

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 169 OF 2023

In the matter of refund of SD and Credit balance of earlier consumer in case of auction of
property

Rizwan Ice & Cold Storage Unit II (C. No. 028619047120) Appellant
(Original Consumer – Sumaraj Sea Foods Pvt. Ltd. – C.No. 028619022604)

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Vashi (MSEDCL).....Respondent

Appearances:

Appellant: 1. Harshad Sheth, Representative
2. Navin Srivastava, Factory Manager

Respondent: 1. R.G. Bele, Executive Engineer, Admin
2. Rajiv Vaman, Asst. Law Officer


Coram: Vandana Krishna [I.A.S.(Retd.)]

Date of hearing: 2nd February 2024

Date of Order : 11th March 2024

ORDER

This Representation was filed on 11th December 2023 under Regulation 19.1 of the Maharashtra
Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity


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Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Original Order dated 29th August 2023 in Case No. 98 of 2022-23 and Review Order dated 18th October 2023 in Case No. R-93 of 2023-24 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).


2. The Forum by its original order dated 29th August 2023 partly allowed the grievance in Case No. 98 of 2022-23. The operative part of the order is as below:

*“2. The Respondent is directed to refund the SD amount along with the interest to the present consumer, Rizwan Ice and Cold Storage.
3. The Applicant is directed to submit an indemnity bond indemnifying the Respondent against the release of SD and SD interest to him.”*

3. The Appellant filed a review application before the Forum on 12.09.2023 praying for the credit of Rs. 63,93,288.08 from the original consumer’s account (No. 028619022604) which accrued due to change in tariff category from commercial to industrial tariff. The Forum dismissed the Review Application by its order dated 18.10.2023.


4. The Appellant has filed this representation against the original order dated 29.08.2023 and Review Order dated 18.10.2023. The e-hearing was held on 2nd February 2024 through video conferencing. Both the parties were heard at length. The Appellant’s written submissions and arguments are stated as below: -

- (i) The Appellant (Rizwan Ice & Cold Storage Unit II) is a HT Consumer (No. 028619047120) from 07.09.2019 at Plot No. M 17, Taloja Industrial Area, Taloja, Tal. Panvel, Dist. Raigad. The Appellant had purchased the property of Sumaraj Sea Foods (Cons. No. 028619022604) (short title as Sumaraj) in an Auction from Bharat Co-operative Bank (Mumbai) Ltd. (the Bank) on 20.07.2019.


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- (ii) Sumaraj had availed various credit facilities from the Bank, and had mortgaged a piece of land admeasuring 5000 sq. meters, at the above address along with with structure standing thereon with plant & machinery. Since Sumaraj had committed default in repayment to the Bank and its account became a Non-Performing Asset (NPA), an auction under “Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002” (the SARFAESI Act 2002) was held by the Bank against Sumaraj. Accordingly, an auction notice was issued, and an auction was held on 5th December 2018 for the said plot. The Appellant, Rizwan Ice & Cold Storage, participated in the auction. It purchased the said plot upon payment of more than Rs.12 Crores to the Bank. Upon payment of the entire consideration and compliance with all the terms and conditions, the Appellant and the Bank executed a Deed of Assignment on 20.07.2019, pursuant to which the right, title and interest in the said plot was transferred to the Appellant.
- (iii) Since this auction was on ‘as is where is basis’, certain liabilities such as previous electricity dues were settled pursuant to the auction process. In particular, in terms of the last paragraph at page 8 of the Deed of Assignment, all the outstanding dues of MSEDCL and other authorities were paid and discharged up to 30.11.2018. *[Note: Actually, there were no outstanding dues of the previous consumer at the time of auction. In fact, he was in credit of Rs.63.93 lakhs. Therefore, there was no question of clearing previous electricity dues.]* Thereafter from 01.12.2018, all the liabilities were to be borne by the Appellant.
- (iv) The Deed of Assignment (Paragraph 3 at page 9) clearly recorded that all the rights, title and interest of Sumaraj in the Premises were transferred to the Appellant herein. Hence, in accordance with law, the Appellant became the rightful owner and became entitled to a refund, if any, with respect to the Premises. *[Note: As per the Deed of Assignment and Transfer of Immovable Property under Sale Certificate No. BCB/CO/Legal & Recovery /271/2019 dated 14.05.2019.]*



