



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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OFFICE OF THE
REGISTRAR

No. NEPRA/R/D(CAD)/TCD.02/10074-77

July 06, 2015

Chief Executive Office
Islamabad Electric Supply Company (IESCO)
Street No. 40, G-7/4
Islamabad

Chief Executive Officer
Shifa International Hospital
H-8/4, Islamabad

Subject: **DECISION IN PURSUANCE TO THE ORDER OF HONORABLE ISLAMABAD HIGH COURT DATED MARCH 25, 2015 IN WRIT PETITION NO. 2204/2008 IN THE MATTER OF M/S SHIFA INTERNATIONAL HOSPITAL, LTD VS IESCO, ETC**
Complaint # IESCO-63/2015

In pursuance to the orders of the honorable Islamabad High Court dated March 25, 2015 in Writ petition no. 2204 /2008, the subject case has been decided by NEPRA. The decision of NEPRA dated July 3, 2015 is enclosed herewith for necessary action and compliance please. Compliance report be submitted within 30 days of receipt of this decision.

Encl: As above


(Uftikhar Ali Khan)
Deputy Registrar

Copy to:

Deputy Registrar (J)
Islamabad High Court, Islamabad

(w.r.t orders dated March 25, 2015 in
Writ Petition No. 2204/2008)

C.E/Customer Services Director
Islamabad Electric Supply Company (IESCO)
Street No. 40, G-7/4
Islamabad



**BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)**

Complaint No: IESCO-63/2015

M/s Shifa International Hospital Complainant
H-8/4, Islamabad

Versus

Islamabad Electric Supply Company (IESCO) Respondent
IESCO, Headquarters
G-7/4, Islamabad

Date of Hearings: April 29, 2015
May 13, 2015

Date of Decision July 03, 2015

On behalf of:

Complainant: 1) Mr. Zahir Bashir Ansari, Advocate
2) Syed Asim Abbas, Administrator
3) Mr. Muhammad Nacem, Company Secretary

Respondent: Syed Mohsin Raza Gillani, NEN/Deputy Manager

Subject: **DECISION IN PURSUANCE TO THE ORDERS OF HONORABLE ISLAMABAD HIGH COURT DATED MARCH 25, 2015 IN WRIT PETITION NO 2204 OF 2008: M/S SHIFA INTERNATIONAL HOSPITAL, LTD VS IESCO ETC**

DECISION

1. In pursuance to the orders of Honorable Islamabad High Court dated March 25, 2015 in the Writ Petition No. 2204/2008, this decision shall dispose of the complaint filed by M/s Shifa International Hospital Limited Islamabad (hereinafter referred to as the "Petitioner" or the "Complainant") under section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 against Islamabad Electric Supply Company (hereinafter referred to as the "Respondent" or "IESCO")
2. Brief facts of the case are that the Petitioner filed a complaint before NEPRA on June 03, 2008 against IESCO regarding debit of Rs. 37 million on account of difference of tariff without any prior notice. Without waiting for the decision, the Petitioner approached Honorable Islamabad High Court on June 18, 2008 after 15 days of filing of complaint with NEPRA, therefore, further proceedings in the matter were suspended/closed
3. The Honorable Islamabad High Court disposed of the Writ Petition No. 2204/2008 filed by the Petitioner vide its order dated March 25, 2015. The operative part of the order is reproduced as under:

"the instant petition is allowed. The respondent No. 2 (NEPRA) is directed to afford an opportunity of hearing to the petitioner and thereafter pass a speaking order. The respondent No. 1 (HESCO) shall be at liberty to place before the respondent No. 2 (NEPRA) all grounds, factual and legal, and the same shall be considered by the respondent No. 2 (NEPRA), while deciding the complaint. The Court expects that the respondent No. 2 (NEPRA) shall decide the complaint preferably within 90 days."

