



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/CAD/TCD-07/4999-5001

April 11, 2017

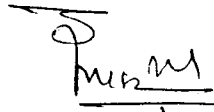
Mr. Abdul Amin,
Company Secretary,
Nadeem Textile Mills (Pvt.) Limited,
A-801-804, 8th Floor, Lakson Square, Building No. 3,
Block-A, Sarwar Shaheed Road,
Karachi.

Subject: **DECISION OF THE AUTHORITY REGARDING APPEAL FILED
BY NADEEM TEXTILE MILLS (PVT.) LIMITED (NTML)
AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS)
DATED 30TH MARCH 2016**

Reference is made to Appeal dated 29th April 2016 filed by Nadeem Textile Mills (Pvt.) Limited (NTML) against the decision of Member (Consumer Affairs), NEPRA dated 30th March 2016 regarding the subject matter.

2. Enclosed find herewith the Decision of the Authority regarding the subject Appeal for information and further necessary action, please.

Encl: As above


11/04/17
(Syed Safer Hussain)

Copy to:

- i. Chief Executive Officer
Hyderabad Electric Supply Company (HESCO)
WAPDA Water Wing Complex,
Hussainabad, Hyderabad.
- ii. RIAA Barker Gillette Chambers,
68, Nazimuddin Road,
Sector F-8/4, Islamabad.



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Nadeem Textile Mills (Pvt.) Ltd.

Through Mr. Abdul Amin, Company Secretary
8th Floor, Lakson Square, Building No.3, Block-A,
Sarwar Shaheed Road, Karachi.

.....

Appellant

Versus

Hyderabad Electric Supply Company

WAPDA Water Wing Complex,
Hussainabad, Hyderabad.

.....

Respondent

Date of Hearing:

October 06, 2016

Present:

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

On behalf of:

Petitioner:

- 1) Mr. Saeed Ahmed Dawach, CE (Commercial)
- 2) Mr. Khalid Hussain Bhatti, Regional Manager (M&T)

Complainant:

- 1) Mr. Nadir Altaf, RIAA BG
- 2) Miss. Saira Khalid Khan, RIAA BG

Subject:

DECISION OF THE AUTHORITY REGARDING APPEAL OF NADEEM TEXTILE MILLS (PVT.) LTD. (NTML) AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) DATED 30.03.2016

DECISION

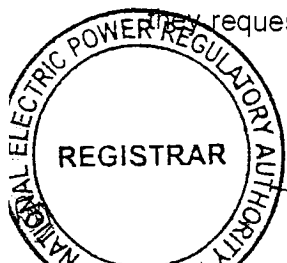
This Decision shall dispose of the Appeal dated April 29, 2016 filed by Nadeem Textile Mills (Pvt.) Limited (hereinafter referred to as the "Appellant" or "NTML") against the decision of, NEPRA dated March 30, 2016 in the matter of complaint filed by NTML against Hyderabad Electric

supply Company Limited (hereinafter referred to as the "HESCO") filed under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "Act").

2. The brief facts of the case are that NEPRA received a complaint from NTML, wherein it was stated that they switched over to self-generation and requested WAPDA/HESCO vide letter dated July 01, 2003 for permanent disconnection. However, HESCO illegally raised fixed charges during the period from August 2003 to July 2005, for which they approached HESCO. In response, they were informed that under Section 22 of the NEPRA Act, NTML was required to serve an advance three-year notice to HESCO regarding disconnection. The Complainant further added that Section 22 of the NEPRA Act is not applicable to them as they did not purchase power from any other DISCO within service territory of HESCO and NEPRA has already decided a few cases in this regard. The Complainant prayed that the fixed charges raised by HESCO for the period from August, 2003 to July, 2005 be declared as void and illegal and HESCO be refrained from disconnecting their electricity connection on this pretext.

3. The case was taken-up with HESCO for submission of para-wise comments. In response, HESCO reported that the Honorable High Court of Sindh, Hyderabad passed its decision in the Constitutional Petitions filed by bulk supply consumers of Nooriabad inclusive of the Complainant. Pursuant to the decision of the Honorable High Court, a set-aside amount of Rs. 11.452 million was shifted in the regular bill of the Complainant in the month of May, 2015. Further, the Honorable High Court also directed that the applications for permanent disconnection be treated as applications for reduction of load and referred the matter to the Board of Directors (BoD) of HESCO. Accordingly, BoD of HESCO, in its 43rd meeting held on June 29-30, 2007 decided that "the applications for permanent disconnection may be treated as applications for load reduction, as this has no adverse financial implications for HESCO. Moreover, the Bulk Power Consumers (BPCs) will pay fixed charges on sanctioned load till the end of the financial year during which the applications for disconnection were made and from the beginning of the next financial year; they will pay fixed charges on the reduced load". Keeping in view the orders of Honorable High Court of Sindh and subsequent decision of BoD of HESCO, the benefits were calculated for each petitioner and they were ordered to make payment of the fixed charges as per the Court's orders.

