

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS no. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case no. HERC/Petition No 70 of 2022

Date of Hearing : 29.03.2023

Date of order : 08.05.2023

IN THE MATTER OF:

Petition for clarification of arc furnace/rolling mill surcharge in the Tariffs for the period from 2017 to 2022.

Petitioner

1. Hisar Metal Industries Limited, Near Industrial Development Colony Hisar-125005 (Haryana)
2. Haryana Strips Private Limited, 10th Km Stone, Delhi Hisar Road, Hisar-125006
3. Jindal Rolling Mills Private Limited, 9th Km Stone, Delhi Road, Hisar-125001
4. JNB Steel Industries Private Limited, Raipur Road Hisar-125044
5. Quality Foils (India) Private Limited, Industrial Development Colony, Hisar-125005
6. Shambhu Industries Private Limited, Village Satrod Khas, Near Sector 27-28, Hisar
7. Sarlia Steel Rolling Mills, Industrial Area Behind Jindal Stainless, Delhi Road, Hisar, 125005

Respondents

1. Dakshin Haryana Bijli Vitran Nigam (DHBVN), Vidyut Sadan, Vidyut Nagar, Hisar -125005
2. Sub Divisional Officer (SDO), DHBVN, Sub Division, Model Town, Hisar.
3. Sub Divisional Officer (SDO), DHBVN, Sub Division, Satrod Khurd, Hisar.

Present on behalf of the Petitioner

1. Shri Drupad Sangwan, Advocate

Present on behalf of the Respondent

1. Ms. Sonia Madan, Advocate
2. Ms. Aditi Lakhanpal
3. Ms. Aerika Singh, Advocate

Quorum

Shri R.K. Pachnanda

Shri Naresh Sardana

Chairman

Member

ORDER

Brief facts of the Case

1. The present petition has been preferred by M/s Hisar Metal Industries Limited and six other similar industries to seek clarification that whether the Tariff of Rs. 6.95/- under the column Arc furnace/Rolling Mill in the schedule of tariff(s) is inclusive of the furnace

surcharge for the HT Consumer taking supply at 11 KVA, from the Nigam during the period from 2017 to 2022.

2. **The petition filed by the petitioner as on 25.12.2022** is reproduced as under:

i. Summary of the relevant facts

- 1) That the petitioners are consumers/industries based in District Hisar and have approached the Commission, through this petition raising a common issue. All the petitioners are HT Consumers taking supply at 11 KV provided by the Respondent No.1 DHBVN. The respondents are aggrieved by the misinterpretation of the tariff orders in regard to the Arc Furnace/Rolling Surcharge so applicable by the Nigam. In pursuant to their misinterpretation, the respondents have come to an erroneous conclusion that the petitioners were being under-charged. The reason for the respondents to arrive at this conclusion is that they misread the relevant notes appended to the Tariff orders and were led to believe that the surcharge for Arc Furnace/Rolling Mill was not included in the tariff being charged from the petitioners. The relevant details of the petitioners are tabulated here under, for the consideration of the Commission:

Sr. No.	name	Account no.	Amount being claimed on account of non-payment of surcharge	DHBVN Audit Sheet along with notice annexed as
1.	Hisar Metal Industries Limited	7806920000	1,30,18,179/-	ANNEXURE A
2.	Haryana Strips Private Limited	3552280000	8,21,20,33/-	ANNEXURE J
3.	Jindal Rolling Mill	8142380000	1,92,12,488/-	ANNEXURE O
4.	JNB Steel Industries Private Limited	5947862000	1,26,79,471	ANNEXURE T
5.	Quality Foils (India) Private Limited	6737520000	48,99,348/-	ANNEXURE Y
6.	Shambhu Industries Private Limited	0261570000	17855789/-	ANNEXURE AD
7.	Sarlia Steel Rolling Mill	5570820000	1480822/-	ANNEXURE AG

- 2) It has been submitted by the petitioner that they are law-abiding entities and have always diligently abided by the relevant rules and regulations and ensured timely payments of all its utility bills. That facts as narrated below are broadly similar to all the petitioners, as they all are aggrieved by the afore mentioned misinterpretation of the Tariff orders by the respondent and all have raised the same objections with respondents about the same.
- 3) That on 03.08.2022, the petitioner no.1 received a notice from the respondent Nigam i.e. DHBVN, stating that a sum of Rs. 1,30,18,179/- was due from the petitioner i.e. M/s Hisar Metal Industries Ltd, on account of the arrears accruing due to non-payment of the Arc Furnace Surcharge since 2018. A copy of the said notice was annexed with the present petition.

