

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 159, 160,161 & 162 OF 2022

In the matter of refund of infrastructure cost

Rep.No.	Appellant	Consumer No.
159/2022	Intexo Corpn.	250481021533
160/2022	Intexo Weaving	250481021541
161/2022	Intexo Airjet	250481021550
162/2022	Intexo Inds.	250481021568
163/2022	Prabhavati Shrikrishna Mundra	250481024699
164/2022	Balkrishna Jankilal Porwal	250481024702

..... Appellants

V/s.

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

Appearances:

Appellants : 1. Pratap Hogade, Representative
2. Mukund Mali, Representative

Respondent : 1. P. T. Rathi, Executive Engineer, Ichalkaranji
2. N. D. Ahuja, Addl. Executive Engineer, Ichalkaranji

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

Date of hearing: 13th March 2023

Date of Order : 12th April 2023

ORDER

These six Representations were filed on 25.10.2022 individually under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Common Order dated 18th August 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum).



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2. The Forum, by its Common Order dated 18th August 2022 has rejected these grievance applications in Case No. 19 of 2020. Aggrieved by the order dated 18th August 2022 of the Forum, the Appellants have filed these representations. The physical hearing was held on 13th March 2023. Both the parties were heard at length. The subject is common in nature; hence, all these representations are clubbed together for the purpose of the common order.

3. The written submissions and arguments of the Appellants are stated in brief as below:

- (i) The Appellants are LT-V A-II Industrial –Power loom Consumers of the Respondent from 08.01.2018 having Sanctioned Load, Contract Demand activity are as below:-

Rep.No.	Appellant	Consumer No.	Sanctioned Load (HP)	Contract Demand (KVA)	Activity	Address
159/2022	Intexo Corpn.	250481021533	105	87	Powerloom	Gat. No. 757, M.No.5183/ 1 & 2, A/P.Tardal, Tal. Hatkanangale, Dist. Kolhapur
160/2022	Intexo Weaving	250481021541	105	87		
161/2022	Intexo Airjet	250481021550	105	87		
162/2022	Intexo Inds.	250481021568	105	87		
163/2022	Prabhavati Shrikrishna Mundra	250481024699	105	87		
164/2022	Balkrishna Jankilal Porwal	2504881024702	105	87		

- (ii) The Appellants are a multiparty group of six power loom consumers. All these six Appellants had applied to MSEDCL, Ichalkaranji Division on 26.07.2017 for Power Sanction under LT Multiparty Power loom Group Scheme. The then SE, MSEDCL, Kolhapur Circle approved their applications by his Revised Sanction Letters bearing nos. SE/KPC/T/DyEE-I/Multiparty/9887 to 9892 dated 09.11.2017, on the condition of Dedicated Distribution Facility (DDF), and directed them to complete the work as per estimate issued by Dy. E.E., MSEDCL, Ichalkaranji Rural Subdivision with estimate amount of Rs. 29,08,300/- for 33 KV HT Line of 0.40 kms with 11 poles, all the concerned infrastructure work including 630 KVA Transformer and HT & LT metering work.

- (iii) Appellants started the work in November 2017 & completed all the Infrastructure & Metering work as per estimate in December 2017. SE, MSEDCL, Kolhapur Circle


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issued them Load Release Letters on 29.12.2017 & load was released to these consumers on 08.01.2018.

- (iv) The issue of refund of Infrastructure Cost was pending due to Stay given by the Hon'ble Supreme Court in the Civil Appeal filed by MSEDCL. Hon'ble Supreme Court dismissed the Civil Appeal and then it became clear that Appellants can claim the refund of all expenses incurred for Non DDF Infrastructure Works and/or Metering Works. After the Final Decision of the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 dated 10.11.2016 regarding Refund of such charges, MSEDCL issued its first Refund Circular on date 12.10.2017, and the Amendment Circular on 29.12.2017.
- (v) Appellants submitted their applications for refund of infrastructure cost to S.E. Kolhapur & E.E. Ichalkaranji on 06.12.2019. But the Appellants have not received any response from both.
- (vi) Appellants submitted their complaint before Internal Grievance Redressal Cell (IGRC), Kolhapur Circle, Kolhapur on 06.01.2020. The IGRC by its order dated 28.02.2020 rejected the complaints. Thereafter Appellants submitted their grievance before the Forum on 12.05.2020. The Forum, by its Common Order dated 18th August 2022 has rejected these grievance applications.
- (vii) On the basis of all concerned Regulations, the Commission orders, Supreme Court Order & MSEDCL Circulars, Appellants are submitting this common representation for refund with interest before the Electricity Ombudsman (Mumbai).
- (viii) **Submissions/Grounds in Support of the Representation -**

The S.E., MSEDCL, Kolhapur and E.E., MSEDCL, Ichalkaranji Division has not given any response to their applications dated 6.12.2019 for refund. The IGRC and the Forum have rejected the grievance. This denial of refund is wrong, illegal and against the orders of the Hon'ble Commission & Hon'ble Supreme Court & MSEDCL's circulars itself.