4. In order to further examine the matter, hearings were held on November 19, 2015 and December 22, 2015 at Karachi and Islamabad respectively. During the hearings, the parties advanced arguments on the basis of their earlier submissions. The Complainant submitted that they requested HESCO for permanent disconnection w.e.f July 04, 2003 however, their request



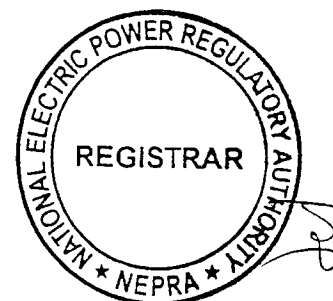
was not considered. Later, they approached the Honorable High Court of Sindh and the Honorable Court directed HESCO to consider their request for reduction of load from the date of their application submitted to HESCO. The Complainant further added that during the period from July 04, 2003 to September, 2005, there was no usage of HESCO's supply and their request for permanent disconnection was pending with HESCO, however, HESCO did not allot permanent disconnection code, therefore, they started using electricity supply w.e.f. October 2005.

5. The case was examined in detail in light of written/verbal arguments of the Complainant and HESCO and applicable documents/law. Following was concluded:

- i. The Complainant is an industrial consumer of HESCO under tariff category B-3. In the month of July, 2003, the Complainant switched over to self-generation and requested HESCO for permanent disconnection of electricity supply.
- ii. As per the law, upon receipt of the Complainant's request, the connection should have been disconnected and permanent disconnection code should have been allotted to the Complainant's connection within 90 days, however the same was not done by HESCO. HESCO continued charging fixed charges to the Complainant during the period from August, 2003 to September, 2005.
- iii. There was no usage of HESCO's connection at the premises from August, 2003 to September, 2005. During this time, the request of the Complainant for permanent disconnection was pending with HESCO, however, HESCO did not allot permanent disconnection code, therefore, the Complainant again started using electricity supply w.e.f October, 2005.
- iv. The Complainant approached HESCO to stop levying fixed charges, but the issue was not resolved and they were asked by HESCO officials to pay fixed charges under the provisions of section 22 of the NEPRA Act. Accordingly, the Complainant approached the Honorable High Court of Sindh. The Honorable Court vide its interim order dated December 09, 2004 restrained HESCO for taking any coercive measure to recover the fixed charges and allowed the Complainant to provide bank guarantee to HESCO in lieu thereof. Later, the Honorable Court vide its decision dated May 25, 2006 referred the case to BoD of HESCO and directed that the applications for permanent disconnection be treated as applications for reduction of load.

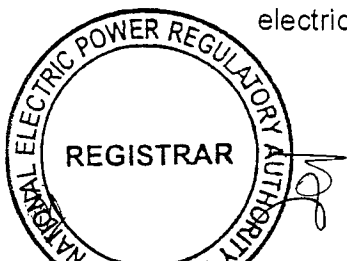
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- v. Accordingly, BoD of HESCO, in its 43rd meeting held on June 29-30, 2007 decided that "the applications for permanent disconnection may be treated as applications for load reduction, as this has no adverse financial implications for HESCO. Moreover, the BPCs will pay fixed charges on sanctioned load till the end of the financial year during which the applications for disconnection were made and from the beginning of the next financial year, they will pay fixed charges on the reduced load". Keeping in view the orders of Honorable High Court of Sindh and subsequent decision of BoD of HESCO, the benefits were calculated and the petitioners were ordered to make payment of rest of the fixed charges as per the Court's orders.
- vi. Initially, HESCO raised an amount of Rs. 11.452 million as fixed charges against the Complainant. Subsequent to the decision of its BoD, HESCO offered benefit of Rs 3.672 million to the Complainant, however, the issue was not resolved and the amount of Rs. 11.452 million was kept as deferred amount. Later on, HESCO debited the said amount against the Complainant during the month of May 2015.
- vii. Upon request for permanent disconnection, HESCO raised fixed charges against the Complainant under Section 22 of the NEPRA Act, which is unjustified. Whereas, the fact remains that Section 22 of the NEPRA Act is not applicable in case of self-generation. The same clarification was also given in other like cases and decisions so rendered were implemented by HESCO.
- viii. The Complainant was of the view that their case is of similar nature as that of Popular Spinning Mills and Popular Fiber Mills vs HESCO which have already been decided by NEPRA wherein charging of fixed charges by HESCO were declared as illegal. The fact remains that the instant case is of different nature than the above mentioned cases. In the said cases, the Honorable High Court of Sindh directed HESCO to accept the application of the petitioner for permanent disconnection, whereas in the instant case, the Honorable Court directed HESCO to consider the application of the petitioner for reduction of load. HESCO reduced the load of the Complainant from 2400 kW to 1200 kW w.e.f July 01, 2005.
- ix. The dispute is for the period from August 2003 to September 2005, during which the Complainant did not use electricity supply from HESCO, however HESCO continued to raise fixed charges. Later on, the Complainant started using electricity supply from HESCO's system w.e.f October, 2005. The Honorable