- 4) The said notice No. 1199 dated 03.08.2022, was replied to by the petitioner no.1 through its letter dated 08.08.2022, requesting the respondent to drop the charges, as there was no due or delay in payment. A copy of the said letter was annexed with the present petition.
- 5) That the petitioner no.1, vide its letters dated 12.08.2022 and 16.08.2022, raised objections with respect to Notice No. 1199, dated 03.08.2022, for charging a sum of Rs. 1,30,18,179/- for Arc Furnace /Rolling Mill surcharge. Through the said letters, the petitioner pleaded to the respondent no.2 that the increased tariff rates on Rolling Mills / Furnace, being charged on the petitioner is unjustified as, the charges for rolling mill based on the normal tariff have already been paid. It was further stated in the letter that the rolling mill / Furnace surcharge was included in their tariff of Rs.6.95 breakup of the same being Rs. 6.65 as the base tariff, plus 30 paise the surcharge for the rolling mill / furnace. Copies of the said letters are collectively annexed with the present petition.
- 6) That the respondent no.2, vide its letter dated 06.09.2022, replied to the objections raised by the petitioner through its letters dated 12.08.2022 and 16.08.2022 with respect to Notice No.1199 dated 03.08.2022. The said letter dated 02.09.2022 by the SDO (Respondent No.2) stated that the petitioner was paying electricity bill as per 'Arc furnace/Steel Rolling Mill's Consumer and as per SE/CBO office memo no. ch-29/20/SE/CBO/OA dated 28.06.2022, a clarification was sought from CE/Commercial, DHBVN regarding applicability of Arc furnace surcharge and as per the clarification, 45 paise surcharge shall be added to the HT supply tariff i.e. (6.95 paise base tariff) + 45 paise (Surcharge) for supply at 11 KV, and no surcharge is applicable for supply at 33 KV and above. A copy of the clarification obtained from the Commission was filed with the present petition.
- 7) That thereafter, on 19.09.2022, some of the petitioners through Hisar Industries Association, moved a representation to the Superintendent Engineer (Commercial) seeking redressal of their grievances with respect to the misinterpretation of tariff orders and double levy of Arc Furnace/ Rolling Mill Surcharge. The petitioner therein asserted that the confusion was created by the clause imposing arc furnace and rolling mill surcharge on open access power. The petitioner stated its case by referring to certain circulars which clearly shows the breakup of rates per unit being charged from the petitioners during several years, which for ready reference is being reproduced here:

Sr	Cir No.	year	For the period	Energy charges as mentioned in the Cir	Rolling Mill Charges mentioned in the Cir	Billing done		Our Submissions
						Energy charges	Furnace /Rolling Mill Charges	
1	D-7	2010	Oct 10	415	15	415	15	The circulars specifically provide that 'A surcharge of 15 paise or 18 paise per unit on the tariff be leviable. In 3of the circular it is mentioned as +18, or +20 with the tariff. The Nigam billed accordingly. It is ok
2	D-25	2011	2011-12	415	15	415	15	
3	D- 2	2012	2012-13	470+18		470	18	
4	D-25	2012	2012-13	470	18	470	18	
5	D-11	2013	2013-2014	530+20		530	20	
6	D-26	2014	2014-2015	560+20		560	20	
7	D-13	2015	2015-16	645	.	625	20	Our submission RMC not mentioned in these circulars but Nigam billed @ 625 tariff and 20 paise RMC. We presumed 20 or 30 paise as RMC have been continued with main tariff. It was ok.
8	D-25	2016	2016-17	645		615	30	
9	D-27	2017	Jul-17	695		665	30	The Nigam enhance charges from 645 to 695. The Nigam continued its practice of charging 30 paise as RMC and 665 as tariff. It was also ok.
10	D-31	2018	Nov-18	695		665	30	
11	D-19	2019	Nov 18	695		665	30	
12	D-14	2020	June-02	695		665	30	
13	D-12	2021	2021-22	695		665	30	
14	D-14	2022	2022-23	695		665	30	

It was averred by the petitioner that SDO and the audit team were not appreciating the Footnote 1 and Footnote 5 in the tariff schedule. Footnote 1 states that "In case of Arc furnaces/ Steel Rolling Mills for supply at 33 kV and above, the HT Industrial tariff at the corresponding voltage level shall be applicable", and 5 states that "The surcharge of 45 paise/ per unit for arc furnace/ steel rolling mills shall also be applicable on Open Access power as well". Hence, the petitioner tried to persuade the respondent that the furnace surcharge of 45 paise/unit for rolling mills would only be applicable to open access power, while for 11 KV consumer buying supply from the Respondents, it is already included in the tariff being paid by the Industry. Copies of the afore-said representation were provided.

- 8) That Electricity Bill bearing No. 780678932111 for the month of October /2022 generated on 03.10.2022, which was charged against the petitioner no.1 with the net payable amount being Rs.1,77,66,758/-, while the total current cycle charges stood at Rs.4748578.85/- and the due date being 10.10.2022. Further, this amount was charged without giving a reply to the aforementioned letters. A copy of the said bill was provided.
- 9) It has been submitted by the petitioners that they through the Hisar Industries Association, yet again made representation to the Superintending Engineer DHBVN, Hisar, seeking redressal of their grievances that their previous representations have not been responded to, and instead the impugned amount has been charged in the electricity Bill of the month of September, which became

due on 10.10.2022. It was further requested that the recovery of the alleged furnace charges may be put in abeyance till the levy of this charge is clarified, and the petitioner be allowed to pay only its regular billing cycle amount. A copy of the said representation dated 08.10.2022 was provided.

- 10) The petitioner paid the current cycle charges as mentioned in the para 9 by the due date. The Bill Receipt bearing Reference No. 89932082, dated 10.10.2022 for sum of Rs. 47,48,579/- was provided.
- 11) That Notice bearing Memo No. 2519, dated 16.11.2022, was issued to the petitioner, which stated to be in continuation of half-margin memo no.42/72 to 42/78 and further stated that a sum of Rs. 38,65,626/- is being charged to the petitioner's electricity Account vide half margin no. 008-009/52/2022 dated 10.11.2022. A copy of the said notice was provided.
- 12) That Notice dated 28.10.2022 was issued to the petitioner No.2, stating that a sum of Rs. 8,21,20,33/- was being charged for recovery of Half-Margin with respect to Arc Furnace Surcharge. A copy of said Notice was provided.
- 13) The petitioner No.2 vide letter dated 04.11.2022 raised objection with respect to Notice No. 10983 dated 28.10.2022, for charging the afore-mentioned amount. A copy of the Said letter was provided.
- 14) That on 16.11.2022, final notice was issued to the petitioner no.2 to pay the amount charged by Audit Party of Rs. 81,87,047. A copy of the said Notice was provided.
- 15) That the petitioner no.2 vide its Letter dated 30.11.2022, yet again raised its objection to the aforementioned amount being unjustly charged to him. A copy of the said letter dated 30.11.2022, was provided.
- 16) That for reference, the electricity bills issued to the petitioner No.2 from 2017 to 2022 are collectively annexed with the petition.
- 17) That the petitioner No.3 was issued Notice bearing No. 10983 dated 28.10.2022, along with audit sheet dated 31.08.2022, stating that a sum of Rs. 1,92,12,488/- was being charged for recovery of Half-Margin with respect to Arc Furnace Surcharge. A copy of the said notice Along with audit sheet was provided.
- 18) The petitioner No.3 vide its letter dated 03.11.2022, to the SDO, raised an objection with respect to Notice No. 10983 dated 28.10.2022, for unjustly charging the amount mentioned therein. A copy of the said letter was provided.
- 19) That on 16.11.2022, Notice bearing No. 11852 was issued by the by SDO to the petitioner No.3. The Notice was issued stating that a sum of Rs. 1,76,01,890/- is being charged after making corrections. A copy of the said Notice was provided.

