

STATE ELECTRICITY OMBUDSMAN

Thaanath Building Club Junction Pookkattupadi Road Edappally Toll

KOCHI 682024

www.keralaeo.org

Phone 04842575488 +919447226341 Email : info@keralaeo.org

REPRESENTATION No: P 91/09

Appellant : M/s BinaniZinc Ltd
BinaniPuram 683502
Ernakulam Dt

Respondent: Kerala State Electricity Board
Represented by
The Special Officer (Revenue)
KSE Board
VaidyuthiBhavanam
Pattom, Thiruvananthapuram

ORDER

M/s BinaniZinc Ltd, BinaniPuram ,Ernakulam

submitted a representation on 8.9.2009 seeking the following relief :

1. *Set aside the Order dated 1.8.2009 of CGRF Ernakulam*
2. *Direct KSEB to compute Maximum Demand for June 08 and July 08 taking the actual demands for the periods of plant shut down*
3. *Pay back /adjust the excess payments*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 31.12.2009 .The Appellant submitted argument note on 6.1.2010. The Appellant is an EHT consumer with contract demand 18000KVA.The Appellant had to shut down the plant from 19/6/2008 to 10/7/2008 for want of raw material . The Appellant claims that the stock out and shut down of the factory were reasons completely beyond the control of the company and they are eligible for reliefs as provided in the Agreement no 63/93-94 dated 22.11.1993.

The request was declined by KSEB as well as the CGRF.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation, during the hearing and in the argument note are summarized below:

The Appellant operates a custom smelter at Binanipuram which depends upon imported zinc concentrates as the basic raw material. They have to source the raw material from suitable for the smelter from specific mines located particularly in South America and Australia. Their annual requirement is around 70000 WMT zinc concentrate and they are importing in 6 or 7 parcels of about 10000 WMT size each costing around Rs 30 to 35 crores. Due to the high value of the raw material they can not hold stock of the same for long periods. It will be completely uneconomical unviable and exposed to high price fluctuations. Even though the Appellant had entered into contract for the supply of the raw material and opened LC etc as per the contract , the consignment due to reach the Cochin Port on May 15, 2008 had actually reached on July 9, 2008. The contractor M/s Glencore International AG informed that the shipment could be effected only on 29th April 2008 instead of 31st March 2008 due to Port congestion at Lord Port . The vessel started on 29th April but reached Cochin on 9th July taking around 79 days instead of the normal 45 to 50 days. In other words there was abnormal delay in both shipment and sailing .These are beyond the control of the Appellant. There was a stock out of the raw material . Consequently the plant had to be shut down from 19/6/2008 to 10/7/2008. This shut down was beyond the control of the company and hence they are eligible for the rebate under clause 16(b)

Under the same circumstances rebate was allowed in 2004. Hence the denial of the same now is not justifiable.

The shut down and restart itself is a very expensive process involving 2 days operations each, and hence the Appellant shall venture for shutdown only in unexpected and unavoidable reasons beyond the control of the establishment.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

The stock out of raw materials as in the instant case can not be treated as force majeure condition in view of the fact that it is the primary duty/responsibility of a firm in production to ensure adequate stock of raw materials and smooth flow of the same. Hence shortage of raw materials due to lack of timely action in processing the same do not come under the purview of force majeure conditions as per agreement clauses.

In 2004 the KSEB had approved force majeure conditions as the shipment from Peru was delayed due to war like situations prevailing in Middle East at that time . The Appellant has not claimed such situations prevented/delayed either shipment or sailing this time. In fact the Appellant had not revealed the real reasons behind the delay this time. If the delay had really resulted in loss to the company they could have claimed damages/perjury from the contractor or shipping agencies. The request for rebate in this context is totally unjustified. KSEB can not be asked to suffer losses in demand charges under this situation. Merely because actual demand was less for a few days and the actual readings are available the methodology of calculation of Monthly demand charges can not be altered.

Discussion and Findings:

The most important question to be decided here is whether the stock out of raw materials can be classified under force majeure situation. The raw material stocking is a function of inventory management. The level of stock to be maintained is mostly influenced by considerations of working capital requirements. In the case of the Appellant, 'high stock' of the raw material 'leads to company being exposed to risk of price fluctuations' as per their own statement. Hence the Company found that 'due to high value of the material and also considering the inventory carrying cost, BZL (Binani Zinc Ltd) can not stock raw material for long period of time'. Such stocking will be 'completely uneconomical apart from being unviable'.

The quotational period for the Bill of Lading dated April 29, 2008 shall be May 2008 as per the contract. But the vessel reached Cochin only on July 9th, 2009, the reasons for the delay not being explained or reported. No 'war-like' situations have been reported. It might be a breach of contract, not a force majeure situation. As pointed out by Respondent, the losses or damages incurred by the Appellant are to be claimed from the Suppliers/Contractors/Shipping companies.

The situations of 2004 were different. As correctly pointed out by Respondent, the KSEB documents itself show that war like situations in Middle East had resulted in delay in delivery of the material in 2004. In the instant case neither the Appellant has claimed that such situations were prevailing in May 2008 nor have they produced any such claims from contractors or shipping company.

It is true that the Clause 16(b) speaks about 'other force majeure over which the consumer has no control'. So also the Clause 17 speaks about 'any other causes reasonably beyond control' which prevents the consumer from consuming electricity. But as explained above the stocking of raw material or stream lining of supply of raw material can not be classified as an activity beyond the control of any Management, worth the name. So also, stock out of raw material can not be grouped as a force majeure situation similar or as serious as lock out, strike, major breakdown of plant or machinery. (Clause 16(b)). So also, stock out of raw material can not be classified as a cause beyond control similar or as serious as strike, riots, insurrection command of a civil or military authority, fire explosives, act of God etc (Clause 17). Whether the Management of the Appellant company had any control over access to a Port in a foreign country, movement of vessels in the oceans etc are not relevant here.

If the reasoning of the Appellant is accepted and allowed to be extended further, failure of any industry in getting delivery of a raw material in time from a supplier for any reasons could be construed as force majeure situation. This shall not be allowed.

Orders:

Under the circumstances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

- 1. The evidences/arguments/points raised by the Appellant are devoid of merits and the representation is dismissed.*

2. *No order on costs.*

Dated this the 15th day of January 2010 ,

P.PARAMESWARAN
Electricity Ombudsman

No P 91/09 / 472 / dated 19.01.2010

Forwarded to: 1. M/s BinaniZinc Ltd
BinaniPuram 683502
Ernakulam Dt
2.The Special Officer (Revenue)
KSE Board
VaidyuthiBhavanam
Pattom, Thiruvananthapuram

Copy to :

1. The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,
PowerHouse Buildings , ERNAKULAM