



OFFICE OF THE
REGISTRAR

No. NEPRA/CAD/TCD-09/ 8665-67

June 09, 2016

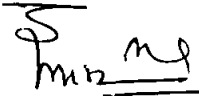
Chief Executive Officer
Shifa International Hospital Limited
Sector H-8/4, Islamabad

Subject:- **DECISION OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY SHIFA INTERNATIONAL HOSPITALS LIMITED AGAINST THE DECISION OF NEPRA DATED JULY 03, 2015 IN THE MATTER OF WRIT PETITION NO. 2204/2008: TITLED "SHIFA INTERNATIONAL HOSPITAL VS IESCO"**

Reference is made to Motion for Leave for Review filed by Shifa International Hospitals Limited (SIHL) against the decision of NEPRA dated July 03, 2015 in the matter of Writ Petition No. 2204/2008: Title "Shifa International Hospital Vs IESCO".

2. Please find enclosed the decision of the Authority in the subject matter for information.

Encl: As above


09.06.16
(Syed Safer Hussain)

Copy to:

1. Chief Executive Officer
Islamabad Electric Supply Company Limited (IESCO)
Head Office, IESCO, Street No. 40
Sector G-7/4, Islamabad.
2. 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)**

Shifa International Hospitals Limited
Sector H-8/4, Islamabad.

.....

Petitioner

Versus

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

.....

Respondent

Date of Hearing: February 09, 2016

Date of Decision: February 09, 2016

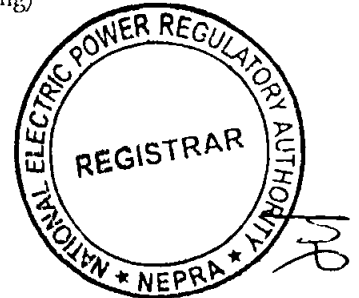
Present:

- | | | |
|----|-----------------------------|---------------------------|
| 1) | Brig. (R) Tariq Saddozai | Chairman |
| 2) | Maj. (R) Haroon Rashid | Member (Consumer Affairs) |
| 3) | Khawaja Muhammad Naeem | Member (Tariff) |
| 4) | Mr. Himayat Ullah Khan | Member (M&E) |
| 5) | Syed Masood-ul-Hassan Naqvi | Member (Licensing) |

On behalf of:

- Petitioner:
- 1) Mr. Muhammad Naeem, Company Secretary
 - 2) Mr. Zaheer Ansari, Advocate
 - 3) Mr. Ali Zain Bin Noor

- Respondent:
- 1) Syed Mohsin Raza Gillani, XLEN (Division-2)
 - 2) Mr. Khalid Zaman, Advocate



Subject: **DECISION OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY SHIFA INTERNATIONAL HOSPITALS LIMITED AGAINST THE DECISION OF NEPRA DATED JULY 03, 2015 IN THE MATTER OF WRIT PETITION NO. 2204/2008: TITLED 'SHIFA HOSPITAL VS IESCO'**

DECISION

This order shall dispose of the Review Motion (received on 1st October 2015) filed by Shifa International Hospitals Limited (hereinafter referred to as the "Petitioner") against the decision of NEPRA dated July 03, 2015 in the matter of complaint of the Petitioner against Islamabad Electric Supply Company (hereinafter referred to as the "Respondent" or "IESCO") in pursuance to the Order of the Honorable Islamabad High Court, Islamabad in the matter of Writ Petition No. 2204/2008: Shifa International Hospital v/s 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. Despite the complaint being lodged with NEPRA, the Petitioner approached Honorable Islamabad High Court on June 18, 2008 and filed a Writ Petition No. 2204/2008: Shifa International Hospital v/s IESCO. Since the matter was *subjudice* before the Honorable

High Court, further proceedings in the matter were *sine die* adjourned by NEPRA. The Honorable Islamabad High Court disposed of the aforesaid Writ Petition vide Order dated March 25, 2015, wherein the Honorable High Court directed NEPRA to afford an opportunity of hearing to the Petitioner and thereafter pass a speaking order within a period of ninety (90) days.

