

**JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Coram*
Sh. S.K.Chaturvedi, Member
Petition No. 106/2013

In the matter of

Petition for seeking relaxation of Regulation 6.10 (2) of JERC (Electricity Supply Code) Regulations, 2010 to the extent of allowing payment of Security Deposit in the form of Bank Guarantee instead of Demand Draft or Banker's Cheque for H.T. Industrial, H.T. Industrial (Ferro Metallurgical/ Steel Melting/ Power Intensive) & H.T. Industrial (Steel Rolling) categories as per JERC Tariff order dated 31.03.2013 for ED- Goa and u/s 47 (1) & 86 (1) (a) & (k) of the Electricity Act, 2003 read with Regulation 79 (b) of JERC (Conduct of Business) Regulations, 2009 and Regulation 11.7 (ii) of JERC (Electricity Supply Code) Regulations, 2010.

And in the matter of

Alloys & Steel Manufacturer Association of Goa, Panaji

And

Electricity Department, Govt. of Goa

Present for petitioner

1. Shri Prashant k. Anvekar, Consultant, ASMAG.

Order

13.08.2013

1. Alloys & Steel Manufacturer Association of Goa - petitioner has filed the present petition under sections 47 (1) & 86 (1) (a) & (k) of the Electricity Act, 2003 read with Regulation 79 (b) of JERC (Conduct of Business) Regulations, 2009 and Regulation 11.7 (ii) of JERC (Electricity Supply Code) Regulations, 2010 for seeking relaxation of Regulation 6.10 (2) of JERC (Electricity Supply Code) Regulations, 2010 to the extent of allowing payment of Security Deposit in the form of Bank Guarantee instead of Demand Draft or Banker's Cheque for H.T. Industrial, H.T. Industrial (Ferro Metallurgical/ Steel Melting/ Power Intensive) & H.T. Industrial (Steel Rolling) categories as per JERC Tariff order dated 31.03.2013 for ED- Goa for FY 2013-14.
2. The petition filed by the petitioner runs as under:-

Quote

1. The Petitioner, Alloy & Steel Manufacturers Association of Goa, Panaji hereinafter referred as ASMA, Goa is an association of various alloy & steel manufacturers in the State of Goa. Members of the above association are consumers of Electricity Department (ED), Goa predominantly drawing power at High Tension (HT) and categorised as H.T. Industrial, H.T. Industrial (Ferro Metallurgical/Steel Melting/Power Intensive) & H.T. Industrial (Steel Rolling) as per JERC Tariff Order dated March 31, 2013 for Electricity Department, Goa.

2. The Respondent, Electricity Department of Goa, hereinafter referred as ED, Goa, is a department under Government of Goa. The Electricity Department was formed in January 1963 and the Electricity Department is the only licensee in the State of Goa for transmission and distribution of electricity.
3. The Petitioner submits that as per the applicable tariff for H.T. Industrial, H.T. Industrial (Ferro Metallurgical/Steel Melting/Power Intensive) & H.T. Industrial (Steel Rolling), the members of ASMA, Goa are required to pay the monthly charges (fixed/demand charge, energy charge & other charges) to ED, Goa based on consumption of power as per applicable JERC Orders and JERC Regulations for the State of Goa and as amended from time to time.
4. The Petitioner submits that in addition to the above charges, as per Regulation 6.10 (1) of the JERC Supply Code Regulations, 2010, all its members {H.T. Industrial, H.T. Industrial (Ferro Metallurgical/Steel Melting/Power Intensive) & H.T. Industrial (Steel Rolling) consumers of ED, Goa categorised as per the JERC Tariff Order dated March 31, 2013} are required pay Security Deposit to ED, Goa for the said power connection. For H.T. Industrial, H.T. Industrial (Ferro Metallurgical/Steel Melting/Power Intensive) & H.T. Industrial (Steel Rolling), the amount of Security Deposit is estimated based on two months average annual total bill amount.
5. The Petitioner submits that Regulation 6.10 (2) of the JERC Supply Code Regulations, 2010 mandates payment of Security Deposit in cash i.e. Demand Draft or Bankers Cheque for HT/ EHT Consumers. Regulation 6.10 is reproduced below:

“6.10 Security Deposit

(1) The licensee may take a security deposit from the consumers for consumption equivalent to the estimated consumption for a specific period as indicated in the table below or as otherwise provided in Terms and Conditions of Supply in force.

<i>Sr. No.</i>	<i>Nature of Consumer</i>	<i>No. of months</i>	<i>Remarks</i>
<i>1</i>	<i>Agricultural</i>	<i>Three</i>	<i>Annual average to be estimated /considered</i>
<i>2</i>	<i>Seasonal</i>	<i>Two</i>	<i>Consumption during the season of operation to be estimated considered</i>
<i>3</i>	<i>Other consumers</i>	<i>Two</i>	<i>Annual average to be estimated / considered</i>

(2) Consumer shall have the option to make advance payment and in such an event security amount shall be proportionately fixed. The procedure for determination of security deposit, for different categories of consumers, shall be determined by the licensee and approved by the Commission. The deposit shall be accepted in the form of cash, Cheque or draft in case of LT consumers and in the form of draft or banker’s Cheque in case of HT/EHT consumers. The Licensee shall maintain separate head of account of such security deposits. On termination of the agreement, the security deposit will be refunded to the consumer after adjustment of the amount, if any, remaining payable by him.”