- 20) The petitioner No.3 raised objections with respect to Notice No. 11852 dated 16.11.2022 through its letter dated 29.11.2022 stating that nothing is due from the petitioner no.3 and the impugned amount shall be dropped. A copy of the said Letter dated 29.11.2022 was provided.
- 21) That for reference, some of bills issued to the petitioner No.3 from 2017 to 2022 are being collectively annexed.
- 22) That the petitioner No.4 was served with Notice dated 28.10.2022 from the SDO, which stated that a sum of Rs. 1,26,79,471/- was due towards on account of Arc Furnace/Rolling Mill Surcharge. A copy of the said notice along with the audit sheet was provided.
- 23) That the petitioner No.4 replied to the Notice No. 10980 dated 28.10.2022, through its letter dated 07.11.2022, raising its objection against the aforesaid sum being unjustly charged. A copy of the said letter dated 07.11.2022 was provided.
- 24) That on 16.11.2022 Final Notice was issued to the petitioner no.4, reiterating that a sum of Rs. 1,26,79,471/- was being charged for Arc Furnace Surcharge. A copy of the said notice was provided.
- 25) On 28.11.2022, the petitioner No.4 again wrote to the SDO, objecting to the Notice No. 10980 dated 28.10.2022, stating that the increased tariff rates on Rolling Mills, being charged are unjustified. A copy of the said letter dated 28.11.2022 was provided.
- 26) That Notice bearing No. 1197 dated 03.08.2022, was issued to the petitioner No. 5, stating that a sum of Rs. 48,99,348/- was being charged for recovery of Arc Furnace Surcharge. A copy of the said notice along with the Audit Sheet was provided.
- 27) That the petitioner No.5, vide its Letter dated 12.08.2022, raised its objections in respect to the aforementioned notice issued vide Memo No. 1197 dated 03.08.2022. A copy of the said Letter dated 12.08.2022 was provided.
- 28) That the petitioner No.5, along with petitioner No.1 and 7, vide their letter dated 19.09.2022, represented to the Superintending Engineer, DHBVN, seeking redressal of their grievance regarding unjustified imposition of the furnace charges. A copy of the Said letter dated 08.10.2022 was provided.
- 29) That on 16.11.2022, Notice bearing No. 2518 was issued to the petitioner No.5, stating that a sum of Rs.15,78,927/- is being charged for recovery of Half-Margin No. 006-007/52/2022. A copy of the said notice was provided.
- 30) The petitioner No.5, vide letter dated 22.11.2022, raised objections with respect to Notice No. 2518 dated 16.11.2022 for charging Rs. 15,78,927/-. A copy of the said Letter dated 22.11.2022 was provided.

- 31) That for reference, some of the electricity bills issued to the petitioner No.5 from 2015 to 2022, are being collectively annexed with the petition.
- 32) That the petitioner No.6 was served with notice dated 28.10.2022 by the SDO, Stating that an amount of Rs. 19576616/- was chargeable on its account. A copy of the said notice along with the audit sheet was provided.
- 33) That the petitioner No. 6 Replied to the aforesaid notice dated 28.10.2022 vide its letter dated 04.11.2022, objecting to the amount being charged, as the charge for Furnace/ Rolling Mill was already paid by it, and nothing stood due towards the petitioner No.6. A copy of the said letter dated 04.11.2022 along with Reply of the respondent no. 2 was provided.
- 34) That the petitioner No.7 was served with notice dated 03.08.2022 bearing memo no.1198, whereby an amount of Rs. 14,80,822/- was being charged as difference of Arc Furnace charges. A copy of the said notice by the SDO, was provided.
- 35) That the petitioner No.7 vehemently objected to the abovesaid amount being claimed qua him, vide his letter dated 16.08.2022, to the SDO. A copy of the said letter dated 16.08.2022 was provided.
- 36) That for reference, the electricity bills of the petitioner No.7 from 2017 to 2022 are being collectively annexed with the petition.

ii. Statement of Jurisdiction

The petitioners are companies based in Hisar, Haryana and is a HT Consumer at 11 KV power provided by the Respondent No.1 DHBVN, the account No. of the petitioner being 7806720000. The petitioner is aggrieved by the interpretation preferred by the respondents of the tariffs approved by the respondents, and hence is left with no other remedy but to approach this Hon'ble Commission through present Miscellaneous Petition under Regulation 68 of the Conduct of Business Regulations, 2004, wherein the inherent powers of this Hon'ble Commission are enshrined. **The petitioner through the present petition, is seeking clarification whether the Tariff of Rs. 6.95/- under the column Arc furnace/Rolling Mill is inclusive of the Rolling Mill surcharge for the HT Consumer at 11 KVA for the period from 2018 to 2022.**

iii. Summary as per the Regulation 27 of the conduct of Business Regulations, 2004

1) Statement of the relief sought from the Commission:

Clarification whether the Tariff of Rs. 6.95/- under the column Arc furnace/Rolling Mill is inclusive of the Rolling Mill surcharge for the HT Consumer at 11 KVA, for the period from 2017 to 2022.

