



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)

Reg. Office: Vydyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004, Kerala

CIN :U40100KL2011SGC027424

website: www.kseb.in

Phone: +91 471.2514437, 2514371, 2514612 Fax: 0471 2514262

E-mail: sorkseb@kseb.in

Abstract

M/s. Popular Carbides (LCN 19/3053) – Waiver of minimum demand for the closed down period – Sanctioned – Orders issued.

CORPORATE OFFICE (SPECIAL OFFICER (REVENUE))

B.O.(FTD) No.462/2020 (SOR/AMU 2/LCN 19/3053/2019-20).

Dated, Thiruvananthapuram, 06.07.2020.

- Read:-
- (1) G.O. (Rt) No.64/06/PD dated 21.02.2006.
 - (2) G.O. (Rt) No.35/07/PD dated 24.02.2007.
 - (3) G.O. (Rt) No.209/08/PD dated 02.08.2008.
 - (4) G.O. (Rt) No.161/2009/PD dated 06.07.2009.
 - (5) G.O. (Rt) No.216/2010/PD dated 13.09.2010.
 - (6) G.O. (Rt) No.220/2011/PD dated 27.09.2011.
 - (7) G.O. (Rt) No.244/2011/PD dated 17.10.2011.
 - (8) G.O. (Rt) No.136/2012/PD dated 16.07.2012.
 - (9) B.O (FB) No.2164/08 (Plg.Com 4576/Waiver of MD/08) dated 30.08.2008.
 - (10) B.O (FB) No.2081/09 (Plg.Com 4576/Waiver of MD/08)/230 dated 11.08.2009.
 - (11) B.O (FB) (Genl) No.2986/2010 (Plg.Com 4576/MD Waiver/2010-11) dated 19.11.2010.
 - (12) B.O (FB) (Genl) No.2313/2011 (Plg.Com 4576/MD Waiver/2011-12) dated 19.11.2011.
 - (13) B.O (FB) (Genl) No.2202/2012 (Comml. II/MD/Waiver/2012-13) dated 20.11.2012.
 - (14) G.O (MS) No.10/2016/PD dated 22.04.2016.
 - (15) Proceedings No.SOR/AMU/HTB 19/3053/6226/2016-17 dated 08.07.2016 of the Special Officer (Revenue).
 - (16) Request dated 15.02.2020 and 17.02.2020 of Sri. R. Srikrishnan, Manager, M/s. Popular Carbides.
 - (17) Decision dated 16.02.2020 of the Vydyuthi Adalath held at Palakkad.
 - (18) Minutes of the Personal hearing held on 11.03.2020.
 - (19) Note No.SOR/AMU 2/LCN 19/3053/2019-20 dated 08.05.2020 of the Special Officer (Revenue) submitted to the Director (Finance).
 - (20) Note No.LAW III/11495/2012 dated 15.06.2020 of the Legal Adviser & Disciplinary Enquiry Officer, KSEBL.
 - (21) Note No.SOR/AMU 2/LCN 19/3053/2019-20 dated 18.06.2020 of the Special Officer (Revenue) submitted to the Full Time Directors (Agenda Item 53/6/20).

ORDER

M/s. Popular Carbides (LCN 19/3053) was an HT Industrial consumer situated in the Old IDA, Kanjikode engaged in the production of Calcium Carbide, started in the year 1995. The unit was shutdown from 31.08.2001 onwards due to a major

repair in the furnace. The service connection was surrendered with effect from 31.05.2002 and dismantled on 30.09.2002. The arrear was settled based on B.O. (FB) No.2222/2011 (LA III/125/2011) dated 13.09.2011, by setting aside the duty portion amounting to ₹ 8,12,116/-.

The Government as per G.O read 1st above ordered to waive minimum demand charges for electricity for the period of closure in respect of all the closed industrial units which will be restarting their operation on or before 31.03.2006. The benefit was later extended several times in different spells initially upto 30.06.2007 and later upto 31.12.2008, 31.03.2010, 30.06.2011, 31.12.2011, and finally upto 31.12.2012 as per Government Orders read (2) to (8) above and KSEB adopted the same as per Board Orders read (9) to (13) above respectively.

The consumer as per letter dated 12.11.2008 requested for the benefit of MD waiver for the closed down period, instalment facility, reconnection, etc., which was declined by the Board. A series of litigation followed in WP (C) No.34665/2008, WP No.36613/2010, 11256/2012 were filed by the petitioner claiming the above benefit. The Hon'ble High Court of Kerala vide judgement dated 15.05.2012 in WP (C) No.11256/2012 ordered to grant reconnection to the consumer. In compliance, the Board directed the Deputy Chief Engineer, Electrical Circle, Palakkad to effect reconnection.