6. The Petitioner submits that payment of security deposit in cash will burden the industry further as this increases the overall cost of production. A brief calculation on the impact of payment of security deposit in cash is elaborated below for the alloy & steel manufacturing units based in Goa:

Sr. No.	Consumers Category	Revenue Amount (Rs. Crs.)	Sales (MUs)	Nos. Consumers	Connected Load (MW)
1	HT/ Industrial	239	596	414	233
2	H.T. Industrial (Ferro Metallurgical/ Steel Melting/ Power intensive)	198	490	26	99
3	H.T. Industrial (Steel Rolling)	20	47	13	20
4	Total	457	1133	453	353
5	Total monthly bill for the above three consumer category	38			
6	Annual Security Deposit amount (two months of annual average bill)	76			

Source: JERC Order on Review of FY 2012-13 and ARR for FY 2013-14 for ED, Goa dated 31.03.2013

7. As can be seen from above table, the total revenue accrued to ED, Goa from H.T. Industrial, H.T. Industrial (Ferro Metallurgical/Steel Melting/Power Intensive) & H.T. Industrial (Steel Rolling) is Rs. 457 Crs. Based on this, the Security Deposit payable by all the above consumer categories is approximately Rs. 76 Crs. If the above amount is to be paid in cash as security deposit to ED, Goa, this will entail arranging such huge fund as working capital loan. For such units, the interest rate for working capital loan is approximately 14.50 % depending on the creditworthiness of each of the business group operating the said industry. The table below shows the impact of working capital financing and the interest rate (@ 9.70 %) payable by ED, Goa on security deposits based on the JERC Regulations.

Sr. No.	Particulars	Amount (Rs. Crs)
1.	Security Deposit Payable	76.00
2.	Annual Interest on working capital loan for arranging above amount of security deposit @ 14.50%	11.02
3.	Annual Interest paid by ED- Goa to above consumers on security deposit as per JERC Regulations @ 9.70%	7.372
4.	Difference due to interest rates	3.648
5.	Charges for Bank Guarantee @ 4%	3.04

Source: Interest Rates as per JERC Order on Review of FY 2012-13 and ARR for FY 2013-14 for ED, Goa dated 31.03.2013

8. From the above analysis, the said category of consumers will have to bear an additional cost due to difference in the interest rates. The prevailing SBI Bank rate as notified by SBI on Feb 4th 2013 is 9.70%. Interest rates payable by members of ASMA Goa for arranging working capital loans is approximately 14.5 %. The bank charges for issue of Bank Guarantee incurred by the members of ASMA, Goa is about 4 %. The total annual cost due to the interest rate differential for arranging this huge amount of Security Deposit of Rs. 76 Crs. is approximately Rs. 3.648 Crs. All the member industries of ASMA, Goa are basically small scale industries operating on optimised financial management principles and require the funds to be deployed in an efficient manner. A onetime cash outflow of Rs. 76 Crs. in the form of cash payment of security deposit will lead to huge impact on the financials of these small scale industries vis-a-vis a cheaper option of providing the payment guarantee to ED, Goa by way of Bank Guarantee which will cost (i.e. Bank charges for issue of Bank Guarantee) annually approximately Rs. 3 Crs. collectively for the members. This option is an efficient mechanism to provide payment security to ED, Goa without unduly straining the financials of these small scale industries and will help maintain their competitiveness in the market.
9. The Petitioner submits that Electricity Department, Goa filed a Petition No. 95/2013 in the matter of Review Petition u/s 94(1) of the Electricity Act, 2003 for review of tariff order dated 27th June, 2012 passed by JERC for the State of Goa and UTs. The Hon'ble Commission in the above petition issued an order dated 31-01-2013, with following directives regarding mode of payment of security deposit:

“The Commission directs that the ED- Goa should follow the provisions of Regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010. Wherever existing mode of deposit i.e. bank guarantee, fixed deposit etc. is different from those provided in the Regulation, the same be replaced by those as specified therein, as per section 47(1) of Electricity Act, 2003 and pay interest as per section 47(4) of Electricity Act, 2003”.

10. In a similar matter, in the Union Territory of Dadra & Nagar Haveli (DNH), the Petitioner submits that Silvassa Industries Association filed a petition under 86 read with Sec. 61(d) of the Electricity Act, 2003, praying for use of inherent powers by the Commission under Regulation 11.7 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010 and review U/s 94(1) of the Electricity Act, 2003 for reviewing tariff order for FY 2011-12 and to permit LT, HT and EHT consumers to continue to avail connection on the basis of Bank Guarantee as security deposit instead of submitting draft as security deposit prescribed under regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010. The Hon'ble Commission vide order dated 27-12-2012 dismissed the above petition with the following observation:

“16. In the light of our above discussion, observations and findings it is clear that the Commission has already framed JERC (Electricity Supply Code) Regulations, 2010 as per section 47 of Electricity Act, 2003. The directions issued by the Commission in para no.