2) The reasons why this Hon'ble Commission should grant the reliefs sought:

- i. The petitioners are left with no other remedy but to approach this Hon'ble Commission through present Miscellaneous Petition under Regulation 68 of the *Conduct of Business Regulations, 2004*, wherein the inherent powers of this Hon'ble Commission are enshrined.
- ii. From the Conduct of the Respondents, it is evident that the Tariff of Rs. 6.95 for Arc furnace/Rolling Mill HT Consumer at 11 KV is inclusive of the Rolling Mill Surcharge, as apparent from the lesser tariff beings charged from the consumers without Arc Furnace/Rolling mill.
- iii. That the Respondents have acted in violation of *The Haryana electricity Regulatory Commission (electricity Supply Code) Regulations, 2014*, in determining the Liability of the petitioners as no reasoned order was communicated to the petitioners after duly considering the objection raised by them, nor any prior notice was issued.

iv. Petitioner's Averments

- A. The Tariff of Rs. 6.95/- under the column Arc furnace/Rolling Mill shall be interpreted as to be inclusive of the surcharge for the HT Consumer at 11 KVA
 - A.1. That a perusal of the table referred to in preceding para 7 of the "Statements of Facts" would reveal that circulars from 2010 to 2015 specifically provided in a separate column that a surcharge of 15 paise or 18 paise per unit on the tariff be leviable on Arc Furnace/Rolling Mill or mentioned the tariff + Furnace charges like 470+18, 530+20 or 560+20. 2. In the year 2012, the respondent created a separate category as "Arc furnace and Steel Rolling Mill" and showed their tariff plus furnace charge like 470+18, 530+20, 560+20
 - A.2. That the respondent no.1, in 2015 merged furnace charges with main tariff for the category "Arc furnace and Steel Rolling Mill" but kept charging tariff at 625,615 and 665 paise and the respective Furnace charges 20 and 30 paise separately in the electricity bills of such HT units who had supply from 11 KVA.
 - A.3. That in the year 2017, a separate Note, (i.e. Note 13) was added to the tariff that Arc Furnace/Rolling Mill charges 30 paise per unit shall also be applicable on Open Access power purchasers. Later

on the rate of 30 paise was changed to 45 and 25 paise in 2018 and 2022 vide note 18 and note 5 respectively. Apparently, The Note had/has no relation with the HT consumers of 11 KVA and It is applicable only on Arc furnace and Steel Rolling Mill consumers who purchase power through Open Access.

A.4. That prior to 2017, there was No separate note for Furnace/ Rolling Mill charges in the Tariff, and it was only included thereafter. The confusion ensued when in 2019, the entry in the column “Category of HT Consumer” was changed from “Arc Furnace and Steel Rolling Mill” to “Arc Furnace/Steel Rolling Mills also applicable to open access”.

A.5. That there has been a uniform pattern of charge in Tariff for all HT consumers, and Since 2017, there has no change in the tariff of all categories of HT consumers. Only the Arc Furnace / Rolling Mill Charges have been changed for Open Access consumer vide the Notes 15,5,13,18 in different circulars which pertains to Open Access only.

A.6. From perusal of the notes appended to Tariffs of the past years, it is apparent that the “Open Access” and the “HT Consumer” are mutually exclusive categories having their separate surcharges. The Respondents have erred in conflating these categories and erroneously levied a charge which is exclusively leviable to the “Open-Access” Power, on to the petitioners, who are HT Consumers. For the Convenience of this Hon’ble Commission, the details of Tariffs approved for previous years is presented in tabular form and annexed herewith as Annexure AJ.

B. That from the conduct of the Respondents, it is evident that the Tariff of Rs. 6.95 for Arc furnace/Rolling Mill HT Consumer at 11 KV is inclusive of the Rolling Mill Surcharge.

B.1. In order to appreciate the issue whether the approved Tariff is inclusive/exclusive of the Furnace/Rolling Mill Charge, it would be pertinent to observe the Tariff being charged to the HT Consumers at 11 KV, without the Arc Furnace or Rolling Mill in their industrial establishment. It came to the knowledge of the petitioners that the HT Consumers at 11 KV without the Arc Furnace or Rolling Mill facility in their establishment were being charged 665 paise, while the establishments with the Arc Furnace or Rolling Mill facility were

being charged the Tariff of 695. Hence it is evident that the 30 paise surplus to the HT Consumer without the said facilities is the Surcharge levied on account of the Arc Furnace or Rolling Mill. For reference, Bill issued by the respondents to one M/S Janak Steels Tubes and Quality Stainless Pvt Ltd. which are other industries in Hisar, are annexed here with as Annexure AK. The petitioner can produce other similar bills issued to such industrial establishments without Arc Furnace/Rolling Mills, if so required by this Hon'ble Commission.

B.2. That from the perusal of the Annexure AK, it is evident that the respondents have also interpreted the Tariff of Rs. 6.95 for Arc furnace/Rolling Mill HT Consumer at 11 KV is inclusive of the Rolling Mill Surcharge. However, due to reasons best known to them, they are now putting forward an entirely different interpretation of the tariff. In doing so, the respondents have acted in a manifestly arbitrary manner, and they shall be estopped from even suggesting such an interpretation of the tariff approved by this Hon'ble Commission.