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- (v) The Appellant made an application to the MSEDCL for reconnection and change of name in the records of the MSEDCL. MSEDCL sanctioned a reconnection to the Appellant at the said Premises on 07.09.2019 with a different consumer No. 028619047120.
- (vi) The Commission had issued the following Regulations which are applicable in the present case:-
- Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations 2005)
 - Maharashtra Electricity Regulatory Commission (Standard of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014)
 - Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021)

Considering the interpretation and applicability of the rules, regulations and various orders passed by the Commission in equivalent matters, the Appellant has become entitled for the following three amounts in this case:

- i. Refund of Security Deposit amounting to Rs. 17,56,500/-,
 - ii. Refund of interest on Security Deposit amounting to Rs. 7,83,399/-,
 - iii. Refund of amount on account of differential tariff rates applicable to Seafood Exporters amounting to Rs. 63,93,288.08.
- (vii) The Appellant submitted an online application (ID NO. 195843) on 24.02.2022 for refund of SD, accrued interest on SD and the amount of differential tariff rates with interest applicable to Seafood Exporters. However, there was no response by the MSEDCL, hence the Appellant was constrained to file a grievance before the Forum



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on 19.09.2022. The Forum by its original order dated 29th August 2023 partly allowed the grievance, whose operative part is captured at Para 2. Not satisfied by this order, the Applicant filed a review application in the Forum, which was also dismissed. The Forum failed to understand the basic issue that the Appellant had purchased this property in auction from the Bank, and the liability as well as credit of the old consumer has been transferred by virtue of law to the new owner. The Forum allowed the transfer of security deposit from the old consumer to the new consumer. If so, with the same logic and in the same circumstances, why did it not allow the transfer of the credit amount of the old consumer?

(viii) The Appellant submitted the following grounds in support of the present Appeal as the Forum's orders do not consider refund/ release of Rs. 63,93,288.08 to the Appellant towards differential in tariff applicable to the consumer at the premises.

- The amount of Rs. 63,93,288.08 is liable to be refunded/ released by the Respondent to the Appellant. The Appellant is the successor in title and the successor consumer of the MSEDCL on the very same premises. There cannot be any difference between the Appellant and the previous consumer regarding liabilities of the Licensee. The Appellant has stepped into the shoes of Sumaraj for all intents and purposes.
- The Appellant cited the Judgement of Hon'ble Supreme Court dated 19th May 2023 in Civil Appeal No 2109- 2110 of 2004 in Case of K C Ninan V/s Kerala State Electricity Board & Ors., in support of its submissions. The Judgment categorically held and approved the aforementioned principle of "*synergy between the consumer and premises*". The relevant paragraph of the Judgment is reproduced as below:


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“61. We need to highlight that the 2003 Act contemplates a synergy between the consumer and premises. Under Section 43 of the 2003 Act, the owner or occupier of premises can seek a supply of electricity for particular premises. Perforce, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided. For example, when a person owning an apartment in a residential complex applies for supply of electricity to such an apartment, they become a consumer only with respect to the apartment for which the application is made and to which electricity is supplied. Such a person may own another apartment to which electricity may already be supplied, but they will be considered a separate consumer with respect to the second apartment. For an application to be considered as a ‘reconnection’, the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection.

264. In the impugned judgment, the High Court referred to the example of a multi-storied residential building to observe that “the licensee may successfully demand that a new purchaser of a different flat whose vendor was not a defaulter, would still be liable to pay the arrears of a defaulting consumer of another flat of the same on the ground that it is a part of the same premises.” In this context, we have already held that there is a synergy between the consumer and premises. A new owner can only be



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obligated to pay the electricity arrears of the previous owner with respect to the premises to which electricity connection is being sought. Therefore, the phrase “any dues relating to that premises” has to be understood with regard to the supply of electricity made to the premises when it was in occupation of the previous owner.