7.1.10 at page no. 64 of order dated 13.09.2011 passed in petition no. 32/2011 for approval of ARR and Tariff Determination for the UT of Dadra and Nagar Haveli for FY 2011-12 are as per section 47 of the Electricity Act, 2003 and regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010. There is no illegality in the order under review so there is no merit in the petition and the same fails and is hereby dismissed.”

11. Thereafter the Silvassa Industries Association filed an Appeal No. 40/2013 titled Silvassa Industries Association Vs. Joint Electricity Regulatory Commission & others before the Hon’ble Appellate Tribunal for Electricity (APTEL) against the order dated 27-12-2012 passed by JERC in review petition no. 81/2012. The Hon’ble APTEL vide order dated 10-05-2013 disposed off the appeal no. 40/2013 with following directions:

“.....The learned counsel for the Distribution Company also submits that they also face some difficulties due to the Regulations which require consideration for relaxation.

From a perusal of the Order, it is clear that this aspect has not been considered by the Joint Electricity Regulatory Commission.

Therefore, the Joint Electricity Regulatory Commission is directed to deal with the said question and find out whether a case is made out for relaxation of the prevailing Regulation after hearing both the parties and pass the Order in accordance with law as expeditiously as possible.

With the above observations, the Appeal is disposed of.”

12. The Petitioner submits that with reference to the APTEL order dated 10-05-2013 in Appeal No. 40/2013 requires that the question of relaxation of the prevailing Regulations needs to be relooked by the Hon’ble Commission for allowing payment of Security Deposit in the form of Bank Guarantee instead of Demand Draft or Banker’s Cheque.
13. The Petitioner submits that the Hon’ble Commission has inherent powers to allow relaxation of particular Regulations in conformity with the Act but in variance with any of the provisions of the Regulations. These powers are provided vide Regulation 79 (b) in the JERC (Conduct of Business) Regulations, 2009 and also vide Regulation 11.7 (ii) JERC (Electricity Supply Code) Regulations, 2010. **Relevant Regulations are reproduced below:**

“JERC Conduct of Business Regulations, 2009

79. Saving of inherent power of the Commission

b. Nothing in these Regulations shall bar the Commission from adopting, in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of the 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 for dealing with such a matter or class of matters.

JERC (Electricity Supply Code) Regulations, 2010

11.7 Savings

(ii) Nothing in these regulations shall bar the Commission from adopting in conformity with the provisions of the Act 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 case or class of cases and for reasons, to be recorded in writing, deems it necessary or expedient for dealing with such a case or class of cases, based on merits.”

14. The Petitioner submits that the preamble of the Electricity Act, 2003 discusses the need for taking measures conducive to the development of the power sector, rationalisation of tariff and also protecting the interest of the consumers.

“Electricity Act, 2003 - Preamble

An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”

Hence in the present case regarding relaxation of the Regulations for allowing Bank Guarantee as a mode of payment of security deposits, the Petitioner humbly submits that this mode of payment will balance the interests of the consumers & the utilities. Such a mode of payment will avoid undue burden on the consumers and also suffice the need of the utilities in securing their outstanding dues from the consumers for the electricity supplied.

15. The Petitioner submits that the Section 47 of the Electricity Act, 2003 requires the consumer to provide adequate security as per the Regulations for availing supply from a distribution licensee and other provisions regarding treatment of such security deposit. Also the Act provides that in case of electricity supply is availed through pre-payment meter; the consumers are not required to pay the security deposits.

Electricity Act, 2003

47. Power to require security.

(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him -

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

16. The Petitioner submits that the intent of the Act is to provide the distribution licensee with adequate payment security against default by any person to whom the licensee supplies electricity and where the security becomes insufficient or invalid, the licensee can require the person to give reasonable security (whether in cash or otherwise) failing which the licensee can discontinue the supply of electricity. Hence our humble submission to the Hon'ble Commission is that Bank Guarantee can be one of the modes of payment of security deposit and is consistent with the intent and provisions of the Act.
17. The Petitioner would also like to highlight the provisions in the National Tariff Policy. The objective of the National Tariff Policy is to ensure electricity to consumer at reasonable and competitive rates and also promote transparency, consistency and predictability in the regulatory approaches across jurisdictions and minimise perception of regulatory risk. As discussed in the subsequent paragraphs many SERCs allow Bank Guarantee as a mode of payment of security deposit. Hence by adopting a different approach in the State of Goa and Union Territories regarding mode of payment of Security Deposit may lead to inconsistent and unpredictable regulatory approaches across different States in India. This may be a disadvantage for the industries in such States and Union Territories compared to similar industries in other States with favourable regulatory dispensation for the said issue. Though Clause 6.2 of the National Tariff Policy (NTP) is not directly applicable for the relation between the licensee and the consumer, the same is being highlighted only to submit that the NTP specifies that the Power Purchase Agreement between the Generating Companies and the distribution should ensure adequate and bankable payment security arrangements to the Generating companies. NTP also suggests/ specifies payment security mechanisms like escrow of cash flows, etc. The relevant sections of the National Tariff Policy is reproduced below:

“National Tariff Policy

4.0 Objectives of the Policy: The objectives of this tariff policy are to:

- (a) Ensure availability of electricity to consumers at reasonable and competitive rates;*
- (b) Ensure financial viability of the sector and attract investments;*
- (c) Promote transparency, consistency and predictability in regulatory approaches across jurisdictions and minimise perceptions of regulatory risks;*
- (d) Promote competition, efficiency in operations and improvement in quality of supply.*

6.2 Tariff structuring and associated issues

(2) Power Purchase Agreement should ensure adequate and bankable payment security arrangements to the Generating companies. In case of persisting default in spite of the available payment security mechanisms like letter of credit, escrow of cash flows etc. the generating companies may sell to other buyers.”

18. The Petitioner submits that it would be appropriate to examine as to whether the Bank Guarantee provides the similar level of security as is the case with cash and cash equivalents, like cheque, demand draft, etc. In case of Bank Guarantee, a bank guarantees the repayment of money on default by the customer or the payment of money when the customer makes procurements on deferred payment basis. Bank Guarantee is an instrument issued by the Bank in which the Bank agrees to stand guarantee against the non-performance of some action/performance of a party. The quantum of guarantee is called the 'guarantee amount'. The guarantee is issued upon receipt of a request from 'applicant' for some purpose/transaction in favour of a 'Beneficiary'. The 'issuing bank' will pay the guarantee amount to the 'beneficiary' of the guarantee upon receipt of the 'claim' from the beneficiary. This results in 'invocation' of the Guarantee. The entire range of Bank Guarantees are, namely, Bid Bond Guarantee, Advance payment Guarantee, Guaranty for warranty obligation, Payment Guarantee/Loan Guarantee, Performance Guarantee, Deferred payment Guarantee, Shipping Guarantee Trade Credit Guarantee.
19. The Petitioner submits that based on the above reading, in case of bank guarantee, the bank guarantees the repayment of money on behalf of the customer. In case of Bank guarantee the bank gives an undertaking to pay on behalf of its customers in case of default by its customer. Thus, a seller of goods or services is well protected of his legitimate dues if a bank guarantee is issued to him on behalf of the buyer.
20. In the power sector, bank guarantee is not a new concept. The generating companies selling power, aware of the financial health of the State Electricity utilities, insist on getting a bank guarantee in their favour and this mechanism is in practice. The only purpose of this was to secure timely payments to the generating companies by the utilities or licensees for supply of electricity as per agreement.
21. Thus, from the reading of the above paragraphs, it is evident that the Bank Guarantee provides the adequate security in case of default by the consumer. The practice of paying security deposit by way of bank guarantee has also been recognized by other State Electricity Regulatory Commissions (SERCs), like Maharashtra, Chattisgarh, Uttar Pradesh, Karnataka, etc. for large consumers.
22. A bare reading of the relevant Regulations regarding payment of Security Deposits by consumers issued by various SERCs in India in the subsequent paragraphs reveals that Bank Guarantee is also one of the modes for payment of security deposits as provided in the relevant regulations and approved by the SERCs, which are also in compliance to the Section 47 of the Electricity Act, 2003. A compendium of relevant regulations on the said matter issued by various SERCs is reproduced below:

MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005

11. Security Deposit

11.1 Subject to the provisions of sub-section (5) of Section 47 of the Act, the Distribution Licensee may require any person to whom supply of electricity has been sanctioned to deposit a security in accordance with the provisions of clause (a) of sub-section (1) of Section 47 of the Act.

11.2 The amount of the security referred to in Regulation 11.1 above shall be an equivalent of the average of three months of billing or the billing cycle period, whichever is lesser. For the purpose of determining the average billing under this Regulation 11.2, the average of the billing to the consumer for the last twelve months, or in cases where supply has been provided for a shorter period, the average of the billing of such shorter period, shall be considered:

Provided that in the case of seasonal consumers, the billing for the season for which supply is provided shall be used to calculate the average billing for the purpose of this Regulation 11.2.

11.3 Where the Distribution Licensee requires security from a consumer at the time of commencement of service, the amount of such security shall be estimated by the Distribution Licensee based on the tariff category and contract demand / sanctioned load, load factor, diversity factor and number of working shifts of the consumer.

11.7 Where a consumer who has deposited security subsequently opts to receive supply through a prepayment meter, the amount of such security deposit shall, after deduction of all monies owing from such consumer, be either refunded to such consumer or treated as a part of the value of the prepayment credit to the account of such consumer, from which the value of his future consumption is to be deducted.

