



ARUNACHAL PRADESH STATE ELECTRICITY REGULATORY COMMISSION

O.T. BUILDING, 2ND FLOOR, NITI VIHAR MARKET, T.T. MARG

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No. F. APSERC/RA-18/II/2024-25/501

PETITION NO: MP-07 of 2024.

CORAM

Mr. Rajesh Kumar Joshi, Chairperson.

Mr. Nich Rika , Member (Law).

FINAL DATE OF HEARING : 27/09/2024

DATE OF ORDER: 08/10/2024

In the matter of:

Miscellaneous Petition under Regulation 12, 13 and 43 of the Arunachal Pradesh State Electricity Regulatory Commission (Conduct of Business) Regulations, 2011 (CRB 2011”) read with Regulations 8.7 of the Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2024, (Supply Code , 2024”) seeking relaxation of Regulation 3.21.4 (1) read with Annexure 10.10 of Supply Code relating to security deposit for new connection .

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State Electricity Regulatory Commission
Arunachal Pradesh

And in the matter of:

Aether Alloys LLP.

Having its registered office at Legi Complex, A sector, Naharlagun, Papum Pare District, Arunachal Pradesh, represented through Shri Niraj Sharma, Chief Executive Officer (CEO).

... Petitioner.

Versus

Department of Power, Arunachal Pradesh, Vidyut Bhawan, Itanagar, Arunachal Pradesh (DOPAP).

... Respondent No. 1.

Department of Industries, Government of Arunachal Pradesh, Itanagar.

... Respondent No.2.

Appearance:

For Petitioner.

1. Mr. H K Jamoh, Advocate
2. Mr. Niraj Sharma, CEO, Aether Alloys LLP.
3. Mr. Anand Sharma Roy, AGM Aether Alloys LLP.
4. Mr. Manik Bhawal, Comm. Mgr, Aether Alloys LLP.

For Respondent.

5. Er. Duyu Tacho, Chief Engineer (Commercial)
Department of Power,
6. Er. Zomba Nasho, EE (Commercial), Department of Power
7. Er. Rajesh Kumar Sharma, JE (Commercial), Department of Power

ORDER

This miscellaneous application has been made under Regulation 12, 13, and 43 of the Arunachal Pradesh State Electricity Regulatory Commission (Conduct of Business) Regulations, 2011 (“CBR 2011”) read with Regulations 8.7 of the Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2024 , (Supply Code , 2024”).

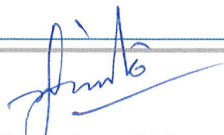
2. The Petitioner seeks relaxation of Regulation 3.21.4 (1) read with Annexure 10.10 of the Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2024 relating to security deposit for the new connection in interest of justice, for protection of consumer interest and fostering economic development. The prayer made in the present petition is to:

“1. To admit and allow the present petition.

2. To reduce or relax the security deposit amount for the petitioner firm as prescribed under Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2024 in terms of submissions made in the present petition. “

3. Heard Representative Mr. Anand Sharma Roy, AGM, Aether Alloys LLP, petitioner in the instant application.

4. The petitioner, a firm registered by the name “Aether Alloys LLP”, a limited liability partnership firm incorporated and is registered at Registrar of Companies (ROC), Shillong .



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5. The petitioner's firm deal with and manufacture of Ferro Alloys. Its manufacturing plant unit is near completion at Industrial Growth Centre, Niglok - Ngorlung, East Siang District, Arunachal Pradesh. A lease agreement, dated 27.09.2018 for land measuring about 59,000 square meters taken on lease for a period of 50 years from the Government of Arunachal Pradesh is part of the record. The petitioner has undertaken a green field ferro alloys (Unit -I) project with a capacity of 2 x 9 MvA furnace (15,000 metric tonnes of ferro silicon per annum) in Unit-I. It has also started work on its unit II plant which will have 21 Mv A Furnace (18,000 metric tonnes of ferro silicon per annum).

