

**Before the Ombudsman
KPFC Bhavan, C.V. Raman Pillai Road,
Vellayambalam, Thiruvananthapuram 695 010.
Order Dated 11th January 2007.**

Present: M. Sivathanu Pillai, Ombudsman-in Charge.

Appeal petition No 1 of 2006.

CGRF order No. CGRF/DCE/COMP/DAP(4)/2006-07 dated 10-10-2006.

Precot Meridian Ltd,
Kanjikode West,
Palakkad 678 623.

Appellant

Vs

Chief Engineer (Commercial & Tariff),
KSEB, Vaidyuthi Bhavan,
Pattom,
Thiruvananthapuram.

Respondent

Date of hearing: 9th January 2007.

Appellant has stated that Precot Meridian Ltd 'A' Unit is situated in Kanjikode West, Palakkad District, Kerala. Prior to the merger with Meridian Industries Ltd with effect from 1.04.2006, the unit was known as Precot Mills Ltd. The unit is engaged in the manufacture and the sale of cotton yarn.

The unit is an HT-EHT consumer of Kerala State Electricity Board (herein after called 'Board') and the consumer number allotted by Board to the unit is 9/731. The unit was set up in the year 1962 and has a capacity of 57,600 spindles. It has a total strength of around 1000 employees employed directly and indirectly.

During the period 1986-88 a dispute arose with Board regarding fixing of quota and charges for unit consumed in excess of quota for imported power supplied by Board during that period.

The disputed amount claimed by Board was Rs.22,58,873/- (Rupees Twenty Two lakhs fifty eight thousand eight hundred and seventy three only) The company challenged the claim of Board in the Hon. High court of Kerala and later in the Hon. Supreme Court of India. In October 2004 during pendency of the company's case in the Hon. Supreme Court of India, Board served notice on the company for payment of the disputed arrears of

Rs. 22,58,873 /- (Rupees Twenty two lakh fifty eight thousand eight hundred and seventy three only) along with the interest at 24% amounting to Rs.78,60,878 (Rupees Seventy Eight lakh Sixty thousand Eight hundred and Seventy Eight only) and threatened disconnection on failure to make payment.

The company remitted the payment of Rs.22, 58,873/- (Twenty two lakhs Fifty Eight thousand Eight hundred and Seventy Three only) on 8.11.2004 and requested Board to waive the demand for the interest portion pending disposal of the case filed in the Hon. Supreme Court of India.

Board declined the company's request for waiver of interest and served notice for the payment of arrears vide their letter dated 5.2.05. The company approached the Hon. High Court of Kerala for obtaining a stay against the above demand of Board.

The Hon. High Court granted stay and directed the company to remit Rs.36 lakhs to Board pending final disposal of the petition. Board came out with a One Time settlement Scheme vide Board Order No.1475/2005(TF4/HT-EHT/OTS/2005) dated 11.05.05 and Board circular No.TF4/HT-EHT/OTS/200 dated 13.5.05. The Company submitted application for One Time Settlement as per the above Board Order and the Circular vide its application-dated 24.06.05.

Personal hearing on the application submitted by the company for One Time Settlement Scheme was conducted at Board head quarters in November 2005. Board directed the Company to withdraw the pending litigations in the Hon. Supreme Court of India and Hon. high Court of Kerala to facilitate final settlement as per the One Time settlement Scheme (hereinafter called OTS).

Company withdrew the pending cases before the two Courts and informed Board accordingly. Board passed order on OTS vide Order No.TF 2/HB 9/731/AO/OTS 05-06 dated 24.03.06 As per the above Order Board demanded final payment of Rs.35, 57,114/- (Rupees Thirty five lakhs fifty seven thousand one hundred and fourteen only) in full and final settlement of the dispute with a rider that the allocation of extra power to the extent of 2200 KVA to the C& D units of the company shall be subject to the payment of the arrears demanded by the Board.

In order not to delay the power allocation to its sister units the company paid Rs.35, 57,114(Rupees Thirty five lakh Fifty seven thousand one hundred and fourteen only) to Board "Under Protest" on 27.03.2006.

Aggrieved by the decision of the Board in the One Time Settlement Scheme the petitioner preferred an appeal to the Consumers Grievance Redressal Forum of Kerala State Electricity Board, Kozhikode on 6th May

2006. Vide Order dated 10.10.2006 the commission rejected the appeal of the company and concurred with the decision of Board.

The above is as per the appeal filed by M/s. Precot Meridian Ltd.

Copy of the appeal was forwarded to Board on 25th November 2006. While forwarding the copy, Board was requested to offer comments within a week and to furnish details of one time settlements effected in a specific format . No reply has been received till date .

The petition was originally posted for a hearing on 3rd January 2007 but was postponed to 9th January 2007 at the request of Board on the score that they have to attend to public hearing on ARR&ERC at Kozhikode on 2nd January 2007 and at Ernakulam on 4th January 2007. During the hearing on 9th Board offered no comments as to why the details called for were not furnished.