11.8 The Distribution Licensee may apply any security so deposited, towards satisfaction of any amount which is due or owing from the consumer.

11.9 Upon termination of supply, the Distribution Licensee shall, after recovery of all amounts due, refund the remainder amount held by the Distribution Licensee to the person who deposited the security, with an intimation to the consumer, if different from such person.

11.10 A consumer -

(i) with a consumption of electricity of not less than one lac (1,00,000) kilo-watt hours per month; and

(ii) with no undisputed sums payable to the Distribution Licensee under Section 56 of the Act may, at the option of such consumer, deposit security under this Regulation 11, by way of cash, irrevocable letter of credit or unconditional bank guarantee issued by a scheduled commercial bank.

23. MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 stipulates that a consumer with a consumption of electricity of not less than one lac (1,00,000) kilo-watt hours per month and with no undisputed sums payable to the Distribution Licensee under Section 56 of the Act may, at the option of such consumer, deposit security under this Regulations, by way of cash, irrevocable letter of credit or unconditional bank guarantee issued by a scheduled commercial bank.

“West Bengal Electricity Regulatory Commission (Miscellaneous Provisions) Regulations, 2013 issued on April 2, 2013

4. Security Deposit:

4.1 Subject to the provisions of the Act, the distribution licensee may require any person to give security deposit with such licensee, for an amount covering 3 months of estimated bills of consumption of electricity at the prevailing rates. The estimated consumption shall be based on

12 months consumption of the previous period as on 1st April of each year or estimated consumption based on his application in case of the new applicant.

Provided that in the case of a new applicant, the estimated consumption based on his declared load shall be treated as an advance, which shall be appropriately adjusted with the amount of security deposit that would eventually be determined on the basis of his first 12 months' consumption when the latter time period is over.

4.2 Different terms and conditions in relation to security deposit are as follows:

4.2.1 A consumer, on his/her licensee's demand through a notice may replenish the deposit as and when it becomes insufficient and the same shall be done within a period of one month from the date of service of the notice under section 47(2) of the Act unless otherwise stated in these regulations showing the detail of the calculations. If required, the licensee may collect such amount in not more than 10 (ten) instalments. In case the replenishing amount of security deposit is collected in instalments, then such information of instalment shall be a part of the notice. The notice shall also mention that on failure to deposit the replenishing amount of security deposit, the disconnection will be effected under section 56(1) of the Act on completion of 30 days from the date of service of the notice under section 47(2) of the Act and the same notice shall also be treated as notice under section 56(1) of the Act. The replenishing amount of security deposit or its instalment amount, as may be decided by the licensee, will be recovered through the energy bill of the consumer and no rebate, if any under tariff order, will be applicable on this amount. If licensee feels to collect it separately against the notice, it can also apply such method. On failure to replenish such amount, the supply of electricity may be disconnected under section 56(1) of the Act.

4.2.2 For LV&MV consumer, having contract demand below 50 KVA, the security deposit shall be deposited only in cash. For LV & MV consumer having contract demand at 50 KVA or above and/or HV/EHV consumer, the security deposit may be deposited either in cash or an irrevocable Bank Guarantee as will be decided by the licensee. The validity of the Bank Guarantee shall be for a period of 2 years with a further claim period of 3 months for lodging the claim. The Bank Guarantee shall be renewed from time to time well before expiry of the Bank Guarantee and at least 3 months before the last date of the validity of the

Bank Guarantee excluding claim period. The Bank Guarantee shall be from a nationalized or a reputed private sector bank or the West Bengal State Cooperative Bank Limited or a District Central Cooperative Bank in West Bengal and be issued from a branch preferably which is within the distribution area of the licensee, but in no case outside the city in which the distribution licensee operates unless the licensee agrees due to specific reasons.

4.2.3 The security deposit either in cash or Bank Guarantee shall not be required in case the supply of electricity is made through a pre-paid meter or through unconditional, confirmed, revolving, irrevocable and non-recourse Letter of Credit (LC) for a period of not less than 12

months from a nationalized or a reputed private sector bank or the West Bengal State Cooperative Bank Limited situated in an area of the distribution licensee, within the city in which the distribution licensee is operating. The amount of the Letter of Credit shall not be less than the estimated amount of bill to be calculated as stated above, but subject to an amount equivalent to one month's estimated bill. In case the amount of the Letter of Credit is insufficient, the same shall be increased within 10 days of such demand by the Licensee. The validity of the Letter of Credit shall be extended at least 3 months before its expiry by the consumer failing which the distribution licensee may refuse to supply electricity as long as the failure continues in accordance with the provisions of Section 56(1) of the Act. Just before 3 months of expiry of the LC, the licensee shall intimate the consumer about the said expiry date along with issuance of disconnection notice under sub-section (2) of section 47 of the Act so that if the LC is not renewed before said expiry date, the line may be disconnected by the licensee under section 56(1) of the Act on expiry of the LC.