6. The petitioner firm being green field ferro alloys processing plant requires continuous supply of electricity. Thus on 19.03.2020, an agreement for industrial Consumers (industrial power supply) for 36 MW was made between the Department of Power, Government of Arunachal Pradesh and the petitioner firm. As per the terms of clause 9.1 of the aforesaid agreement which reads as:

" at the time of commencement of supply of energy to the consumer and before the connection of power allocation as per agreement, the consumer shall deposit Rs. 5.00 lakhs (Rupees five lakhs) only per MW as per tariff order issued from time to time by the APSERC in form of Demand Draft in favour of the Executive Engineer (E), Pashigat Electrical Division, Department of Power, Pasighat as Security Deposit.

Provided that if the power consumption of the consumer exceed the actual requirement of power of one month, the consumer shall deposit the balance amount

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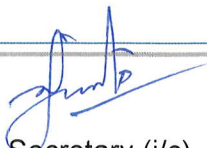
of Security Deposit for such excess consumption in the form as may be prescribed by APSERC/CERC/NEPRC immediately in the following month”

7. The petitioner on the strength of agreement dated 19.03.2020 approached the State Bank of India, commercial branch, Guwahati for securing loan, however the bank raise the queries to clause 3.1 of the agreement in regard to the assets like 132 kV LILO & 132/33 KV, 2x25 MVA Sub-Station being the assets of the Department of Power. The petitioner made a fresh agreement on 03.06.2022 wherein the terms of the Clause 3.1 was rectified and corrected, however the terms of clause 9.1 of the old agreement which provide for the payment of security deposit was also altered and modify thereby, drastically increasing the amount of security deposit .

8. The petitioner already facing financial crunch and not being able to complete the project, succumbed to the conditions imposed by the department as new agreement was necessitated to avail the loan for completion of the project.

9. The petitioner manufacturing unit is at the stage of completion. It has already invested more than Rs 140 Crores including a term loan of Rs. 80 Crores however ,due to the significantly high quantum of security deposit the petitioner is not able to deposit the required Security Deposit which ultimately is causing heavy financial losses.

10. The ideal requirement of supply of power as per the agreement of 03.06.2022 is considered at 18 MW for operation of the aforesaid unit. The manufacturing unit of



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the petitioner firm as per Regulation 2.2 (Classification of Supply) of Supply Code, 2024 falls under clause 3 category. i.e Extra High Tension (EHT) -Three Phase 132 kV, 220 kV, 400 kV .

11. The crux of the petitioner case is in regard to the Regulation 3.21.4 (1) of the Arunachal Pradesh State Electricity Regulatory Commission (Supply Code) Regulation, 2024 that stipulates a security deposit shall be made by all consumers to covers (a) in respect of consumption of electricity –load security; and (b) in respect of the electricity meters / metering equipments provided to such persons by the licensee-meter security. It also provides that new consumers shall pay an initial security deposit based on the estimated consumption as per prevailing tariff applicable to the category of the consumer. The norms of computing the quantum of security deposit payable by a particular consumer is incorporated in Annexure 10.10, and the same is depicted herein below:

Annexure 10.10 determination of Security Deposit Amount.

(a) Security deposit amount for a consumer (other than industrial consumer)	= Load (kW) x load factor of the category in which consumer falls x (one billing cycle (no of days) + 30 days) x 24 hrs x current tariff (Rs/kWh of the Consumer Category
(b)	

Security deposit amount for an industrial consumer	= Load (kW) x load factor of the category in which consumer falls x one billing cycle (no of days) x 24 hrs x current tariff (Rs/kWh of the Consumer Category
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SL No.	Particulars	Load Factor
1	Domestic	30%
2	Commercial	50%
3	LT Industrial	50%
4	HT/EHT Industrial	
	. Single shift industries	50%
	. Double Shift Industries	75%
	. Continuous Industries	100%
5	Agriculture/water Supply	33%
6	Street Lights	40%
7	Signals & Blinkers	75%
8	Railway Traction	50%

12. The petitioner's firm in terms of the above regulations of the Supply Code 2024 shall be determined as "new industrial consumers "under the category of

HT/EHT industrial (Continuous industries) with 100% load factor and the current tariff of the consumer i.e Industrial 3-phase 132 kV @ Rs. 3.35 per kWh according to the tariff passed by the Commission from time to time. The security deposit amount to be paid by the petitioner firm was calculated at Rs 4,34,16,000/- only and the amount for 1 Mega Watt (M W) derived at Rs 24,12,000/- only. The security deposit amount of Rs 4,34,16,000/- only is astonishingly high as well as discouraging.