328. The conclusions are summarised below:

a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;

b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;”

- The above ratio of the judgment leaves no doubt that in a case such as present, when there is reconnection of electricity on the very same premises, the new consumer steps into the shoes of the previous consumer at the very same premises. **As a consequence, he takes over all the rights and liabilities. Just as he is liable to pay the arrears of the previous consumer, he is also liable to seek payment/ refund of amount due and payable to it in accordance with law.**


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➤ In the present case, the Impugned Orders of the Forum suffer from a serious error of law and facts on the following two counts. Firstly, the order neglects to deal with the issue of release of Rs.63,93,288.08 to the Appellant towards differential in tariff applicable to the consumer at the Premises. The said order neither rejects nor grants the said relief. Secondly, the review order fails to cure and rectify the above serious error.

(ix) The Appellant submitted rejoinders dated 09.01.2024 and 16.01.2024 which repeated the previous submissions.

5. The Respondent filed its reply dated 26th December 2023. Its submissions and arguments are stated as below:

No locus standi to file Representation:


(i) M/s Sumaraj Sea Foods Pvt Ltd (Con.No.028519022604) and M/s. Rizwan Ice & Cold Storage (Con.No.028619047120) are separate legal entities and have no legal relation with each other. There is no legal merger/ amalgamation under Companies Act or business take over agreement or assignment deed which entail legal power to the Appellant, Rizwan Ice & Cold Storage to receive SD of the old connection or other credit amount which stands in the name of Sumaraj Sea Foods Pvt Ltd. Even a simple Power of Attorney / No Objection Certificate from Sumaraj has not been submitted. The connection of Sumraj Sea Foods Pvt Ltd. was permanently disconnected in 2016 without any arrears. Rizwan Ice & Cold Storage came into picture in 2019 when he purchased the plot in auction. There was no question of the Appellant clearing the arrears of the old connection simply because there were no arrears as of 2019. Appellant applied for a new connection on the said premises; accordingly, a new connection was sanctioned vide Consumer No. 028619047120.


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The Appellant is merely an auction purchaser, and hence cannot be legally entitled to get a refund on behalf of the old consumer.


- (ii) The Appellant has referred to the Judgment of Hon'ble Supreme Court in Case of K C Ninan V/s Kerala State Electricity Board & Ors. in support of its submissions. The ratio of this Judgment is not applicable in the present case. It is applicable in cases of recovery of old dues from new incoming consumer. The Hon'ble Supreme Court held that old dues of electricity can be recovered as a condition precedent for getting new supply. The ratio of the above judgment cannot be blindly applied for refund of old consumer's SD and other refund, for reason that there is a specific provision under Reg.13.9 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 for refund of SD to the person who deposited the security, and not to any new consumer. The old and the new consumers are separate legal entities. As such the Appellant has no locus standi to file the present Representation, and therefore the same should be dismissed at the initial stage itself.
- (iii) Sumraj Sea Foods Pvt Ltd was HT PD Consumer at the above address with date of supply as 20.03.1998. The above connection was in arrears of Rs.2,88,85,972.88 (2.88 crores), therefore the supply was temporarily disconnected in August 2016. Meanwhile a matter was under consideration before the Commission, as to whether industrial or commercial tariff should be applicable to all sea-food processing units. This matter was decided by the Commission on 13.05.2016 in favour of the sea-food processing units, and it was decided to apply industrial tariff. Accordingly, in the month of Sept.2016, a credit adjustment of Rs.3,53,36,852.93 (Rs.3.53 crores) was passed towards the tariff difference for the period of **August-2012 to May-2015** as per the Commission's order dated 13.05.2016 passed in Case No.42 of 2015. In the month of Nov.2016, the said connection was made PD with credit balance of


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Rs.62,31,913.66 and SD of Rs.17,56,500. The credit balance (towards tariff difference from commercial to industrial tariff of Rs.62,31,913.66, and other credit of Rs.1,61,374.42, thus total credit of Rs.63,93,288.08) was already adjusted by way of credit adjustment in the energy bill, **and will be refunded to the original consumer in his bank account as and when he applies for it.**