4.2.4 All bank charges in connection with the Bank Guarantee or Letter of Credit shall be borne by the concerned consumer.

4.2.5 The security deposit shall be appropriately returned / refunded within 15 days on the request of the person who gave such security deposit after adjusting amount of any outstanding bill.

4.2.6 The distribution licensee shall pay interest on cash security deposit equivalent to 6% per annum. Such interest shall be computed annually and added to the security deposit held against the consumer account as long as the security deposit thus held is less than or equal to the amount of required security deposit provided that excess interest amount shall be annually refunded / adjusted to the consumer in the event, the security deposit amount is already sufficient or becomes sufficient, in the billing month of May of each year. The non-refund or non-adjustment of the interest on security deposit to eligible consumer accordingly shall attract interest @ 10% per annum in addition to other penalties etc. as per the provisions of the Act and Regulations. The updation of security deposit for the consumer may be done in a phased manner to bring all the consumer security deposit up-to-date within 31.03.2015.

4.2.7 The distribution licensee may, at any time, appropriate such deposit in whole or in part in satisfaction of any sum legally due or owing by the consumer to the licensee whether the supply of electric energy to the consumer continues or has ceased without prejudice to any other remedy to which the licensee may be entitled for recovery of such sum due or owed by the consumer under any other provisions of the Act or any other law.

4.2.8 In case, any electric line or electric plant or electric meter is provided to any consumer exclusively, by the licensee at the licensee's cost, then an additional amount of 25% of such cost fully or partly, as decided by the licensee, may also be added to the security deposit to be furnished by such a consumer."

24. The WBERC (Miscellaneous Provisions) Regulations, 2013 issued on April 2, 2013, is one of the latest regulations regarding various provisions for payment of security deposit by the consumers which is in compliance to the Section 47 of the Electricity Act, 2003. The WBERC Regulations

allows the LV & MV consumer having contract demand at 50 KVA or above and for HV/EHV consumer; the security deposit may be deposited either in cash or an irrevocable Bank Guarantee or through unconditional, confirmed, revolving, irrevocable and non-recourse Letter of Credit (LC) for a period of not less than 12 months from a nationalized/reputed private sector bank/ WBSC Bank Limited situated in an area of the distribution licensee.

25. Chhattisgarh State Electricity Regulatory Commission (Security Deposit -First Amendment) Regulations, 2007 provides that the licensee may consider security deposit for a consumer by way of irrevocable letter of credit or unconditional bank guarantee (BG) issued by a scheduled commercial bank, at the option of such consumer, which shall be subject to authentication by the concerned bank, who has a sanctioned load of 5 MVA and above and has no undisputed sums payable to the Distribution licensee under Section 56 of the Act.
26. The Supply Code issued by UP Electricity Regulatory Commission specifically provides that consumers opting for new connections for contracted load exceeding 10 MW, may have the option of making payment for the security deposit by way of a bank guarantee, valid for an initial period of 5 years, drawn on a branch of a scheduled bank, situated in the district.
27. Karnataka Electricity Regulatory Commission (Security Deposit) Regulations, 2007 also stipulates that both initial and additional security deposit shall be paid in the form of cash / demand draft (DD)/Bank Guarantee drawn in favour of the Licensee.

“KERC (Security Deposit) Regulations, 2007

7. Mode of Payment of Security Deposit

ISD shall be paid in the form of cash / demand draft (DD)/Bank Guarantee drawn in favour of the Licensee.

ASD shall be paid in the form of cash / demand draft (DD) /Cheque /Bank Guarantee drawn in favour of the Licensee.”

28. Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005 stipulates that the amount payable towards security exceeds rupees 5.00 lacs, the consumer may opt to furnish the security in the form of Bank Guarantee.

“Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005

3. Power to require security:

(1) The distribution licensee shall require every person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act, to give security as provided in regulation 4, for the payment of all monies, which may become due to the licensee -

(a) in respect of the electricity supplied to such person; or/and

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line, plant and/or meter.

(2) If such person fails to give such security under sub-regulation (1), the distribution licensee may refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

4. Security deposit for the supply of electricity:

(1) The consumer shall, at all times maintain with the licensee an amount equivalent to consumption charges for the billing cycle period, as security during the period the agreement for supply of energy to such consumer remains in force:

Provided that where billing cycle is changed the security deposit shall be reduced/increased on pro-rata basis.

(2) If any person is prepared to take the supply through a pre-payment meter, the distribution licensee shall not be entitled to collect the security deposit in respect of the electricity supplied to such person:

Provided that in the case of existing consumer who opts for the supply through the pre-payment meter, the licensee shall refund the amount of the security deposit of such consumer lying with the licensee.

(3) The initial security deposit payable at the time of releasing the supply shall be at flat rates mentioned in regulation 5.