The Deputy Chief Engineer, Electrical Circle, Palakkad has informed that reconnection cannot be effected but a fresh connection can be given. Accordingly, new connection was given on 03.08.2012 with consumer No.HTB 19/6226. The company re-opened and restarted production with effect from 01.09.2012.

The Hon'ble High Court of Kerala in the judgement dated 06.08.2012 in WP (C) No.11256/2012 directed the Board to consider the representation of the petitioner as per Rules. In compliance, the petitioner was heard by the Secretary, KSEB on 02.01.2013. Consequent on the above, B.O. (MF) No.2052/2013 (LA.III/11495/2012) dated 26.09.2013 was issued declining the request of the petitioner for the following reasons.

- 1) The registered consumer of the original service connection was one Sri. Sreekrishnan where as the new connection is availed in the name of Smt. S. Radha Sreekrishnan. The partners of the partnership deed has also changed.
- 2) The product changed from calcium carbide to liquid oxygen.
- 3) The connection is changed as a power intensive one.
- 4) Not re-opened the original factory as ordered in Board Order dated 13.09.2011.
- 5) Regarding refund of the duty amount, Government is to take a decision in the matter.

The consumer aggrieved by the Board's decision filed WP(C) No.14795/2014 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala vide judgement dated 28.08.2014 directed KSEBL to reconsider the matter and to take a fresh decision after affording full opportunity of hearing to the petitioner. The

consumer dissatisfied over the delay in getting his grievances redressed filed WP (C) No.817/2020 before the Hon'ble High Court of Kerala. The case is pending decision of the Hon'ble High Court of Kerala.

Sri. R. Srikrishnan, Manager, M/s. Popular Carbides submitted a representation before the Vidyuthi Adalath held at Palakkad on 16.02.2020 requesting to consider their claim for MD waiver. The Adalath directed to collect the objections from the consumer and to take a proper decision within one month after hearing the petitioner.

In compliance of the Adalath decision, personal hearing of the petitioner was held on 11.03.2020 in the Cabin of Special Officer (Revenue). Sri. R. Srikrishnan, who attended the meeting on behalf of M/s. Popular Carbides presented their claim and objections. The main request of the petitioner is to grant the benefit of waiver of MD Charges for the closed down period of their firm and to refund the amount collected on this account. He produced the copy of Board Order read as 13th in support of his claim. The petitioner refuted the reasons stated for declining the benefit on the following grounds.

- a) As per Board Order dated 20.11.2012, the benefit of waiver of MD Charges shall be extended to the consumers whose service connection was dismantled, if they re-open on or before 31.12.2012. The firm of the petitioner re-opened and re-started the production with effect from 01.09.2012 (The Cer. No.P1/265/2013 dated 16.02.2013 of the General Manager, DIC, Palakkad is produced as proof).
- b) Regarding change of partners in the partnership deed it is stated that the partners of the firm before and after re-opening are one and the same i.e., Smt. Radha Sreekrishnan and Smt. P.G. Prabha Sahasranamam. The deed was signed by Sri. Sreekrishnan. R, in his capacity of Manager of the firm. Moreover, as per Board Order dated 20.11.2012, the benefit is extended to the units where there is a change in ownership as well.
- c) Regarding change in product from calcium carbide to liquid oxygen, the same is approved by the Board (Letter dated HTB 19/3053 dated 27.10.2010 of the Special Officer (Revenue) is produced as proof).
- d) The petitioner further submitted that the statement in the Board Order dated 26.09.2013 that the consumer changed as a power intensive one is totally incorrect. The oxygen units in Kerala numbering above 10 does not fall under the category of power intensive consumer. Another oxygen unit near the petitioners firm i.e., in the same KSEB Section and Division is not classified as a power intensive unit. Above all, the classification of power intensive consumer itself does not exist during 2012.
- e) Another condition stipulated for availing the benefit of MD waiver is that the unit shall have to function for a minimum period of 6 months after re-opening. The same is also satisfied in this case. The re-opened firm is functioning for the last 8 years and is working even now.

In compliance of the judgement dated 28.08.2014 in WP (C) No.14795/2014 and direction dated 16.02.2020 of Vidyuthi Adalath, Palakkad, the entire matter has been reviewed in the light of Board Order read 13th above and the documents produced by the petitioner, and has arrived at the following conclusion.

The reasons stated in B.O. (MF) No.2052/2013 (LA.III/11495/2012) dated 26.09.2013 for declining the benefit of MD waiver to M/s. Popular Carbides is found to be not maintainable consequent on issuance of Board Order dated 20.11.2012.