Their detailed submissions in this regard are given in the following paragraphs.

- (1) **Work Done** - The work done by the Appellants as per the estimate of MSEDCL is the extension of the existing HT 33 KV line up to their premises. The scope of the work was laying of 0.40 KM HT 33 KV line along with 11 poles and all


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the concerned infrastructure work including 630 KVA Transformer and HT/LT Metering work.

In case of Meter/Metering Cubical, Appellants wish to state that, as per MERC Order regarding "Schedule of Charges" dated 08.09.2006 in Case No. 70/2005 and corresponding MSEDCL Circular No. 43 dated 27.09.2006, meters are to be installed by the licensees. Also, if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars. Copies of concerned Circulars No. 21560 dated 09.05.2017 and No. 34307 dated 03.09.2007 are kept on record.

- (2) **Feeder Details** - The name of the feeder is 33 KV Gangatara Feeder, which emanates from 33/11 KV Shahapur Substation. Feeder from MSEDCL Substation was existing and Appellants have done only the further extension work of the existing feeder.
- (3) **Other Consumers** - There are many other HT & LT consumers getting power supply from the same 33 KV Gangatara Feeder, which can be clearly seen & understood from the Single Line Diagram.
- (4) **MERC Order dt.16.02.2008** - Only the extension work was done by us and many other consumers are getting supply from the same feeder. "Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)" is the Clarification given by MERC, on the demand of MSEDCL itself, in its order in Case No. 56 of 2007 dated 16.02.2008.
- (5) **Work Non DDF** - It is clear from the definition of DDF in the regulations & clarifications given by MERC in detail in the above-mentioned order, their feeder and the work done by us is clearly Non DDF. Hence, the Appellants are fully eligible for the refund of the said amount i.e., Rs. 14,49,200/- as per MSEDCL's own office estimate.
- (6) **MERC Order dt.17.05.2007** – Hon'ble MERC in its Order dated 17.05.2007 in Case No. 82 of 2006 has given clear directions that MSEDCL must refund to

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all the consumers all overcharged amounts along with the interest thereon, that have been collected towards ORC, ORC-P or such other head based charges which are not allowed in Electricity Supply Code Regulations 2005 and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dated 08.09.2006.

Para 4 end - "MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the order dated September 8, 2006."

Para 5 end - "The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests."

Para 9 end - "While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006."

- (7) MERC Order dt. 21.08.2007 - Again the Hon'ble Commission has issued further Order dated 21.08.2007 in the same Case No. 82 of 2006, imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL for compliance as per Order dated 17th May 2017.

Few important extracts of this order are as below,

Para 7 - "Public Utilities such as MSEDCL are those industries who are affected with public interest and as such are subjected to regulatory Control and cannot be permitted to claim charges beyond what the legislature regards as legal."

Para 9 - "The directions of the Commissions to MSEDCL were to refund amounts that never belonged to them as they were collected illegally. It is well settled that interest shall also be leviable on such amounts. MSEDCL cannot argue that the amounts spent towards creating infrastructure must be replenished at the cost of those consumers at whose cost MSEDCL has enriched unjustly. What is sought to be prevented is unjust enrichment or unjust benefit derived by MSEDCL from its consumers."



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- (8) **DDF Clarifications** - Again Case No. 56 of 2007 was filed by the same petitioner before MERC for the compliance of the directions issued on 17.05.2017 in Case No. 82 of 2006. In this case issues of ORC, DDF and Non DDF were fully discussed by the Commission. In this order, MERC has clarified the concept and issued detailed clarification on "DDF" on request of MSEDCL itself.

Few important extracts of this order are as below,

Para 9 - "The Commission observed that consumers should not be burdened with infrastructure costs which are the liability of MSEDCL. MSEDCL may seek the recovery of the same as an annual revenue requirement."

Para 12 - "It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility."

Para 12 - "Also Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek the Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Sector 43 of E. Act 2003 read with SoP regulations."

- (9) **Provisions of Section 62 (6) of the Electricity Act, 2003** - It is very much clear from the directions of MERC quoted in Para 7 above that "the directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally". Also, it is clear from the directions quoted in Para 8 above that "consumers should not be burdened with infrastructure costs which are the liability of MSEDCL".