- (iv) In the year 2019, the Appellant purchased the above premises from M/s Bharat Co-operative Bank (Mumbai) Ltd. in an auction. He applied for a new HT supply in 2019. Accordingly, a new connection was sanctioned to them vide Consumer No. 028619047120. The date of supply is 07.09.2019.
- (v) The Appellant applied to MSEDCL for a refund of security deposit and the credit balance lying in respect of the old PD consumer M/s Sumaraj Sea Foods Pvt. Ltd. However, Sumraj Sea Foods Pvt Ltd and the Appellant are separate legal entities and have no legal relation with each other. In future, if the original consumer with SD receipt approaches the MSEDCL for refund of SD, then MSEDCL will be bound to refund the SD, being a statutory payment. This will create an unnecessary complication with 2 claimants; therefore the refund of SD and credit balance to the Appellant was rejected.
- (vi) The connection of Sumraj Sea Foods Pvt Ltd. was PD in the year 2016 with no arrears, i.e. before Rizwan Ice & Cold Storage came into the picture in 2019. It is not the case of the Appellant that they paid the dues of the old connection. **He applied for a new connection**, and as he complied with the requirements, new supply was sanctioned. There was no question of change of name; the energy bill of Consumer No. 028519022604 still stands in the name of Sumraj Sea Foods Pvt Ltd. Therefore the observation of the Forum that MSEDCL effected change of name is not in conformity with the facts.


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- (vii) The PD connection stands in the name of Sumraj Sea Foods Pvt Ltd. There was a supply agreement between the old consumer and MSEDCL, and the Appellant was not a party to that contract; therefore, without any legal documents of amalgamation /merger by National Company Law Tribunal under Companies Act, the present complainant cannot step into the shoes of Sumraj Sea Foods Pvt Ltd. and ask for refund of SD and other balances. Sumraj Sea Foods Pvt Ltd. is a corporate company registered under the Companies Act, being a separate legal entity and still in existence. The Appellant is the purchaser of the plot belonging to Sumraj Sea Foods Pvt Ltd. through Bank auction, and as such cannot be termed as the legal successor or legal heir of the said company.
- (viii) The Appellant has the right, related to only the land, and do not have all rights of Sumraj Sea Foods Pvt Ltd. There is absolutely nothing on record to show that Sumraj Sea Foods Pvt Ltd. was liquidated as per the provisions of the law. Even if that were the case, the liquidator would have the right to claim refund of SD or other balances if any, and not the auction purchaser.
- (ix) The transfer of all rights, title, interest and share of Sumraj Sea Foods Pvt Ltd. does not include the right of SD refund and other balances of Sumraj Sea Foods Pvt Ltd paid to MSEDCL at the time of connection or thereafter. The right of SD refund and other credit balance is not a right which was transferred by law on the transfer of immovable property. It is an independent right which can be transferred only by proper legal documents.
- (x) **Reg.10.5 of the Supply Code Regulations 2005 and Reg. 12.5 of Supply Code & SOP Regulations 2021, stipulate the liability to clear the electricity dues of the old consumer by the incoming consumer for getting supply. It cannot be equated with the right to get refund of SD or other balances of the old consumer. The**



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Order and Judgment of Hon'ble Supreme Court passed in the matter of K. C. Ninan Vs. Kerala State Electricity Board & Ors. cited by the Appellant is not applicable in the present case. It is applicable to different circumstances of recovery of old dues from the new incoming consumer. The Hon'ble Supreme Court held that, if the statutory Regulations allowed so, then it can be recovered from the incoming consumer as a condition precedent for getting new supply. This cannot be blindly applied in case of refund of old consumer's SD and other refunds, as there is a specific provision under Regulation 13.9 of Supply Code & SOP Regulations 2021 for refund of SD/ credit balances to the old consumer. The said Regulation No.13.9 runs as under:

*“13.9. 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, within Seven (7) days: Provided that original receipt of payment of Security Deposit need not to be submitted while claiming such refund if the KYC/e-KYC bank details are available with the Distribution Licensee.”*


The above provision is very clear that SD or other credit balance can be refunded only to the person who deposited the SD and not to anyone else. The situation of refund of SD to a person who deposited it other than the consumer would arise only when SD is paid by the old consumer and the name on the energy bill was transferred to the new consumer. On change of name, the old consumer ceases to be the consumer; therefore, the phrase “person who has deposited” is used in Reg. 13.9 for the old consumer. In the present case the


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connection was in the name of Sumraj Sea Foods Pvt. Ltd till PD, and stands so on today also. The Complainant has no concern with the said connection.