4. NEPRA received the aforesaid order of Honorable Islamabad High Court on April 10, 2015. Accordingly, to proceed further an opportunity of hearing was given to both the parties on April 29, 2015 which was adjourned on the request of the representatives of the Petitioner. Therefore, another hearing was given to the parties on May 13, 2015, which was attended by the representatives of both the parties. The parties submitted their written and verbal arguments in their favour as under:

I Submissions of the Petitioner

- i) They applied for bulk supply connection with WAPDA on October 16, 1991. Accordingly, an estimate amounting to Rs.8,33,596/- was prepared by the concerned SIDO. It was worked out that previously the case was entered under tariff A-2/B-3 in the office of Chairman Area Electricity Board WAPDA, Islamabad but it was suggested that the tariff allowed should be C-2 for sanctioning bulk supply.
- ii) After the payments were made and infrastructure completed, WAPDA offered tariff A-2/B-2 but their requirement was immediate therefore, A-2 tariff was approved on their request and the premises got connected.
- iii) They continued pressing their original demand for provision of supply under C-2 tariff for which the estimate was worked out. The reason for demand of C-2 tariff was that the Petitioner within its premises has hospital, two medical colleges, administrative offices, nursing hostels and its own distribution system. For the multiple nature of load, the Petitioner considered itself for entitlement under C-2 tariff and also made further investment of Rs. 6 million for its internal distribution system.
- iv) On the persistent demand by the Complainant for grant of C-2 tariff, the Complainant was advised to approach WAPDA House Lahore for conversion of tariff from A-2 to C-2. Accordingly, the Complainant through letter dated October 13, 1994 requested for the same. The said request for conversion of tariff from A-2 to C-2 was approved on October 23, 1994 and the Complainant was charged under C-2 tariff accordingly.
- v) In the year 1995, the Complainant requested WAPDA for enhancement of load from 972 kW to 2587 kW. WAPDA although allowed extension but offered tariff A-2/B-2. The Petitioner requested for extension on the same tariff i.e. C-2. Accordingly, the matter was referred by WAPDA Islamabad to WAPDA House Lahore, which was approved on December 06, 1995 and accordingly billing was started under tariff C-2. A payment of Rs. 2.7 million was made for extension of load.
- vi) In the billing month of June 1999, WAPDA (HESCO) unilaterally converted C-2 tariff into A-2 tariff without any prior notice and had demanded an arrears of Rs.38.25 million from 1994 to May 1999 being difference of the two tariffs.
- vii) The Complainant filed writ petition No. 1675/1999 before Honorable Lahore High Court Rawalpindi Bench; which was dismissed vide judgment dated October 29, 1999. WAPDA disconnected the electricity supply on November 01, 1999. The Complainant moved to Honorable High Court and the Court vide its order dated November 01, 1999 directed the Complainant to pay Rs. 10.7 million against arrears and to pay from July 1999 onwards under tariff A-2. The Complainant paid the said amount and challenged the order passed by the Honorable Court in writ petition No. 1675/1999 vide ICA No. 107/1999. The ICA was disposed of through judgment dated October 31, 2002 and the matter was referred to the Chairman, Area Electricity Board (HESCO). The Chairman Area Electricity Board was not following the directions of the High Court, therefore, the Complainant filed criminal original No. 45-W/2003 before the

High Court, which was dismissed for non-prosecution on January 15, 2007. The Complainant filed C.M. No. 248/M/2007 before the High Court for restoration of criminal original.

- xvii) HESCO raised a demand of Rs. 37 million on June 28, 2007 to be paid by June 29, 2007. The Complainant filed C.M. No. 351/M of 2007 impugning the act of the Respondent (HESCO). The Honorable Court vide order June 29, 2007 directed to maintain status quo. The respondent preferred L.P.A. No. 799/2007 before the Honorable Supreme Court of Pakistan against the orders dated June 29, 2007. The Honorable Supreme Court of Pakistan directed the Complainant to deposit amount of Rs. 37 million before the Registrar of the Supreme Court of Pakistan, which the Petitioner deposited on March 3, 2008.
- xviii) The Complainant prayed that the unilateral change in tariff from C-2 to A-2, demand of arrears on basis of difference of rates between the two tariffs from the year 1994 to 1999 and onward be declared to have been made illegally against provisions of the NEPRA Act.