C. That the Respondents have acted in violation of the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014, in determining the liability of the petitioners

C.1. That the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations (hereinafter referred to as electricity Supply Code), provides that if it is found that a consumer has been undercharged, a 15 days notice shall be served on the consumer for him to contest the said amount. The regulation 6.10.4 is reproduced here below for ready reference:

"6.10.4 If the licensee establishes during review or otherwise or as a result of audit observation that a consumer has been under-charged, a 15 days notice shall be served upon the consumer to enable him to contest the demand. However, in case of additional demand being made out by internal audit in respect of any consumer, the officer concerned shall satisfy himself in the matter before giving notice to the consumer. After receipt of reply from the consumer, the licensee shall review the amount charged after taking into account the facts submitted by the consumer."

C.2. That perusal of above regulation makes it clear that an opportunity has to be accorded to the consumer if it is found that he has been under charged, and the objection raised by him shall be duly considered. Further, the Regulation 6.10.6 of the code makes it a bounden duty of the respondent to communicate the decision taken by it on the review of the bills in writing, and advise the consumer

that he has the right to prefer an appeal to the Consumer grievance Redressal Forum. The said Regulation 6.10.6 is reproduced here below for ready reference:

“6.10.6 While communicating the decision on the review of the bill, the licensee shall advise the consumer in writing his right to prefer an appeal against the decision of the licensee to Consumer Grievance Redressal Forum.”

C.3. That as per the Electricity Supply Code, it was incumbent upon the respondent to pass a reasoned order after duly considering the objections raised by the petitioners, and communicating the same as per the regulations before billing the amount to the petitioners. As the bill for sum due on account of undercharging has been issued without following the due process, and overriding the rights and projections provided by Law, the same cannot be sustained before this Hon'ble Commission.

v. Prayer

It has been respectfully prayed that:

- a) Issue a clarification with regards to whether the Tariff of Rs. 6.95/- under the column Arc furnace/Rolling Mill is inclusive of the Rolling Mill surcharge for the HT Consumer at 11 KVA for the period from 2017 to 2022; And
- b) Set aside the Demand Notices/half-margin Memos/audit sheets/ bills, etc. issued to the petitioners by the respondents for recovery of amount accrued on account of the misinterpretation of the Tariff by the respondents; And/or
- c) Pass Any other orders/directions in view of peculiar facts and circumstances of the present case, and in the Interest of Justice.

vi. Interim Prayer

It is further prayed that during the pendency of the present petition:

- i) Demand raised by the respondents vide its Demand Notice/half-margin Memo/ Bill shall be put in abeyance; And
- ii) The period during the pendency of the present petition starting from the date of its filing till the date of final disposal shall be excluded from computation of any interest accrued on the due amount in event outcome of the petition being unfavorable to the Petitioners; and
- iii) The disconnection of the electricity connection of the petitioners shall also be put in abeyance and the respondents be restrained from taking

recourse to any coercive action in order to recover the Amount impugned before this Hon'ble Commission.

3. **Reply filed by DHBVNL:** Composite reply filed on behalf of DHBVN dated 17.02.2023 with respect to charging surcharge from arc furnace/rolling surcharge as applicable in compliance to the Tariff order dated 30.02.2022 is as under:

Preliminary Submissions:

- i) That the present petitioners have approached this Hon'ble Commission by way of the instant petition and have prayed for the Hon'ble Commission to issue clarification with regard the tariff of Rs 6.95 per unit under the column Arc furnace/Rolling Mill is inclusive of surcharge for HT Consumer at 11 KVA for the period 2017-2022. Consequently, the petitioners have sought setting aside of the Demand Notices/Half Margin Memos/Audit Sheets/bills etc. issued by the answering respondents for recovery of amount accrued on account of charging of the applicable surcharges.
- ii) The Hon'ble Commission in exercise of its jurisdiction under Section 86 (1)(a) of the electricity Act, 2003 had passed final order dated 30.02.2022 in the petition No. HERC/PRO-46 of 2021 regarding true-up for the FY 2020-21, annual (mid-year) performance review for the FY 202-21, Aggregate Revenue Requirement (ARR) of the Applicant-UHBVNL, distribution and retail supply tariff for the FY 2022-23 (hereinafter referred to as 'Tariff Order, 2022'). A copy of relevant extract of Tariff Order, 2022 was provided.
- iii) The Hon'ble Commission vide the said Tariff Order dated 30.03.2022 had published the Retail Supply Tariff Schedule for FY 2022-23. Thereafter, in order to ensure consistency in implementation of the tariff by the field offices, the Nigam has published the Retail Supply Tariff Schedule along with its terms and conditions vide Sales Circular Nos.D-31/2016, D-27/2017, 31/2018, 20/2019, 14/2020, 12/2021 and 14/2022. A copy of the said Sales Circulars was provided.
- iv) The Hon'ble Commission vide Tariff Order dated 30.03.2021(hereinafter referred to as 'Tariff Order, 2021') approved the tariff for the petitioner for the FY 2021-22 for supply of electricity to Arc Furnace/Steel Rolling mills connected on 11kV High tension lines (hereinafter referred to as "HT lines"). The approved Tariff for Arc Furnace/Steel Rolling mills as provide in the said order is given below:

Tariff for 2021-22 (w.e.f 01.04.2021)			
Category of consumers	Energy Charges (Paisa/KWh or/kVAh)	Fixed Charge (Rs. per kW per month of the connected load /per kVA of sanctioned contract demand (in case supply is on HT) or as indicated	MC (Rs. per kW per month of the connected load or part thereof)

Tariff for 2021-22 (w.e.f 01.04.2021)			
Arc furnaces/ Steel Rolling Mills also applicable to Open Access	695 Paisa per kVAh if supply is at 11 kV (See note 1 below)	165 kVA	Nil
Notes to Tariff Schedule:			
1. In case of Arc furnaces/ Steel Rolling Mills for supply at 33kV and above, the HT Industrial tariff at the corresponding voltage level shall be applicable.			
5. The surcharge of 45 paise/per unit for arc furnace/steel rolling mills shall also be applicable on Open Access power as well.			