- (xi) The Appellant filed a grievance before the Forum on 19.09.2022. The Forum by its original order dated 29th August 2023 partly allowed the grievance. The operative part is already captured at Para 2. The order of the Forum to the extent of directing the SD refund is also against the important provision of Regulations of the Commission, and violates the law and infringes upon the right of the old consumer of MSEDCL who was not made a party before the Forum. Therefore, MSEDCL has submitted a review application dated 21.09.2023 for the review of Forum's order.
- (xii) The Appellant also filed Review No.93 of 2023 for review of the order dated 29.08.2023 for getting the credit balance. **The Forum by its order dated 18.10.2023 rejected both the review applications of the Appellant and MSEDCL. The Forum in its Review Order dated 20.10.2023 categorically held that the Complainant is not a legal heir and not entitled for claim of any money of Sumraj Cold Storage; however, rejected the MSEDCL review. This is a contradictory and erroneous observation of the Forum.**
- (xiii) MSEDCL is bound to refund the SD as and when the original consumer approaches it. The Forum directed the complainant to submit an indemnity bond against the claim of the original consumer; but if the original consumer approaches after PD, how can the indemnity bond be implemented? As such unnecessary complications will be created if the Forum's order is to be complied with; therefore, it is also liable to be set aside.
- (xiv) In view of the above, it is requested to reject the representation. It is requested to set aside the order dated 29.08.2023 passed by the Forum in Case No.98 of 2023.


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6. Post hearing the Appellant has submitted another rejoinder by email dated 10.02.2024, by which the Appellant again prays that the Respondent be directed to credit transfer the amount of Rs. 63,93,288.08 to the present consumer (No. 028619047120) from the original consumer (No. 028619022604) Sumaraj with interest on the following grounds:-

- a) The Appellant pointed out that the tariff difference was credited in Sep. 2016. The earlier consumer was made PD in Nov. 2016. Credit of 63.93 lakhs was available. This credit data was known to Bharat Bank; which put the bid amount as Rs. 12 Crores in the year 2019. Bharat Bank declared in its deed that *“everything including right, title interest, share of Sumaraj is transferred to Rizwan.”*
- b) MSEDCL Vashi circle sent a letter to Bharat Bank to clarify its stand, but if the bank did not come forward, it is clear that the bank is satisfied with what it got. So the credit balance amount is to be paid to Rizwan only. *[Note: Bharat Bank has not bothered to clarify its stand; thus the logical conclusion is that the Bank is not bothered about who is entitled to claim the credit balance: the old or the new consumer.]*
- c) After a lapse of 7 years from PD of supply, MSEDCL Vashi circle has accepted Bharat Bank as the owner, and Rizwan is the recipient of all payables & credit. It is futile to involve Sumaraj at this stage & refusing to pay Rizwan who is declared & accepted as the Rightful owner. MSEDCL Vashi circle’s submission of “two different entities” is irrelevant & a diversion of the issue. Vashi circle has not understood the correct meaning of the term “As is where is” and is making a wrong submission of only M17 premises, whereas the bank has considered all types of assets & liabilities of the earlier owner.
- d) The Respondent has quoted Reg. 12.5 of Supply Code & SOP Regulations 2021. **However, every word & situations are not mentioned in law & regulations. When the earlier owners’ arrears are allowed to be recovered from the**


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incoming owner, then in the same way, the earlier owner's credit balance should also be refunded to the incoming owner.

- e) Para 8 of the MSEDCL HO circular no 30586 dt 31 Oct 2012 on guidelines to refund RLC of PD consumers states that in name change cases / business take over cases of consumers, the refund of RLC of previous owner / consumer should be adjusted in the bills of current owner / name changed consumer.
- f) We have relied upon the Apex Court order of K C Ninan which has highlighted Section 43 of the Act & put up the principle of synergy of consumer & premises. Rizwan has stepped into the shoes of Sumaraj for all intents and purposes. We are attaching the following documents to show our indemnity- Our letter by email dt. 31.08.2023 attached with indemnity - Our reminder letter by email with proof dt. 20.10.2023 with indemnity - Our original submission of indemnity dt 28.02.2022 to vashi circle
- Letter sent by Rizwan by email dt. 22 jan 2024 with proof
 - Letter of Rizwan sent by registered AD.
- g) It is requested to consider the above submission & allow the claim of transfer of credit amount of Rs. 63.93 lakhs to the Appellant.