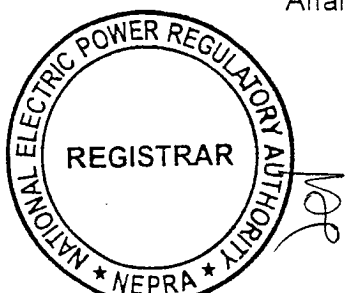
High Court of Sindh referred the case to BoD of HESCO and directed that the application for permanent disconnection be treated as application for reduction of load. The said orders of the court are still in force.

6. Foregoing in view, the case was decided by Member (Consumer Affairs) NEPRA vide decision dated March 30, 2016, wherein it was held that since the orders of Honorable High Court dated May 25, 2006 regarding conversion of request of the Complainant from permanent disconnection into reduction of load are still in force, and the Complainant has not challenged the same, therefore, NEPRA cannot intervene in the matter. However if the Complainant has any issue with respect to implementation of the orders of the Honorable High Court, then it may approach the Court in this regard.

7. Being aggrieved with the impugned decision, NTML filed an Appeal dated April 29, 2016 under Section 12-A of the Act and prayed to (a) set aside the impugned Order as the fixed charged were wrongly imposed by the BoD of HESCO (b) modify the impugned Order and determine that the charges levied and claimed on account of fixed charged from August 2003 to September 2005 are illegal, void, unjustified and not recoverable from the Appellant. (c) direct HESCO not to take any measures which would restrict the Appellant's right to enjoy safe, reliable electricity facility and (d) resolve the matter in compliance with the Law. The Authority admitted the appeal of NTML and a hearing of the parties was held on 06th October 2016 in this regard. In the meanwhile, it came to the knowledge of NEPRA that NTML has filed a petition C.P No. D-1506/16 before Sindh High Court, Hyderabad inter-alia praying to the Court (a) to restore the electricity connection of the petitioner (b) to decide that Section 22 of the NERA Act is not applicable to it (c) withdraw the fixed charges bill issued in the month of May 2016.

8. This case has been examined in detail in light of the relevant documents, arguments advanced during the hearing and the applicable law. The following has been observed/concluded –

- (i) The Appellant, by filing C.P. No. D-1506/16 with the High Court of Sindh, has conformed to the decision of Member (Consumer Affairs), with regards to approaching the Court for redress of its grievances against the order of Court, dated May 25, 2006.
- (ii) The Appellant is in full conformity of the decision of the Member (Consumer Affairs) and therefore no further adjudication on the matter is necessary

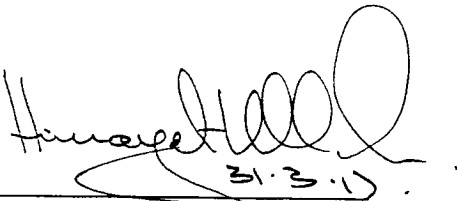


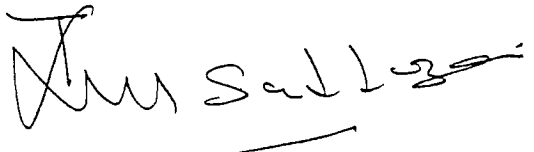
(iii) Further, there is no cause for Authority to exercise its statutory jurisdiction on the subject of interpretation of Section 22 of the NEPRA Act while the same is being adjudicated before the High Court of Sindh.

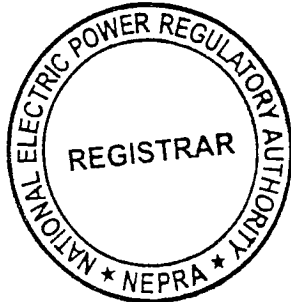

9. In consideration of the above, the decision of Member (Consumer Affairs) dated March 30, 2016 is hereby upheld and the instant appeal is accordingly dismissed.


Maj (R) Haroon Rashid
(Member)


Syed Maseed Ul Hassan Naqvi
(Member)


Himayat Ullah Khan
(Vice Chairman)


Tariq Saddozai
(Chairman)



11.04.17

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