A copy of relevant extract of Tariff Order, 2021 is appended herewith marked was provided.

vi) In view of the above said Tariff Order which has fixed tariff for Arc Furnace/Steel Rolling mills, the respondent herein submitted a Memo bearing No. Ch-78/SE/C/426/Vol-3 dated 13.04.2022 to the Director/tariff of the Hon'ble Commission with a request to give clarification upon the following points:

- a) Whether the surcharge of 45 paise/unit is applicable over and above energy charge of 695 Paise/kVAh or energy charge of 695 Paise/kVAh also includes surcharge of 45 Paise (i.e. 650 Paise (base Tariff) + 45 Paise (surcharge).
- b) Whether the surcharge will be applicable on all the Arc Furnace/Steel Rolling Mills consumers irrespective of their supply voltage.
- c) Whether surcharge is applicable on total units or only on the open access unit which consumer avails from open access facility.

A copy of the Memo dated 13.04.2022 is appended herewith and marked was provided.

vii) In response to the abovementioned Memo, the Hon'ble Commission vide Director/Tariff, HERC office memo No. 625/HERC dated 02.05.2022 as annexed has provided the following clarification to DHBVN:

Sr No	Points	Remarks
1	Surcharge of 45 Paisa/Unit is applicable in addition to the specific rate (i.e. 695 paisa per unit applicable to Arc furnace/Steel Rolling Mills having supply at 11 KV.	In case of supply at 11 KV, 45 paise surcharge shall be added to the HT supply tariff i.e. (695 paise base tariff) + 45 paise (surcharge). In case of supply at 33 KV and above, there is no surcharge applicable and the tariff is as applicable to HT supply tariff only.
2	Whether surcharge is applicable to all the Arc furnace/Steel Rolling Mills consumers irrespective of their supply voltage or not.	Applicable only on supply at 11 KV
3	Whether surcharge is applicable on total units or only on open access where consumer avails open access facility.	Surcharge of 45 paise is already built in the tariff for the embedded consumers of Discoms. Hence, the same is to be levied on only the power brought under open access mechanism.

- viii) The Hon'ble Commission, vide Director/Tariff, HERC clarified in response to the query put forward by the Nigam herein that the surcharge of 45 paise per unit is applicable over and above energy charge of 695 Paise/kVAh of energy charge only in case the supply of electricity to Arc Furnace/Steel Rolling Mills is through 11 KV HT lines. Notwithstanding the above, it was also clarified that no surcharge shall be applicable on the supply of electricity to Arc Furnace/Steel Rolling Mills through 33 KV lines or above and only the base tariff shall be charged from the consumers in terms of the tariff order dated 30.03.2022.
- ix) Pursuant thereto, the Hon'ble Commission passed Tariff Order, 2022 wherein the only modification made was with respect to the amount of surcharge bringing 25 paise per unit instead of 45 paise per unit. Moreover, it is also relevant to refer to the Note-5 of Annexure A-Schedule of the Tariff and Charges of the Tariff Order, 2022 which provides the surcharge for Arc Furnace/Steel Rolling Mills. The Note-5 of Annexure A-Schedule of the Tariff and Charges of the Tariff Order is reproduced hereunder:
"5. The surcharge for arc furnace/ steel rolling mills shall be 25 Paise / Unit in case the supply is at 11 kV including open access power."
- x) It is humbly submitted that after the issuance of the Tariff Order and in line with the clarification of the Hon'ble commission given vide memo dated 02.05.2022 and the Sales Circulars, the answering respondent has added the surcharge to HT supply tariff i.e. 6.95 paise base tariff + 45 paise (surcharge) for supply of 11 KV to the Arc Furnace/Steel Rolling with retrospective effect since 01.07.2017. However, as per Sales Circular D-14/2022, presently 25 paise is being charged upon the base tariff.
- xi) That the answering respondent for the purpose to determining the consumers on whom the said surcharge shall be applicable collected a list of Arc/Furnace/Steel rolling consumers from both the billing agencies and found 62 consumers updated under this category which includes the present Petitioners. Therefore, the respondent sought recovery of the outstanding amount of the tariff along with surcharge applicable to the said Petitioners.
- xii) That upon being charged with the legally valid surcharge over the base tariff, the petitioners herein submitted their objections to the answering Respondent. In response to the said objections, the answering Respondent after due consultations and deliberations with the Audit Party formed the conclusion that the surcharge on Arc/Furnace/Steel Rolling Mills are clearly chargeable with retrospective effect in terms of the aforementioned sales circulars and clarification issued by the Hon'ble Commission.

- xiii) That the petitioners have advanced following arguments in the present petition for seeking setting aside of recovery notices issued by the Respondent –
- a) The Tariff of Rs. 6.95 under the column Arc furnace/Rolling Mill shall be interpreted as to be inclusive of the surcharge for HT consumer at 11 KVA;
 - b) From the conduct of respondent, it is evident that Tariff of Rs. 6.95 for Arc furnace/Rolling Mill HT consumer at 11 KV is inclusive of the Rolling Mill Surcharge;
 - c) The respondents have acted in violation of the Haryana electricity Regulatory Commission (electricity Supply Code) Regulations, 2014, in determining the liability of the Petitioners.