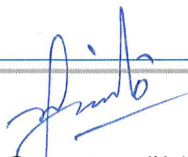
13. Hence this present petition is filed seeking relaxation of the Regulation 3.21.4 (1) read with Annexure 10.10 of the Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2024.

14. The petitioner in plea for relaxation of security deposit has relied mainly on policy namely "The Arunachal Pradesh State Industrial and Investment policy 2020" which accorded top priority to industrial growth as a means to mitigate poverty and unemployment and Sub-Regulation (1) of the Regulation 8.7 of the Supply Code which reads as.

"8.7 Power of Relaxation and Power to Remove Difficulties

(1) The Commission may, in Public interest and for reasons to be recorded in writing, relax any of the provision of this Code."

15. The petitioner further prays to remove difficulties in interpretations and implementation of certain provision of the Supply Code under sub - regulation (2) of the Regulation 8.7 of the supply Code 2024, which reads as:



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“ 8. 7 Power of Relaxation and Power to remove Difficulties

(2) If any difficulty arises in giving effect to any provision of this Code or there is a dispute regarding interpretation of any provision, the matter may be expeditiously referred to the Commission, the Commission shall pass necessary orders after consulting the parties concerned, provided that the Commission may refuse to entertain the reference file beyond 3 months delay without sufficient cause.”

16. In addition, the petitioner put emphasis on Regulation 43, which deals with saving of inherent power of the Commission under the Arunachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2011, which reads as :

“ 43 Saving of Inherent power of the Commission:-

- (1) *Nothing in this regulation shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.*
- (2) *Nothing in these regulations shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient.*

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(3) *Nothing in these regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed and the Commission may deal with such matters and exercise powers and functions in a manner it thinks fit."*

17. The petitioner herein cited case laws in reliance to the plea made in the present petition, which are:-

i. **Energy Watchdog vrs. Central Electricity Regulator Commission.**

ii. **Mr Gagan Narang vrs. Delhi Electricity Regulatory Commission &**

Ors.

iii. **Premium Granites & Anr vrs. State of T.N & Ors.**

iv. **India Glycols Limited vrs. Uttarakhand Electricity Regulatory Commission.**

v. **Star Wire(India) Vidyut Private Limited vrs. Harayana Electricity Regulatory Commission & Ors.**

18. That this Commission as seen from the Record of Proceeding, dated 27.08.2024, had come to notice that no respondent were impleaded as a necessary party by the petitioner in the present petition, furthermore for to establish the matter

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involved "public interest" and for better adjudication of the matter regarding the power tariff and security deposit in cases of New Extra High Tension (EHT) connections in neighboring states, this Commission in the order directed as under:

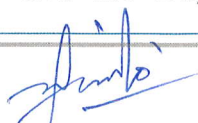
(Extracts)

" 3. The petitioner is directed to submit the statements made in the hearing on affidavit alongwith a comparative statement of the power tariff and the security deposit, one has to pay in case a new EHT connection is applied in the neighboring States like Assam, Meghalaya and other NE States. The petitioner is also required to establish the "public Interest" involved in the matter. The petitioner is directed to submit the data showing a trend that low industrial tariff and power availability in Arunachal Has attracted investor in last decade since when the industrial tariff of the state is lowest in the NE States.

4. The representative of the Department of Power submitted that the petitioner has been neither impleaded it as party nor served copy of the petition on them. Therefore, they are not in a position to make ant submissions in the matter.