II Submission of the Respondent

- i) The connection of Shifa International Hospital was sanctioned under A-2 tariff on March 22, 1993 and the same was energized on July 18, 1993. The tariff was changed from A-2 into C-2 tariff in October 1994 by WAPDA management on request of the Complainant. In 1997, the internal audit party pointed out application of wrong tariff to Shifa International Hospital which was converted into advanced para.
- ii) In April 1999, a joint verification by representatives of Deputy Chief Auditor and NEN concerned was carried out to verify the facts wherein the committee declared that M/s Shifa International Hospital does not qualify for C-2 tariff. As per tariff terms and conditions in vogue, C-2 tariff was applicable to entities for example Railways, M.E.S., P.A.F., Cantonment Boards and other Government, Semi Government and other approved Institutions having their own distribution facilities for the purpose of further distribution within their jurisdiction. There was no such distribution facility/ network in the jurisdiction of Shifa International Hospital. Furthermore, the Consultant of Shifa International Hospital had himself suggested A-2 tariff for the Hospital. In July 1999, the difference of the two tariffs as worked out by the Audit party amounting to Rs. 35.938 million for the period from November 1994 to June 1999 was added in the current bill of Rs. 2.602 million with total amount of Rs. 38.532 million.
- iii) Shifa International Hospital challenged the same before Honorable Lahore High Court Rawalpindi Bench in writ petition No. 1675/1999. The writ petition was dismissed on October 29, 1999. Meanwhile the consumer had continuously been billed for current consumption along with arrears at tariff A-2, which they did not pay. The concerned NEN served notice to the Complainant on October 29, 1999 to pay dues by October 30, 1999 which was not paid so the supply was disconnected on November 1, 1999. Shifa International Hospital filed a review petition before the High Court on November 01, 1999 vide ICA No. 407/99. The Honorable Court advised Shifa International Hospital to pay the current bill amounting to Rs. 40.737 million under A-2 tariff without surcharge and directed the Respondent that upon payment their supply be restored for 15 days and during this period the Petitioner may settle their case with HESCO or may seek legal remedy.
- iv) Ultimately, the ICA was decided by the Honorable High Court on October 31, 2002 wherein the CEO HESCO was directed to order inspection/investigation of the case but the representatives of Shifa International Hospital did not cooperate in investigation. Then Shifa International Hospital filed criminal petition No. 45-W/2003, which was dismissed for non-prosecution on January 01, 2007.
- v) The Complainant finally approached Supreme Court of Pakistan. On directions of the Supreme Court of Pakistan, the Complainant deposited the disputed amount of Rs. 37 million with the Registrar of the Supreme Court of Pakistan and finally HESCO was allowed to withdraw the said amount. HESCO representatives further stated that the

instant case has been disposed of by the Supreme Court Of Pakistan and the instant petition has been referred by the Honorable High Court just to dispose of it being pending in their list, therefore no further action is required to be taken in this regard