Analysis and Ruling


7. Heard the parties and perused the documents on record. The original HT consumer (No.028519022604) of the Respondent was Sumaraj Sea Foods Pvt Ltd from 20.03.1998 at Plot No-M-17, MIDC Talaja Industries Area Dist. Raigad 410208. According to the Respondent, this consumer was made PD in Nov. 2016. At the same time, there was a credit balance of Rs. 63.93 lakhs in the name of the consumer.


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8. The Appellant contended that the original consumer, Sumaraj Sea Foods Pvt. Ltd. had availed of credit facility from Bharat Co-operative Bank (Mumbai) Ltd., and since it had committed default in repayment to the Bank, its account became a Non-Performing Asset. The Bank took over the assets of Sumaraj Sea Foods Pvt. Ltd. and auctioned it under SARFAESI Act 2002. Accordingly, an auction was held on 5th December 2018 for sale of the said plot. The Appellant, Rizwan Ice & Cold Storage, participated in this auction and upon payment of more than Rs. 12 crores to the Bank, purchased the said asset. The Appellant and the Bank executed a Deed of Assignment on 20th July 2019, pursuant to which all the right, title and interest in the said plot was transferred to the Appellant herein. This includes the right to claim credit balance of MSEDCL, if any.

9. However, the Respondent contended that the transfer of all rights, title interest and share of Sumaraj Sea Foods Pvt Ltd. is only related to the immovable property, and does not include the right of SD refund and other credit balances of Sumaraj Sea Foods Pvt. Ltd relating to MSEDCL at the time of connection or thereafter. The right of SD refund and other credit balance is not a right which was transferred by efflux of law on transfer of the immovable property. It is an independent right which can be transferred only by proper legal documents. Initially, the connection of the original consumer was in arrears of Rs.2.88 crores; therefore, supply was temporarily disconnected in August 2016. Meanwhile the Commission decided a case wherein all sea-food processing units were treated as “industrial” and entitled to get a refund of the tariff difference between Commercial and Industrial, as Commercial tariff had already been recovered. Accordingly, in the month of Sept.2016, a credit adjustment of Rs.3.53 crores was passed on to Sumaraj towards the tariff difference for the period of August 2012 to May 2015, as per the Commission’s order dated 13.05.2016 passed in Case No.42 of 2015. In the month of Nov.2016, the said connection’s status was “PD with credit balance of Rs.62,31,913.66 and SD of Rs.17,56,500 /-”. The credit balance towards tariff difference of Rs.62,31,913.66 and other credit of Rs.1,61,374.42, i.e. total credit of Rs.63,93,288.08 was already given by way of credit


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adjustment in the energy bill, and will be refunded to the original consumer in his bank account as and when he applies for it.

10. The Respondent has argued that Sumaraj Sea Foods Pvt. Ltd. is a corporate company registered under the Companies Act, is a separate legal entity and is still in existence as shown on the website of the Ministry of Corporate affairs i.e. www.mca.gov.in. The Appellant is the auction purchaser of the mortgaged piece and parcel of Plot no. M-17, admeasuring 5000 sq.mtrs. in the MIDC, Taloja Industrial Area, Dist. Raigad together with the structure standing thereon along with plant & machineries. After purchasing the plot in the year 2019, the Appellant applied for reconnection at the said premises i.e. Plot No-M-17, MIDC Taloja Industries Area Dist. Raigad 410208. [Note: We have checked the original application form in A-1 format, which mentions that the application is for a new connection.] However, instead of reconnection, a new supply was sanctioned to the Appellant vide Consumer No. 028619047120.

11. From the above contentions, it is seen that the Appellant was given a new connection in the year 2019, irrespective of the old PD connection of the original consumer. Hence, firstly the Appellant does not have locus standi to claim the refund of the previous consumer number of another party. Secondly, the original consumer, Sumaraj Sea Foods Pvt Ltd. is a corporate company registered under the Companies Act being a separate legal entity and still in existence. In future, this original consumer (or his heirs) can come forward and claim the refund of any legitimate amount such as credit balance on its Consumer No. 028519022604, which the Respondent MSEDCL is obliged to refund.