5. The petitioner is directed to

a. Implead the Department of Power, Government of Arunachal Pradesh represented by Chief Engineer, (Commercial cum CEI) as Respondent No.1 and the Department of Industry, Government of



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Arunachal Pradesh represented by Director (Industries) as Respondent No.2.

b. To file revised memo of parties and provide a copy of the petition along with the relevant documents to the parties.”

19. The Department of Power, Government of Arunachal Pradesh impleaded as respondent No.1 had filed affidavit in reply. The respondent No.1 contended that the security deposit has been calculated based on the formula given in the Electricity Supply Code 2020. The security deposit amount so calculated is equivalent to the expected amount of bill for one single billing cycle, which is the smallest possible billing cycle. Hence the security deposit amount of Rs 4,34,16,000/- seems to be genuine.
20. The Department of Industries, Government of Arunachal Pradesh impleaded as Respondent No.2 neither appeared nor had filed any reply even after notice being issued.
21. The petitioner as per order dated 27.08.2024 filed additional affidavit to bring on record certain documents being necessary for proper adjudication of the issues involved in the instant petition.
22. The petitioner in the additional affidavit has showcased the comparative table in regard to security deposit along with current tariff in regard to Extra High Tension (EHT) category of the North East States, further petitioner has placed on record several similar agreement with respondent no.1 where security deposit being

fixed at Rs.5.00 lakhs per MW. Thereby prayed that his case may also be considered in the same footing.

COMMISSION OBSERVATION AND FINDING:

23. Having gone through the pleadings and the submissions made by representative for the petitioner and representative of Department of Power, Government of Arunachal Pradesh, impleaded as Respondent No.1. the matter that came up for consideration before the Commission is that petitioner seeking relaxation of the Regulation 3.21.4 (1) read with Annexure 10.10 of the Arunachal Pradesh State Electricity Regulatory Commission (Supply Code) Regulation, 2024 and consequent reduction of the Security Deposit amount .

24. The Commission carefully perused the provision under Regulation 3.21.4 (1) of the Arunachal Pradesh State Electricity Regulatory Commission (Supply Code) Regulation, 2024. The relevant portion is extracted as under:

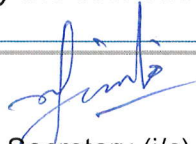
3.21.4 Security Deposit

(1) A security deposit shall be made by all consumers to cover:

(a) In respect of consumption of electricity of electricity-load security;

and

(b) In respect of the electricity meters/ metering equipment provided to such persons by the licensee-meter security.



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(2) Post Paid Metering

(a) Load Security

All consumers shall have to deposit an amount as specified in this Code against his consumption as load security to cover non-payment of his monthly energy bill, as per Schedule of Tariff applicable from time to time.

The security deposit amount required to be maintained with the licensee will be computed as follows:

(i) For new Consumer:

The new consumers shall pay an initial security deposit based on the estimated consumption as per prevailing tariff applicable to the category of consumer. The norm of computing consumption for the load security is incorporated in Annexure 10.10.

25. Thus bare readings of provisions emphasis, the regulation code mandates security deposit mandatory to be made by all consumers. All consumers compulsorily should deposit an amount as specified in this code against his

requirement and consumption as load security to cover non-payment of his monthly electrical bill, as per schedule of tariff applicable from time to time. The new consumer shall pay an initial security deposit based on the estimated consumption as per prevailing tariff applicable to the category of consumer. The norm of computing consumption for the load security is as incorporated in Annexure 10.10 of the supply code 2024. Thus to Commission's understanding, the security deposit act as a protective measures against the defaulter consumers for non- payment of his monthly energy bill, it aims to ensure proper payment of bills. The commission has also examined and gone through Regulation 3.21.4, Sub Regulation (5) of the code whereby it provides for refundable of security deposit in events of termination of the agreement, further Regulation 3.21.5 provides for interest to the consumers on the security deposit. The intention and objective of security deposit are clear under these regulations. For no purpose this Commission believes and accounts any part of the regulations be malafide and against the interest of any consumer.

