Date of settlement received	24.08.2017	07.11.2017	24.11.2017	25.01.2018	16.03.2018	20.06.2018

According to the respondents Open Access Generator issued a public notice in the month of Jan'2018 that he filed an insolvency petition before Hon'ble National Company Law Tribunal (NCLT) i.e. on 23.01.2018. According to respondents that they received a mail to the effect that the admitted outstanding claim amount is Rs.29,44,31,151/- out of Rs.35,36,42,971/- and difference amount is Rs.5,92,11,820/-.

In the remarks column it is mentioned as:

***“Remarks: - The following amounts have been reduced from the claim amount:***

- 1) *Power supplied by SBQ steels limited to APSPDCL Grid for which no adjustment has been made to Kusalava International Ltd., for the months of Aug, Sep,& Oct'2017 of Rs.1,21,99,329/-*
- 2) *Power supplied by SBQ steels limited to APSPDCL Grid for which no adjustment has been made to Teamec Chlorates Ltd., (now M/s. Chemfab Alkalis Ltd., complainant herein) for the months of Aug, Sep,& Oct'2017 of Rs.4,56,64,236/- .*
- 3) *CC charges for the period falling after insolvency commencement date of Rs.13,48,255/- .”*

The first contention of the complainant is that licensee has to conduct activities as per the terms and conditions of Licence. Licensee is not authorized to conduct activities in the nature of acting as a collection agency of Open Access Supplier i.e., M/s. SBQ Steels Ltd., licensee raised a bill for the quantum of energy supplied by the third party for which licensee is not legal owner of the goods , licensee violated the terms and conditions of the license . Licensee also choose to raise a bill at the rate fixed in the tariff order issued by Hon'ble Commission in excess of unit price agreed between M/s. SBQ Steels Ltd., and complainant herein which is not legally sustainable.

The second contention of the complainant is that the dispute is a billing dispute and it is not related to quality, quantum of energy wheeling charges, banking charges & transmission charges. SLDC only have jurisdiction to settle the disputes over the above said disputes but not for the present dispute. So the forum has got jurisdiction to resolve this dispute.

The third contention is that complainant is not a party to the proceedings before NCLT and official liquidator. In the absence of any order or decree in favor of licensee nothing binds the complainant to make good the debt on behalf of company under liquidation. Neither the complainant nor respondent has pleaded before this forum issues relating to the matters before NCLT or proceedings before liquidator since issue before this forum are specifically relates to billing and retention of OA Energy charges without the authority in Law.

On the other hand the contention of the respondents is that Hon'ble APERC has issued Regulation No. 2/2006 for Interim Balancing and Settlement Code for Open Access Transactions. APSPDCL being a distribution licensee is empowered to enter into an Agreements for Wheeling of Electricity with Open Access User /Generator. Open Access User/Generator has to enter into an agreement with APTRANSCO & APSPDCL for availing the Transmission and Wheeling of

Electricity. Accordingly M/s. SBQ Steels Limited being Open Access Generator/User entered in to Agreement with APTRANSCO & APSPDCL for availing Transmission and Wheeling services offered to provide supply to complainant herein and Kusalava International Ltd., Apart from it complainant herein entered into an Agreement with APSPDCL for supply of power for 8000KVA. *Complainant also entered into Agreement with M/s. SBQ Steels Ltd., for Power Purchase. Complainant herein entered in to Agreement with M/s. SBQ steels Ltd., for purchase of power and so also M/s. SBQ steels Open Access User/Generator entered into an Agreement with APTRANSCO & APSPDCL as per the provisions of Regulation 2/2006.*

After availing the power through APSPDCL, now it is not open to the complainant to say that licensee has violated the terms and conditions of the license and activities made by the licensee are in the nature of acting as a collection agency on behalf of M/s. SBQ Steels Ltd., Complainant now could not say that licensee raised a bill on behalf of third party after completion of 3 months period out of six months contract period. Complainant only questioning about delay in issuing credit notes for the remaining 3 months that too after knowing fully well that licensee was not able to issue credit notes on account of orders of liquidator.

The settlement of accounting of energy shall be made by SLDC as per Clause 7 of Regulation. No. 2/2006 and as per Clause. 13 of the same Regulation, all the disputes and complaints shall be referred to SLDC for resolution. In this case credit note could not be issued by the licensee on account of non-finalization of account of energy by SLDC and meanwhile insolvency proceedings are launched by M/s. SBQ Steels Ltd., and if complainant is having any grievance for the delay it ought to have approached SLDC.