(4) The amount payable towards security shall be in the form of cash/demand draft (DD) drawn in favour of the licensee;

Provided that where the amount payable towards security exceeds rupees 5.00 lacs, the consumer may opt to furnish the security in the form of Bank Guarantee.”

29. Based on the discussion in the above paragraphs, allowing Bank Guarantee as a mode of payment of Security Deposit by HT consumers is summarised below:
- a. Mode of payment of security deposit can be in the form of Bank Guarantee which is in compliance to the Section 47 of the Electricity Act, 2003. Bank Guarantee as a mode of payment for security deposit will balance the interests of the consumers & the utilities. This will also avoid undue burden on the consumers and also suffice the need of the utilities in securing their outstanding dues from the consumers for the electricity supplied.
 - b. The National Tariff Policy also mandates balancing the interests of the licensees and the consumers in order to ensure financial viability of the sector. The National Tariff Policy also recommends Bank Guarantee as one of the payment security mechanism for purchase of power by distribution licensees from generators. This mechanism is in vogue since a long time in the power sector and is serving its purposes adequately without putting undue financial stress on each of the parties involved.
 - c. A Bank Guarantee provides enough payment security to the utilities/ licensees and also helps in optimises the cost of electricity for the consumer. Hence rightly balances the interests of the utilities/ licensees which is one of the key principles enshrined in the preamble of the Electricity Act, 2003 and also the National Tariff Policy
 - d. Many of the SERCs have issued regulations approving Bank Guarantee as a mode of payment of security deposit for particular class of consumers i.e. HT consumers or consumers above a particular level of Contract Demand as specified in the relevant regulations.
 - e. A brief analysis of the payment security mechanism provided by a Bank Guarantee is equivalent to that provided by other instruments (Demand Draft or Cheque). Hence the requirement of the

utilities/ licensees to secure their payment from consumers is adequately addressed by a Bank Guarantee (BG). BG is a low cost payment security mechanism used in majority of the contracts across various industries.

- f. The Hon'ble Commission has inherent powers as per Regulation 79 of JERC Conduct of Business Regulations, 2009 and Regulation 11.7 JERC (Electricity Supply Code) Regulations, 2010 for adopting in conformity with the provisions of the Act, 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 case or class of cases and for reasons, to be recorded in writing, deems it necessary or expedient for dealing with such a case or class of cases, based on merits. Hence the Hon'ble Commission may issue directives in this case to allow Bank Guarantee as a mode of payment of Security Deposit for particular class of consumers i.e. H.T. Industrial, H.T. Industrial (Ferro Metallurgical/Steel Melting/Power Intensive) & H.T. Industrial (Steel Rolling).

Unquote

3. The respondent ED- Goa in response to the petition filed reply stating as under:-

Quote

1. *The Goa Electricity Department was accepting security deposit from the consumers in the form of cash and bank guarantees till 30.01.2013 i.e. the date on which order was passed by Joint Electricity Regulatory Commission directing not to accept security deposit in the form of bank guarantee as this is in violation of the clause 6.10 (2) of supply code Regulation and further directing to ensure that all the security deposits paid by consumers in the form of bank guarantees must be replaced either in cash or banker's cheque or demand draft or fixed deposit in favour of the utility.*
2. *A number of requests have come to this department from H.T Consumers (4 such requests are place as Annexure -1) requesting to permit them to continue with the practice of furnishing the security deposit by way of bank guarantee as payment of security deposit in cash will be additional burden on them as this increase the overall cost of production due to difference in interest rates.*
3. *Holding security deposit in the form of bank guarantee serves the purpose of securing the outstanding dues form the consumers for the Electricity supplied as the bank guarantee can be enchased in case of default. Hence the interest of the department is well protected by accepting security deposit in the form of bank guarantee.*
4. *The H.T. Consumers are requesting to permit them to continue to furnish the security deposit in the form of bank guarantee and in cases where the bank guarantees has expired the consumers have failed to provide security in the form of cash/ fixed deposits due to the financial difficulties faced by them. The Electricity Department is therefore left without any security deposit in cases where the existing bank guarantees has already expired and is left with the only option of requesting those consumers to make advance payment of their bills.*
5. *In view of the above Joint Electricity Regulatory Commission may permit the Electricity Department to accept security deposit in the form of bank guarantee pending disposal of the present appeal. Joint Electricity Regulatory Commission may also allow the Electricity Department to continue to hold the existing security deposit in the form of bank guarantee till the expiry date of the respective bank guarantee.*