12. The Respondent has given an assurance that as and when the previous consumer, Sumaraj Sea Foods Pvt. Ltd. applies for the refund of Rs.63.93 lakhs credit amount, it will be refunded to him. It is not known why the previous consumer, Sumaraj Sea Foods Pvt. Ltd. did not apply for refund of this large credit amount around 2016 when he got the benefit of the credit balance. The



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circumstances of his silence on this matter are not known. The bank has also not been able to shed light on this issue. Also, the bank has not made its stand clear as to which party is entitled to get this credit amount and whether the amount of credit balance was taken into account while calculating the bid amount of Rs.12 crores or so, which was paid by the Appellant. On the contrary, the bank had not even responded to efforts to contact it. From these circumstances, it seems that the bank is least interested in which party claims this credit balance amount. At this point of time, it is also impossible to determine whether the Appellant bid the amount of Rs. 12 crores after taking into account, or not taking into account, a possible future gain of Rs. 63 lakhs or so by way of credit adjustment. The Appellant might be trying to take advantage of the previous consumer's silence regarding claiming the pending due amount of Rs.63.93 lakhs. Had the previous consumer applied for and taken this credit balance in 2016, there would have been no question of the Appellant trying to claim this amount.

13. In any case, the EO is not the appropriate authority to decide the legality of this claim, since there can be two claimants to this amount, i.e. the previous and the new consumer. Also, there could be other legal issues involved under other laws such as the Companies Act and SARFAESI Act. There is a separate authority to decide auction related disputes. Nothing bars the Appellant from approaching the competent authority to settle this matter.

14. The Forum, in its original order dated 29.08.2023 has directed to refund the SD to the Appellant; however, the Appellant was expected to submit an Indemnity Bond indemnifying the Respondent against the release of SD and interest, in case of any future claims / disputes regarding SD amount. The intention of the Forum seems to be to ensure that the Appellant agrees to return the SD in case there are any future claims from the previous consumer, or if any disputes are resolved in his favour. The Appellant has not provided any such indemnity bond to our knowledge. The only indemnity bond on record is the older indemnity bond submitted by the Appellant in 2021, and that too only claiming that they have lost the original receipt of the SD. In



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fact, the Appellant did not pay the original SD amount at all, which was paid by the earlier consumer. Hence, there is no question of having lost the SD receipt and therefore claiming the SD amount.

15. We have found that there is another serious error in the Forum's order. The order on its page no.15 mentions that the Respondent effected a "change of name" in favour of the Appellant; however, the Respondent has repeatedly clarified that this was not a change of name but a fresh connection which was given. We have also verified the original application form A1 of the Appellant dated 03.08.2019 wherein there is a clear mention on its application for a new connection. There is no mention of change of name. We have also confirmed from the documents submitted by the Respondent that a fresh connection was granted vide letter dated 05.09.2019. This fact would make a substantial difference to the Forum's order, besides the other issues involved. The Forum is advised to avoid such substantive mistakes in future.

16. As already discussed above, the Forum has also incorrectly passed the original order dated 29th August 2023 by directing the Respondent to refund the SD amount of the previous consumer along with the interest to the Appellant. The Appellant is not the successor of the original consumer but has been supplied with a different consumer No. 028619047120. Hence, the Appellant is a third party in this case, nor is he authorized by the original consumer to claim the SD amount from the Respondent MSEDCL. Further, Regulation 13.9 of the Supply Code & SOP Regulations 2021 clearly stipulates that the refund of SD shall be made "to the person who deposited the security." Even where this person is different from the consumer, the refund is still expected to be made to the person who deposited the security, only with an intimation to the consumer. In this case, the Appellant did not deposit the security; hence he is not entitled to get the refund.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



17. The Forum has also erred in considering only the issue of SD, and not considering the other related issue of refund of credit amount. The Forum cannot adjudicate on one issue and remain silent on the other. Nor can there be a contradictory stand on the two issues. Either both refunds are eligible, or both are ineligible. We hold that both the refunds are ineligible to the Appellant. We therefore set aside the Forum's order in toto.

18. The SD amount need not be refunded by the Respondent to the Appellant. Other prayers of the Appellant are rejected. The instant Representation is rejected being not maintainable.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