The petition was heard on 9th January 2007. Appellant outlined the brief history of the issue. Appellant stated that an amount of Rs 22,58,873/- was remitted on 08-11-2004 and requested Board to waive demand for interest pending disposal of case in the Hon. Supreme Court. Board declined the request and served notice for payment of arrears vide letter dated 05-02-05. Appellant approached Hon High Court of Kerala and obtained a stay on disconnection but with a condition that interest at 12% should be paid. Appellant paid Rs 36 lakh pending final disposal of the case. Then appellant applied for one time settlement (hereinafter called OTS) as notified by Board vide order dated 11-05-05 and circular dated 13-05-05. Board took a stand that for settlement under OTS all cases pending in Courts should be withdrawn. Appellant stated that as per para 4(a) of the circular on OTS dated 13-05-05 issued by Board, if the consumer is ready to clear the arrears in one lump sum the penal interest rate will be reduced from 24% to 12 % per annum. It was further pointed out that during the personal hearing at Board Headquarters with Member(Finance) of Board in November 2005 the matter regarding the methods of computation of interest was never clarified to appellant. Appellant further stated that the principal has not been adjusted at the time of applying for OTS. Board has applied interest at 24% till last date of payment (16-03-05) and has applied 12% interest thereafter. Appellant stated that for a consumer who has not paid any arrears, the interest applicable would be only 12 % for the entire period whereas appellant is denied of the benefit only on the reason that some payment was already made.

Respondent stated that the payments made are adjusted first against interest and then only against principal. As per the agreement executed by the appellant with Board penal interest of 24% is applicable for delayed payments. Respondent stated that as per the regulations issued by KSERC, this issue does not come under disputes to be addressed by CGRF and Ombudsman.

Appellant pointed out that the issue comes under clause 2.f.vii. of the regulations. It seems that respondent has serious problem in interpretation of even simple regulations.

Appellant further pointed out that in the case filed with Hon. High Court, stay was given with a direction to pay only 12% interest. Appellant stated that Board has violated the spirit of the circular on OTS.

Respondent stated that the OTS package offered was not based on any discussion but was a general package. No dilution was allowed to any one. Appellant again stated that OTS is not as per agreement.

Respondent stated that if Rs 36 lakh was not remitted in as per Court direction supply would have been disconnected. Respondent stated that any dilution of issue will evoke massive response from other consumers also. Board has acted as per the power supply agreement only.

The most important documents are the circular dated 11-05-05 and 13-05-05 on OTS and the order dated 24-03-06 in which the package was released by Board in the case of appellant.

Penal interest of 24% can be applied for delayed payment as per agreement. For this no OTS is required. Linking OTS with agreement implies that arbitrary methods are adopted by respondent. From order dated 24-03-06, it is noted that the computation of arrears was revised based on directions from Hon. High Court. The proportion of local power and imported power is seen revised from original value of 33.33:66.66 to 50:50. Also cost of imported power has been revised from Ps 90 to Ps 80. Interest has accrued because of wrong and arbitrary methods adopted by Board in fixing quota during power cut period. Appellant has withdrawn the cases only to apply for OTS. Hon. High Court has granted stay on the condition that 12% interest be remitted.

In the OTS order dated 24-03-06 issued by Board and applicable for appellant alone, in page 15 para 3, it is specifically mentioned that as per clause 32(g) of the Conditions of Supply interest for the arrears shall be paid in full along with the first instalment. In the next sentence it is concluded that the order of accounting shall be interest first and principal last. But in the circular dated 11-05-05 and 13-05-05, in para numbered as 5, it is clearly stated that instalment facility for remitting interest charges can be granted in

cases where the principal amount of arrears have been fully remitted. Thus it is clear that the stand taken by Board in order dated 24-03-06 is wrong. Board has not furnished details of One-Time Settlements made on the basis of circular dated 13-05-05. Thus it is clear that Board has purposefully concealed facts.

Also in para numbered as 4(b) in circulars dated 11-05-05 and 13-05-05, interest applicable for payment made in installments is only 18%. At least this facility should have been extended to the appellant for the payments made up to 16-03-05 and 12% interest thereafter. Applying 24 % interest up to 16-03-05 the date on which payment was made as per court order is not at all just.

Respondent did not produce the details of OTS made. No supporting orders for applying the principle that principal will be adjusted at last has been submitted. As such the settlement as per order dated 24-03-06 can be treated as arbitrary. Appellant should be given the benefits as announced vide circulars dated 11-05-05 and 13-05-05. Payments made by appellant should be adjusted against principal which is as per para 5 of circulars on OTS. Interest should be limited to 18% till the date of last payment. Thereafter it should be 12%. Petition is disposed off.

**Sd/-
OMBUDSMAN**

P1/2006/.....DATED

Forwarded to

The Administrative Manager
Prescot Meridian Ltd,
'A'Unit, Kanjikode West
Palakkad 678 623

Chief Engineer(Commercial& Tariff),
KSEB, Vaidyuthi Bhavan ,
Pattom, Thiruvananthapuram 695 004.

Secretary-in-charge.