Unquote

4. Silvassa Industries & Manufacturers Association (SIMA) through its secretary Narendra Trivedi filed an application with a prayer to allow them to join proceedings/ hearings in the present review petition. The Commission allowed Silvassa Industries & Manufacturers Association (SIMA) to join proceedings/ hearings in the present review petition. The Silvassa Industries & Manufacturers Association in written submission has prayed that in case of Micro, Small and Medium Entrepreneurs (MSME) Consumers the licensee has been accepting security deposit in the form of Fixed Deposit in favour of Department since long. Therefore, they be allowed to continue to avail practice of security deposit in the form of fixed deposit.
5. The Commission after hearing on 29.07.2013 and 13.08.2013 going through the petition and reply carefully and thoroughly and application of mind on the facts and circumstance of the petition and law on the point is of the confirm opinion that only prayer of the petitioner is to allow the petitioner and other LT, HT, EHT and Micro Small and Medium Entrepreneurs (MSME) consumers of ED- Goa-licensee to continue to avail connection on the basis of Bank Guarantee as security deposit instead of submitting draft as security deposit prescribed under regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010.
6. The representative of the petitioner submitted that the respondent is releasing electricity connection on FD, cash, banker's cheque and demand draft as security. He further submitted that payment of security deposit in cash will burden the industry as this will increase overall cost of production. He further argued that the total revenue accrued to ED, Goa from H.T. Industrial, H.T. Industrial (Ferro Metallurgical/Steel Melting/Power Intensive) & H.T. Industrial (Steel Rolling) is Rs. 457 Crs. Based on this, the Security Deposit payable by all the above consumer categories is approximately Rs. 76 Crs. If the above amount is to be paid in cash as security deposit to ED, Goa, this will entail arranging such huge fund as working capital loan. For such units, the interest rate for working capital loan is approximately 14.50 % depending on the creditworthiness of each of the business group operating the said industry. Therefore, if, relaxations in Regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010 is not allowed the petitioners in particular and other electricity consumers in general shall suffer heavy losses and irreparable injury.
7. From bare reading of provisions of section 47 of Electricity Act, 2003 and Regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010 it is clear that the respondent can require reasonable security as may be determined by regulation for continuation of electricity supply on an existing electricity connection and for releasing electricity on a new connection according to the regulations. The Commission in compliance of section 47 of the Electricity Act, 2003 has notified JERC (Electricity Supply Code) Regulations, 2010 and as per regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010 the respondent can ask for security for existing electric connections and new connections.

8. There is no dispute with the submissions of representative of the petitioner that under regulation 11.7 of JERC (Electricity Supply Code) Regulations, 2010 the Commission can use inherent powers to meet ends of justice and adopt an opinion inconformity with the provisions of Electricity Act, 2003 and variance of the provisions of the regulations for reasons to be recorded in writing. The Commission can also deal with any matter under the Electricity Act, 2003 for which no regulation has been framed.
9. The Commission has gone through the Regulations framed by Electricity Regulatory Commissions of States of West Bengal, Gujarat, Maharashtra, Andhra and Tripura etc. These Commissions are allowing the consumers to deposit security as Bank Guarantee and fixed deposit also for existing and new connections.
10. The respondent ED- Goa in reply has admitted that earlier ED- Goa was allowing security as Bank Guarantee and fixed deposit. They in the reply have not objected for allowing security in the form of Bank Guarantee to LT, HT, EHT and MSME consumers. Many other Commissions are also allowing security in the form of Bank Guarantee and fixed deposit. There is nothing on the record to show that if, the respondent is allowed to take security in the form of Bank Guarantee and fixed deposit from consumers either the petitioner or the respondent shall suffer any loss or injury. The Commission under section 94 of the EA, 2003 has power to review its own order and under regulation 11.7 of JERC (Electricity Supply Code) Regulations, 2010 has inherent powers to meet ends of justice and adopt an opinion inconformity with the provisions of Electricity Act, 2003 and variance of the provisions of the regulations for reasons to be recorded in writing.
11. The Commission after hearing, going through the petition and reply carefully and thoroughly and application of mind on the facts and circumstance of the petition and law on the point as well as JERC Regulations is of the confirm opinion that no one is going to suffer any loss or injury if the respondent is allowed to take security in the form of Bank Guarantee and fixed deposit also and allow relaxation in Regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010 to this extent and it is fit case where the Commission should exercise its inherent powers to meet ends of justice and adopt an opinion inconformity with the provisions of Electricity Act, 2003 and variance to the provisions of the regulations for reasons to be recorded in writing.
12. Therefore, in opinion of the Commission it is fit case for relaxation in the prevailing Regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010 and directions to the respondent ED- Goa- licensee to allow security in the form of Bank Guarantee and fixed deposit also for LT, HT, EHT and Micro, Small and Medium Entrepreneurs Consumers (MSME) to existing and new connections of consumers and it is ordered accordingly.
13. Resultantly the petition succeeds and in hereby allowed.

14. The Commission is of the opinion that Regulation 6.10 of JERC (Electricity Supply Code) Regulations 2010 requires amendment. Therefore, the secretary of the Commission is directed to put up a comprehensive note for amendment in Regulation 6.10 of JERC (Electricity Supply Code) Regulations 2010.

(S.K.Chaturvedi)

Member

Chairperson (Vacant)

- * Post of the Chairperson is vacant. As per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 for review of its own orders "Coram is all Members". Whereas according to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Member only constitute a valid quorum.

Certified copy

Sd/-

(R. K. Malik)