26. The petitioner here had approached this commission being aggrieved with modification/alteration of the clause 9.1 of the agreement, dated 03.06.2022 entered with respondent no. 1 in regard to security deposit. The petitioner never had raised any concerns or made any representation before the competent authority. It was only after a period of two year of the said agreement; the petitioner has filed this present petition.

27. The commission observed that petitioner's firm a ferro alloy manufacturing has

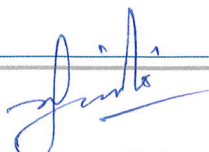
set up unit on the projected location at Arunachal Pradesh to avail the benefits of its low industrial tariff and availability of surplus power. The petitioner has set up his manufacturing unit sensing conducive and lucrative industrial policy of the state of Arunachal Pradesh. So the concept of "Public interest" to relax the security deposit does not sustain in any way. The petitioner has failed to satisfy the Commission's intervention evoking Public interest as under Sub-regulation (1) of the Regulation 8.7 of the Arunachal Pradesh State Electricity Regulatory Commission (Supply Code) Regulation, 2024. The petitioner having entered into a contract with open eyes cannot deviate from the agreement by placing that the matter could be considered as it involved public interest thereby relaxing the security deposit amount of the petitioner.

28. The Commission observed that petitioner wanting for implication of earlier agreement, dated 19.03.2020 between the Department of Power, Government of Arunachal Pradesh and the petitioner firm, where an amount of Rs. 5.00 lakhs (Rupees five lakhs) only per MW as security deposit was to be made to respondent No.1. To sustain the claim of the petitioner, several similar agreements with the department of Power, Government of Arunachal Pradesh, were placed on record. After going through all the agreements, it appears that respondent No.1 had been allowed, in past, such condition before the establishment of the present Commission. It is well settled that once Commission is established and Regulation has been framed and in force, its bound to be followed and abided by its provisions. **In PTC India Ltd. Vrs. CERC (2010) 4 SCC 603,** it has categorically held that once the

Appropriate Commission frames and notifies regulations, then it is bound by such regulations and further that the regulations so framed override even existing contracts between the parties.”

29. The commission observed that respondent No.1 has opposed for any relaxation in security deposit as the amount so calculated is based on the norm of computing consumption for the load security is as incorporated in Annexure 10.10 of the Arunachal Pradesh State Electricity Regulatory Commission (Supply Code) Regulation, 2024 . The security deposit amount so calculated is equivalent to the expected amount of the billing cycle. The security deposit amount of Rs. 4,34,16,000/- is what petitioner must deposit for the total 18 MW energy consumption per month. The respondent no.1 further acknowledged that no any variation or revision done in regard to security deposit as from the year 2020 to till this date.

30. The Commission observed that security deposit amount in case of new connection for Extra High Tension (EHT) is comparatively high in neighboring states of Assam, Meghalaya and other North East States as compared to Arunachal Pradesh. The petitioner fairly admits the facts in the additional affidavit brought on record. The Commission further decides that official correspondence put forward by the respondent No.1 cannot in any way be treated and accepted a document considered to be put on record.



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31. The Commission observed that during course of proceeding on 27.08.2024, the counsel for petitioner prayed to implead the Department of Industries as respondent no. 2 to shed some light if any directions or policy in regard to security deposit has been issued. The respondent no. 2 nor filed any reply neither appeared in the hearing even though the notice was issued for appearance.

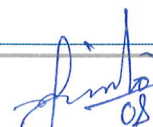
Decisions:

32. In views of the foregoing observations and discussions, we are satisfied that no grounds have been made out by the petitioner in the present petition seeking relaxation of the Regulation 3.21.4 (1) read with Annexure 10.10 of the Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2024. Thus prayer for relaxation of the security deposit in the context of "public interest" is not established by the pleadings and records of Petitioner. In such circumstances Commission is not inclined for evoking the Clause 8.7 of the Regulation in force.

33. With the aforesaid, the Miscellaneous Petition no 07 of 2024 has no merit and is, accordingly, dismissed.

**Sd/-
(Nich Rika)
Member (LAW)**

**Sd/-
(R.K. Joshi)
Chairperson**


08/10/2024

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