Re: Interpretation of Tariff Order -

- xiv) That it is respectfully submitted that the clarification as sought in the present Petition has already been given by the Hon'ble Commission vide memo dated 02.05.2022. A perusal of said memo does not leave any scope for interpretation as contended by the Petitioner in the Petition. The respondent herein has acted in compliance with the orders of the Hon'ble Commission. In view of the ratio of law laid down by the Hon'ble Apex Court in M/s Prem Cottex v UHBVNL, dated 05.10.2021 it is now well settled that licensee is entitled to raising an additional or supplementary demand in the case of a mistake or bonafide error on such error coming to the notice of the licensee. The notices for recovery are therefore, valid and legal.

Re: Violation of electricity Supply Code Regulations, 2014 -

- xv) The contention of the petitioners as regards not serving notice as per the Regulations is inconsequential and irrelevant as no adverse action has been taken against the petitioners up till now. It is pertinent here to mention that a notice was served to the petitioners vide letter dated 03.08.2022 (Annexure AG). The Petitioners replied to the said notice on 16.08.2022. Further, on 02.09.2022 (Annexure R-12 (colly)), the respondent replied to the petitioners specifying that the charge is being levied in view of the clarification provided as regards applicability of Arc furnace charges.
- xvi) Since the petitioner were unsatisfied with the clarification tendered by the office of the respondent, a committee was constituted in line with the procedure for settlement of consumer billing disputes notified vide Sales Circular of DHBVN no. D-25/2022 dated 16.09.2022 (Annexure R-13). The said Committee examined the complaint of the petitioners in line with the notified procedure and it was decided that the half margins are chargeable and are as per the clarification given by this Hon'ble Commission.

- xvii) However, till now no such payment has been made by the consumer and no adverse action has been taken. It is incorrect to state that the procedure has not been followed by the respondent. If there has been an error in referring to the minimum days for responding to the recovery notice, the same is purely inadvertent and inconsequential.
- xviii) **Prayer**
In view of the foregoing, it is most humbly prayed that the Petition may kindly be dismissed.

Proceedings of the Case

4. The case was first heard on 22.02.2023, wherein upon hearing the parties, the Commission vide its Interim Order directed as under:
- a) The demand raised vide demand notices/half-margin memos/audit sheets/ bills, to the petitioner(s) for recovery of amount is stayed/kept in abeyance and no coercive action shall be taken against the petitioner(s).
 - b) The petitioner(s) may file a rejoinder within a week from the date of this order.
 - c) And the matter was listed for hearing on 29.03.2023.
5. **Rejoinder by the Petitioners:** Accordingly, rejoinder on behalf of the petitioners dated 27.02.2023 was filed to the composite reply filed by the respondents.
- Preliminary Submissions:
1. That the contents of the corresponding para are admitted however it is submitted that summarily the stand of the respondent in its reply to the petition is that the respondent is only recovering the charges as per the tariff clarified by this Hon'ble Commission vide its memo no. 625/HERC dated 02.05.2022 (R-11) wherein the commission has observed that the surcharge of 45 paise is to be charged over and above the base tariff. Summarily, the response of the petitioners to the said stand taken by the respondents is that respondents have incorrectly interpreted the said memo of the Hon'ble Commission. Furthermore, the understanding of the said memo (R-11) by the respondent is also contrary to the previous tariff orders/circulars of this Hon'ble Commission especially when the controversy with respect to the surcharge has already been settled by this Commission vide its recent ARR order dated 15.02.2023 in Petition no. 65 and 66 of 2022.
 - 2 to 4: The contents of corresponding para pertain to the previous tariff orders/circulars issued by this Hon'ble Commission hence needs no formal rejoinder. However, it is submitted that the respondents have not been diligent in reading the previous year's tariff orders of this Hon'ble Commission. A perusal of previous tariff orders

of this Commission Clearly suggest that the furnace/rolling mill Surcharge is embedded in the base tariff for the consumers and a separate note entry has been made exclusively for the surcharge to be levied on the open access power. Copies of the previous year orders/circulars from 2011 to 2022 are being collectively annexed. It is further submitted that in the year 2017, for the first time a separate Note, (i.e. Note 13) was added to the tariff that Arc Furnace/Rolling Mill charges 30 paise per unit shall also be applicable on Open Access power purchasers. Later on, the rate of 30 paise was changed to 45 and 25 paise in 2018 and 2022 vide note 18 and note 5 respectively. Apparently, The Note had/has no relation with the HT consumers of 11 KVA and It is applicable only on Arc furnace and Steel Rolling Mill consumers who purchase power through Open Access. The contents of the Para A of the petition from page no. 12 onwards are reiterated herein. Moreover, this commission has also settled this issue in its recent ARR order dated 15.02.2023 in Petition no. 65 and 66 of 2022 by clarifying that the note entry pertaining to open access power has nothing to do with the consumers of 11kv. A copy of the relevant chapter of the said order was provided.

- 6 (sic). The contents of the corresponding para are regarding correspondence between the respondent and the Hon'ble Commission hence needs no formal rejoinder.
7. The contents of the corresponding para are regarding correspondence between the respondent and the Hon'ble Commission and, hence, needs no formal rejoinder. However, it is submitted that the commission in the said memo dated 02.05.2022 had observed in its remark at serial number 3 that the surcharge is already built in the tariff for the embedded consumers of discoms and hence the same is to be levied only on the power brought under open access mechanism. Therefore, the respondents have acted contrary to the said observation of the commission by charging the surcharge on top of the base tariff.
8. The contents of the corresponding para are incorrect and hence denied. The respondents have misinterpreted the previous tariffs/circulars of this Hon'ble Commission, and the Hon'ble commission vide its recent order has proved that the respondent's understanding of the tariff is flawed. The contents of the preceding paras are reiterated herein.
- 9 to 10: The contents of the corresponding para are incorrect and have been appropriately responded to in the preceding paras of this rejoinder. However, it is submitted that respondents have in lieu of their misinterpretation of the tariff have already overcharged the petitioners by levying a surcharge of 25 paisa over and above the base tariff from 01.04.2022 onwards which the petitioners have paid in their bills and the same is liable to be refunded/adjusted with interest.