Complainant filed the Agreement between it and M/s. SBQ Steels Limited. Clause No.3 of the said Agreement at Page 5 is as follows:-

***“Price for 15.4.2017 to 31.3.2018:***

***Rs.4.99/-unit billed by M/s. SBQ***

***(the tariff is inclusive of scheduling charges, Transmission charges, wheeling charges, T&D losses & self-Generation Tax + cross-subsidy, of applicable)***

***Above price is fixed based on 12% discount on the Energy charges of APSPDCL. This is on the basis that the payment cycle would take about 4 months from the date of billing.***

***However if the credit period improves due to faster settlement by APSPDCL then for every one month of payment receipt in advance the discount will be enhanced by 1%.***



***Renewal would be made with discount of 15% on our applicable tariff***

Clause 6 of the Agreement:

***'6' payment terms:***

***"Billing will be done at the end of every calendar month***

***Consumer need to make payment within 10 days after receipt of settlement note and the credit note for supply made during corresponding period"***

The above referred clauses shows that complainant is aware that the payment cycle would take about 4 months from the date of billing and the complainant herein need to pay the amount only after 10days of the receipt of the credit note for supply made during the corresponding period

In this case the particulars given by the respondents for the settlement of accounting of Energy made by the SLDC clearly shows that they settled the accounting of energy after a lapse of about 4 to 7 months.

Complainant ought to have made a complaint to the concerned authorities for such abnormal delay made by SLDC. But, now they cannot say had the accounts are settled in time they would have obtain credit note earlier and prior to filing of insolvency petition by its M/s. SBQ Steels Ltd.,

The contention of the complainant that subsequent events taken place could not be taken into consideration and respondents are bound to issue credit note on the ground that insolvency petition filed by M/s. SBQ Steels Ltd., subsequent to the period of agreement is not tenable. Respondents could not issue credit note on account of non-settlement of account by SLDC and mean while came to know that M/s. SBQ Steels Ltd., filed insolvency petition before NCLT and proceedings given by official liquidator deleting the amounts payable to the complainant herein and another. The contention of the complainant that it is not a party to the proceedings before NCLT and official liquidator and they are entitled for credit note is also cannot be taken into consideration. Respondents could not go against the orders of the official liquidator.

Admittedly the proceedings before the District Consumer Forums constituted under Consumer Protection Act, 1986 are summary in nature. It was held by Hon'ble Apex Court of India in Oriental Insurance Company Limited Vs Munimahesh Patel :-

***“Proceedings before the commission are essentially summary in nature and adjudication of issues which involve disputed factual questions should not be adjudicated. “***

It was also held by Hon'ble Apex Court of India in *Synco Industries Vs State Bank of Bikaner and Jaipur*: -

*“Given the nature of the claim in the complaint and the prayer for damages in the sum of Rs. Fifteen crores and for an additional sum of Rs. Sixty Lakhs for covering the cost of travelling and other expenses incurred by the appellant, is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses. It is, therefore, in any event not an appropriate case to be heard and disposed of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the Civil Court. This is an appropriate claim for a civil court to decide and, obviously, was not filed before a civil court to start with because, before the consumer forum, and figure in damages can be claimed without having to pay court fees. This, in that sense, is an abuse of the process of the consumer forum”.*

Relying upon the above cited decisions and in view of proceedings before District Consumer Forum are summary in nature. The same analogy will also be applicable to the proceedings before this Forum. Hence the proceedings before this forum are also summary in nature.

Whether the agreement between the Licensee and M/s. SBQ Steels Ltd., in issuing of bill and collecting on behalf of open access generator is valid and binding on the complainant cannot be decided by this Forum.

Complainant in this case is questioning the activities of the Licensee and stating that they are in violation of terms & conditions of the policy and also stating that SLDC has only got jurisdiction in respect of dispute relating to quality, quantum of energy and wheeling charges etc.,

The powers vested in this forum are very limited. This forum can only pass orders when officers of Licensee fail to follow the Regulations issued by the Hon'ble Commission from time to time and GTCS. In this case respondents gave reasons for not releasing credit note. If the complainant is of the opinion that respondents violated terms of license and regulations issued by Hon'ble APERC, its remedy is elsewhere and not before the Forum. This Forum could not decide the jurisdiction of the SLDC in the absence of SLDC a party to the proceedings.

All these issues could not be decided summarily. Respondents could not issue credit note on account of non-settlement of energy by SLDC and due to proceedings of official

liquidator. The forum could not give orders for issuing credit note in favor of the complainant when the proceedings before NCLT and official liquidator are pending.

Respondents are entitled to collect minimum charges as per Clause 5.9.4.3 of GTCS. So also respondents levied late payment/penalty charges on the complainant herein as per the tariff orders issued by Hon'ble APERC from time to time. This forum is not competent to waive and order for refund the demand charges and late payment/penalty charges.

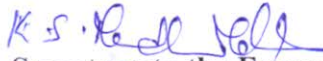
5. In view of the above reasons there are no merits in the complaint and is liable to be dismissed. The points are answered accordingly.
6. In the result complaint is dismissed.

If aggrieved by this order, the Complainant may represent to the Vidyut Ombudsman, Andhra Pradesh, 3<sup>rd</sup> Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008, within 30 days from the date of receipt of this order.

This order is passed on this, the day of 24<sup>st</sup> August' 2020.

Sd/-	Sd/-	Sd/-	Sd/-
Member (Finance)	Member (Technical)	Independent Member	Chairperson

**Forwarded By Order**

  
**Secretary to the Forum**

To

The Complainant  
The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.

Copy to the Nodal Officer (Executive Director/Operation)/CGRF/APSPDCL/TPT.

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh , 3<sup>rd</sup> Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008.

Copy Submitted to the Secretary, APERC,11-4-660, 4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad- 500 004.