- (a) The ownership/partners of the re-opened firm is not relevant since as per Board order dated 20.11.2012, the benefit was extended to those units where there was a change in ownership as well.
- (b) The change in product from Calcium Carbide to liquid oxygen is seen done with the knowledge and approval of Board.
- (c) The consumer has not changed as a power intensive one since liquid oxygen companies are not power intensive consumer. Moreover, the classification of power intensive consumer itself does not exist during 2012 as per KSERC regulations.
- (d) As per Board Order dated 20.11.2012, the benefit of MD waiver is admissible to those consumers whose service connection was dismantled if they re-opened on or before 31.12.2012. The petitioner firm was re-opened and restarted production with effect from 01.09.2012 i.e., before the stipulated date of 31.12.2012.
- (e) The condition that the re-opened firm shall function for a minimum period of 6 months is also satisfied since the firm is functioning for the last 8 years and is working even now.

In the circumstances stated above, the firm M/s. Popular Carbides (LCN 19/3053) is entitled to the benefit of MD Waiver for the closed down period with effect from 09/2001 to 09/2002.

On verification of the CPL for the period with effect from 09/2001 to 09/2002, an amount of ₹ 12,49,560/- (₹ 96,120/- x 13 months) is seen demanded against the consumer on account of minimum demand and ₹ 2,09,608/- is seen collected during this period leaving a balance of ₹ 10,39,952/-. The company has later remitted an amount totaling to ₹ 26,60,973/- in 3 different spells (₹ 3,00,000/- on 06.12.2008, ₹ 8,13,000/- on 09.01.2009, ₹ 15,47,973/- on 08.04.2009). The Special Officer (Revenue) vide letter No.HTB 19/3053 dated 01.10.2011 directed the consumer to remit an amount of ₹ 8,71,567/- to avail the benefit of OTS vide Board Order BO(FB) No.2222/2011(Law.III/125/2011) dated 13.09.2011. In compliance, the consumer remitted aforesaid amount on 18.10.2011 and thus settled the arrear amount (setting aside the duty portion which was later allowed vide Proceedings read as 15th above issued in compliance of Government Order read 14th above). As such, no amount is outstanding from HTB 19/3053 as of now.

In the Board Order dated 20.11.2012 it is further stipulated that "Board also orders to request the Government to pay in advance or reimburse to KSEBL, the amount of MD Charges/fixed charge to be waived on account of implementation of Government Order dated 16.07.2012".

The matter was presented before the Director (Finance) as per note dated 08.05.2020 read (19) above. The Director (Finance) sought legal opinion in the matter. In response, the LA & DEO vide note No.LAW III/11495/2012 dated 15.06.2020 read (20) above has opined that those reasons cited earlier for the denial of the MD waiver factually prove unsustainable and no more defence remains to pursue the case. The WP (C) No.817/2020 filed by the consumer before the Hon'ble High Court of Kerala is with the same prayer for the MD waiver and there is no legal impediment in conceding it, if otherwise the consumer is eligible for the relief. As of now, no reason remains for denial of the benefit of waiver of MD charges to M/s. Popular Carbides.

The Director (Finance) directed to put up the matter before the Full Time Directors. Accordingly the subject matter was placed before the Full Time Directors as per note read as (21) above. Having examined the matter in detail, the Full Time Directors in its meeting held on 25.06.2020 resolved to accord sanction for the benefit of waiver of MD charge amounting to ₹ 12,49,560/- (Rupees Twelve Lakh Forty Nine Thousand Five Hundred and Sixty only) to M/s. Popular Carbides (LCN 19/3053) in the light of B.O. (FB) Genl. No.2202/2012 (Comml.II/MD Waiver/2012-13) dated 20.11.2012 and to request Government to reimburse to KSEBL the amount of MD Charges waived on account of implementation of Government Order dated 16.07.2012.

Orders are issued accordingly.

By Order of the Full Time Directors,
Sd/-
LEKHA .G,
COMPANY SECRETARY (IN-CHARGE).

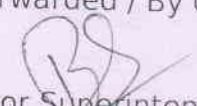
To

- ✓ M/s. Popular Carbides (LCN 19/3053)
13/700, Coimbatore Road, Palakkad – 678001.

Copy to:-

1. The Financial Adviser/The Chief Internal Auditor.
2. The Deputy Chief Engineer, Electrical Circle, Palakkad
3. The TA to Chairman & Managing Director/ Director (Distn., IT & HRM/ Director (Transmission, System Operation & REES)/ Director (Generation (Ele.) & SCM) / Director (Generation-Civil)/ Director (Planning & Safety).
4. The PA to Director (Finance)/Senior CA to Secretary (Administration).
5. The Special Officer (Revenue).
6. The Company Secretary-in charge.
7. Library/Stock file.

Forwarded / By Order


Senior Superintendent.