11. The contents of the corresponding para regarding the recovery of surcharge applicable on petitioners is appropriately replied to in the preceding paras. The remaining contents are not concerned with the petitioners hence require no response.
12. The averment in the corresponding para regarding legality of the surcharge over base tariff is incorrect and the contents of the preceding paras are reiterated herein. The averment with respect to deliberation and consultation between the respondents and the audit party is denied for want of knowledge.
13. That the contents of the corresponding para are a matter of record.
Re: Interpretation of Tariff order: -
14. The contents of the corresponding para are incorrect and denied. They are appropriately replied to in the preceding paras of this rejoinder.
Re: Violation of electricity supply code regulations, 2014:
15. The averment in the corresponding para that the not serving of notice as per regulation is inconsequential and irrelevant as no adverse action has been taken against the petitioners is incorrect and denied. It is submitted that during the pendency of the present petition, the respondents have raised the impugned amount in the electricity bills of the petitioners. Fearing disconnection, the petitioners were forced to approach the High Court vide CWP 869 of 2023 seeking protection from disconnection till the adjudication of the present petition before this Commission. CWP came up for hearing on 16.01.2023 and the Hon'ble High Court was pleased to restrain the respondents from disconnecting the power of the petitioners in terms of Section 56 of the Electricity Act; copy of the side order dated 16.01.2023 was provided. Even after the passing of the said order by the Hon'ble High court, some of the petitioners have been receiving demand notices.
16. The contents of the corresponding para are denied for want of knowledge.
17. The contents of the corresponding para are incorrect and the contents of the para 15 of this rejoinder are reiterated.
Prayer: It is therefore prayed the present petition may be allowed.

Commission's Order:

6. The case was heard by the Commission on 29.03.2023 at 11:30 AM, as scheduled, in the court room. The petitioner(s) as well as the respondent advanced their respective arguments/averments already reproduced earlier in the present order. Hence, the same are not being reproduced here.

7. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties.
8. At the onset, it is observed that in the hearing held on 29.03.2023, the Commission was pleased to grant two days' time to the respondent Nigam, as requested by them, to file submissions on the rejoinder filed by the petitioner. However, it is observed that the respondent Nigam has neglected to strengthen its case by countering the issues raised in the rejoinder.
9. The Commission observes that in its Note1 to the "Schedule of Tariff and Charges" on page no 232 in the recent ARR order regarding True-Up for the FY 2021-22, Annual (Mid-Year) Performance Review for the FY 2022-23, Aggregate Revenue Requirement of UHBVNL and DHBVNL and Distribution and Retail Supply Tariff for the FY 2023-24, the matter is clarified as under:
"Note 1: In case of Arc furnaces/ Steel Rolling Mills for supply at 33 kV and above, the HT Industrial tariff at the corresponding voltage level shall be applicable. The tariff determined in the table above for Arc Furnace taking supply at 11 kV voltage, is inclusive of surcharge. However, the open access consumers bringing in power under Open Access Mechanism shall also pay a surcharge of 30 Paisa/unit."
10. The confusion/mis-interpretation seems to have been caused by misplaced understanding of the clarification issued by the Commission on a reference received from the distribution licensee.

The tariff, as evident from the 'tariff schedule' of the relevant year(s) applicable for Arc Furnace/ Steel Rolling mill for supply at a pressure of 33 KV and above are equivalent to HT supply tariff determined for the respective voltage levels. However, for such consumer taking supply at 11 KV a separate tariff after adding furnace surcharge, has been determined for example, Rs. 6.95 per unit tariff has an inbuilt element of surcharge. Hence, such consumer meeting its entire requirement by sourcing power from the distribution licensee of its area pays Rs. 6.95 per unit of the electricity drawn from the discom besides also paying (in the present illustration) Rs. 165/KVA or KW per month of the sanctioned contract demand or connected load, as the case may be.

Evidently, a few such consumers, who may be drawing power under Open Access mechanism also for meeting some of its energy requirement for its Arc Furnace / Steel Rolling mill, are left out of the ambit of the schedule of tariff and charges applicable for the power drawn from the two distribution licensees in Haryana i.e. UHBVNL and DHBVNL. As the open access power also flows through the same distribution system in Haryana thereby subjecting the grid to the disturbances generated by the arc devices

affecting the quality of power, there was a need to recover furnace surcharge, as determined by the Commission from time to time, from the open access power.

Hence, keeping in view this requirement, furnace surcharge finds a separate mention and the same ought not to be added to the tariff applicable for Arc Furnace/Steel Rolling Mill taking supply at 11 KV from the distribution licensees of the area.

11. Accordingly, it is clarified, that the tariff determined by the Commission in Rs. per unit is inclusive of furnace surcharge for the Arc Furnace/Steel Rolling Mill(s) taking supply at 11 KVA from Discoms, for the period from 2017 to 2022.
12. The demand raised vide demand notices/half-margin memos/audit sheets/ bills, to the petitioner(s) for recovery of amount is nullified and no coercive action shall be taken against the petitioner(s). It is added that all the similarly placed consumers in the distribution licensed area of UHBVNL and DHBVNL shall also be treated at par with the present petitioners.

In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 08.05.2023.

Date: 08.05.2023
Place: Panchkula

(Naresh Sardana)
Member

(R.K Pachnanda)
Chairman