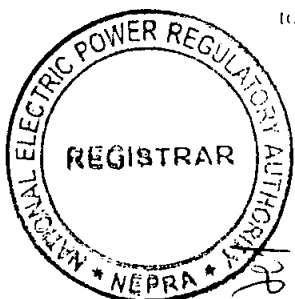
3. The aforesaid Order of the Honorable Islamabad High Court was received on April 10, 2015. In order to proceed further, a hearing was scheduled on April 29, 2015 which was adjourned on the request of the Petitioner and was re-scheduled for May 13, 2015 which was attended by the representatives of both the parties who advanced their arguments and submitted their written arguments/comments.

4. The case was examined in detail in light of written/verbal arguments of the Petitioner & IESCO and applicable documents/law. The case was decided by NEPRA vide Order/decision dated July 03, 2015 and the same was conveyed to both the parties vide NEPRA's letter dated July 06, 2015 for compliance within thirty (30) days. The operative part of the decision is as under:

"The tariff applicable to Shifa Hospital was A-2, therefore, the arrears raised by IESCO, on account of difference of tariff, are justified and payable by Shifa International Hospital subject to its reconciliation by both the parties. IESCO may initiate proceedings against the officials involved in illegal change of tariff from A-2 to C-2."

5. Being aggrieved with the decision, the Petitioner vide its letter dated August 03, 2015 filed an Appeal against the decision. In response, NEPRA vide letter dated August 26, 2015 returned the Appeal (in original) to the Petitioner and advised to file a Review Motion under NEPRA (Review Procedure) Regulations, 2009 against the decision (if so desired). Accordingly, the Petitioner filed the instant Review Motion against the decision. The main contents of the Review Motion are as under:

- i. The matter was whether the demand raised by IESCO in the year 1999 and thereafter passing of an order by its Chairman were legal, as by then the powers (if any) were not available to them by virtue of NEPRA Act, and it was exclusive jurisdiction of NEPRA to determine, revise or fix tariff etc. The act of IESCO was illegal *per se* and the impugned order is silent to this effect.
- ii. Whether under the NEPRA Act, definition of bulk consumer required it to have its own distribution system to become entitled for connection under the said head or is it the amount of electricity purchased or received at one premises. Even this power to determine vested with NEPRA and IESCO had no jurisdiction to either determine or refuse status of bulk consumer or otherwise. The impugned order is silent to this effect also.
- iii. One of the issues was that MD Consumer Service WAPDA exercised his authority illegally. IESCO claimed that MD Consumer Service WAPDA exercised his authority without any authority and was proceeded against departmentally. The Petitioner moved an application for production of complete record of the said proceedings which remain un-attended. This has caused prejudice to the case of Shifa Hospital.
- iv. NEPRA while dislodging entitlement of Shifa Hospital of bulk consumer discussed the status of Shifa Hospital to be a private hospital and commercial organization. Fact of the matter is that different tariffs are not defined on the basis of activity but are in nature of either domestic, commercial, industrial and bulk power consumer. The electricity purchased by Shifa Hospital at one point is sufficient to define it in the category of a bulk consumer in the time frame when Shifa Hospital was given bulk consumer tariff. The finding of NEPRA is against law.
- v. The impugned order is also against Section 31 of the NEPRA Act, 1997 as when IESCO decided to raise demand, the power to determine, modify or revise rate charges or terms and conditions of tariff vested with the Authority, and any such order passed by any other entity was without jurisdiction. The finding in the impugned order, making demand by IESCO valid, is against the law.
- vi. The impugned order is also silent to the effect of Section 45 of the NEPRA Act, 1997, as per which all other laws, rules, regulations to the extent of inconsistency would cease to have effect from the date of NEPRA Act coming into force. The date when IESCO raised the demand, they did not have any authority for the same. Looking at the impugned order from this angle also makes the same illegal *per se*.
- vii. In case IESCO was cognizant of the alleged wrong allocation of tariff, the only option available to it was to refer the dispute to the Authority under the NEPRA Act and should not had ventured on to take

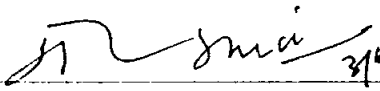


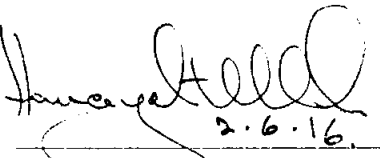
cognizance of the issue itself, making the whole exercise of authority by it illegal and therefore, the claim (if any) is barred by law. The impugned order is silent to this effect, hence without legal justification.