- 5 The case has been examined in detail in light of documents provided by both the parties, arguments advanced during the hearing and applicable law. The following has been observed:
 - i The Respondent is of the view that the case has already been decided by the Honorable Supreme Court of Pakistan, therefore, NEPRA cannot intervene in the matter. Here it is clarified that the Honorable Islamabad High Court has referred the matter to NEPRA vide its order dated March 25, 2015 for decision, therefore, NEPRA is under obligation to decide the matter.
 - ii Shifa International Hospital applied to Area Electricity Board WAPDA Islamabad on October 16, 1991 for grant of 1100 KW load. Later the Complainant revised his load and requested for 856 KW load. The connection was sanctioned under A-2/B-2 tariff.
 - iii M/s Shifa International Hospital requested for sanction of connection under A-2 tariff as a whole. Accordingly, the same was sanctioned on February 22, 1993. The connection was energized on July 18, 1993 and was billed under A-2 (commercial) tariff till October 1994. The Shifa International Hospital made representation to the Managing Director, Customer Services, WAPDA House Lahore on October 13, 1994 for conversion of tariff from A-2 to C-2 with the plea that they fall under C-2 tariff category as they have several distribution points i.e. separate blocks, Nursing School, Hostels, etc. Accordingly, their request was considered and approval for change of tariff was granted on October 23, 1994 and their tariff was changed from A-2 to C-2 in November 1994.
 - iv On September 10, 1995, the application of Shifa International Hospital was registered for extension of load upto 2587 KW which was approved on September 30, 1995 under A-2/B-3 tariff category. Again Shifa International Hospital made representation to Area Electricity Board Islamabad for change of tariff. Their request was forwarded to the Director General, WAPDA House Lahore wherein it was decided that bulk supply tariff C-2 is applicable to Shifa International Hospital. Accordingly, their request for extension of load was approved under C-2 tariff category on December 06, 1995.
 - v In the year 1997, internal audit party of the Respondent raised objections stating that tariff C-2 was not applicable to Shifa International Hospital. In April 1999, joint verification was carried out by representatives of Audit party and concerned Executive Engineer to verify the facts with respect to application of correct tariff. In July 1999, the difference as worked out by the audit party amounting to Rs. 35,938 million for the period from November 1994 to June 1999 along with current bill amounting to Rs. 2,602 million totaling Rs. 38,532 million was charged by HESCO. Further an amount of Rs. 1,0723 million was charged as Late Payment (L.P.) surcharge for the period from July 1999 to October 1999.
 - vi The Petitioner challenged the arrears raised by HESCO before the Honorable High Court and finally approached the Honorable Supreme Court of Pakistan. On directions of the Honorable Supreme Court of Pakistan, the Complainant deposited the disputed amount of Rs. 37 million (difference of tariff amount of Rs. 35,938 + Rs. 1,0723 million L.P. surcharge from July 1999 to October 1999) with the Registrar of the Supreme Court of Pakistan and finally HESCO was allowed by the Honorable Supreme Court of Pakistan to withdraw the said amount and accordingly the amount was transferred to HESCO's account.
 - vii HESCO has been charging bills to the Complainant on A-2 tariff with effect from July 1999.
 - viii As per tariff terms and conditions, bulk supply at 11 kV under C-2 tariff is applicable to consumers having their own distribution facility i.e. own HT/LT.

lines and distribution transformers for the purpose of further distribution within their respective jurisdiction. Whereas, there is no such distribution network in the jurisdiction of Shifa International Hospital, as such bulk supply tariff is not applicable to the petitioner.

ix. Shifa International Hospital is a private hospital and a commercial organization. As per tariff terms and conditions at that time and at present, commercial tariff i.e. A-2 is applicable to private hospitals.

x. Applicable tariff to Shifa International Hospital is A-2 (commercial) tariff. Conversion of tariff of Shifa International Hospital from A-2 (commercial) tariff to bulk supply tariff i.e. C-2 by the management of WAPDA was in contradiction with the tariff terms and conditions in vogue as such the same is not justified and tantamount to misuse of powers. Therefore, the audit party had correctly pointed out the discrepancy of change of tariff.

6. Foregoing in view, the tariff applicable to Shifa Hospital was A-2, therefore, the arrears raised by HESCO, on account of difference of tariff, are justified and payable by Shifa International Hospital subject to its reconciliation by both the parties. HESCO may initiate proceedings against the officials involved in illegal change of tariff from A-2 to C-2. A report in this regard be submitted within 30 days.


(Maj. (R) Haroon Rashid)
Member (Consumer Affairs)

Islamabad, July 03, 2015