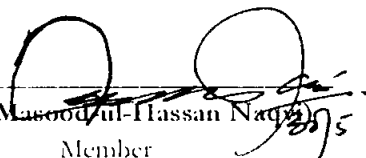
- viii. The impugned order is also silent to the fact that in absence of any claim put forward by IESCO before the Authority, could NEPRA, after 20 years, hold the demand raised by IESCO to be valid when a right has accrued in favor of Shifa Hospital on the ground of in-action on its part? The demand, by all intent and purpose, would be illegal and also in violation of right accrued.
- ix. Through the impugned order, NEPRA has termed an order and demand raised by IESCO as legal which was passed without any lawful authority. The impugned order, on this score, is also against the law. Therefore, it is requested that NEPRA's order dated July 03, 2015 be set-aside being against the law, along with bill dated July 1999 and IESCO's order dated May 25, 2003, being raised and passed without any legal authority, with a direction to refund the amount of Rs. 37.5 Million paid by Shifa Hospital.

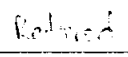
6. The review motion filed by the Petitioner was admitted by the Authority for hearing. Accordingly, hearing was scheduled for January 07, 2016, however, upon request by the Petitioner, the same was adjourned and re-scheduled for February 09, 2016 at NEPRA Head Office, Islamabad wherein representatives of both the parties participated. During the hearing, the Authority directed both the parties to submit additional documents / information in support of their case/arguments within ten (10) days. However, no information/documents were received from any of the parties.

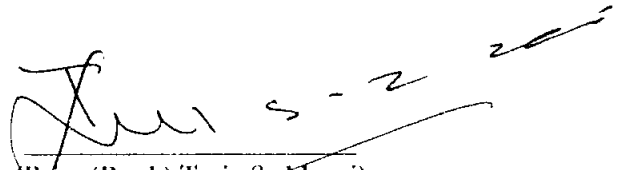
7. The Authority has considered the review motion filed by the Petitioner. In terms of Regulation 3(2) of NEPRA (Review Procedure) Regulations, 2009, a motion seeking review of any order of the Authority is competent only upon discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record. The perusal of the decision sought to be reviewed clearly indicates that all material facts and representations made were examined in detail and there is neither any occasion to amend the impugned decision nor any error inviting indulgence as admissible in law has been pleaded out. Further the legal grounds stated in the review petition are based on misunderstanding of the law and the tariff determination procedures. The determination of tariff, rate of electricity, determination of consumer categories etc is exclusive jurisdiction of NEPRA, however, implementation of the same is responsibility of concerned distribution company. Further, the applicable tariff to the Petitioner is A-2 as per notified tariff in vogue. Therefore, the Authority is convinced that review would not result in withdrawal or modification of the impugned decision. Hence, the motion for review is dismissed.

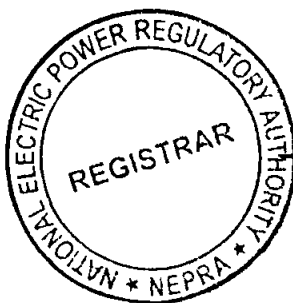

(Maj. (Retd.) Haroon Rashid)
Member

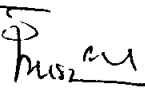

(Himayat-Ullah Khan)
Member


(Syed Masood-ul-Hassan Naqvi)
Member


(Khawaja Muhammad Naeem)
Member


(Brig. (Retd.) Tariq Saddozai)
Chairman




09.06.16