Also S.62 (6) of the Electricity Act, 2003 reads as below,

S.62(6) - "If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."



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The directions of the Commission clearly states that "the collection towards infrastructure cost is totally illegal and consumers should not be burdened with infrastructure costs." Also, Section 62(6) clearly states that excess recovered amount must be refunded to the concerned person along with the interest thereon. Hence it is eligible to get the refund of infrastructure cost along with the interest thereon.

- (10) **MSEDCL Circular dt. 20.05.2008** - After this order dated 16.02.2008, MSEDCL issued a circular on 20th May 2008 as Guidelines for release of new connections on the basis of above-mentioned MERC orders. The circular itself clarifies that all the Non DDF connections are refundable. MSEDCL has issued circular only for LT connections. Actually, MERC order is for both LT & HT connections. It is clearly stated in the circular that in case of all LT industrial individual or group consumers, all the infrastructure will be created by MSEDCL and only SCC will be recovered.

MSEDCL Circular dt.21.12.2009 - MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21st December 2009 regarding refund of the infrastructure cost. It is pertinent to note here that it is clearly stated in the circular that the work may get executed under DDF & the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.

- (11) **MSEDCL Civil Appeal in Supreme Court** - In the meanwhile MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007), in which Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31.08.2007. Hence all the Refunds were stopped.
- (12) **Supreme Court Order dt. 10.11.2016** - Finally the Civil Appeal filed by MSEDCL before the Hon'ble Supreme Court came for final hearing in the Year 2016. Hon'ble Supreme Court heard the matter, issued final order on dated 10.11.2016 and dismissed the Civil Appeal in toto.



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- (13) **MSEDCL Circular dt. 12.10.2017 & 29.12.2017** - After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement concerned MERC orders in letter & spirit. MSEDCL issued a circular for refund of SLC, ORC & meter cost after 11 months vide its circular No. CE/Dist/D-IV/MERC No. 25079 on 12.10.2017. Then after MSEDCL HO itself has issued amendment circular on dated 29.12.2017 and revised the refund period from dated 20.01.2005 to dated 20.05.2008.
- (14) In this circular dated 12.10.2017, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by MERC in its order dated 16.02.2008 on demand of MSEDCL itself. But if the connection is actually Non DDF and it is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then in such Non DDF cases, the Infrastructure Cost imposed on consumers is nothing but ORC. Hence the Consumers are eligible to get the refund along with the interest thereon.
- (15) **Supply Code Regulations** - After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL imposes the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually, using the phrase DDF and imposing cost on consumers is totally illegal & against the orders of the Commission. Such imposed condition & imposed cost is nothing but ORC. Actually, such act & such conditions of MSEDCL are against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

19.1 "Any terms & conditions of the Distribution Licensee, whether contained in the terms and conditions of supply and/or in any circular, order, notification or any other document or communication, which are inconsistent with these Regulations, shall be deemed to be invalid from the date on which these Regulations come into force."



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- (16) **Interest** - As per provisions of Section 62 (6) of the Electricity Act 2003, it is binding on the licensee to refund the excess recovered amount to the concerned person/consumer along with interest equivalent to the bank rate.
- (17) Actually, their expenditure on the concerned work is more than the estimate of MSEDCL. But logically and reasonably, Appellants can claim the estimate amount only. Hence, on the basis of all above mentioned grounds, A are eligible to get a refund of the estimated amount Rs. 14,49,200/- along with the interest thereon at bank rate from 23.02.2017 up to the actual date of repayment.
- (18) **Compensation** - Their complaint is a complaint other than bills. Hence as per SoP Regulations 2014, Regulation No. 7.6, "In other cases the complaint shall be resolved during subsequent billing cycle." Appellants have filed their complaint on 12.10.2017. It is necessary & binding on MSEDCL to resolve it in subsequent billing cycle means maximum up to the end of November 2017. Hence, Appellants are eligible for SoP Compensation of Rs. 100/- per Week or part thereof from 1st December 2017.
- (19) **Consumers Consent, Agreement, No Protest & Multiparty Circulars -**

MSEDCL always takes a stand that the concerned consumer/s have given their consent, have signed agreement and have not protested & hence they been not eligible for refund.

These stand/submissions are wrong, illegal, and hence null & void. This provision is clearly given in the Supply Code Regulations Reg. No. 19.1 which is reproduced in their submissions in Para No. 15 above. It is a clear provision that all the terms & conditions of the licensee, which are inconsistent with the regulations, shall be deemed to be invalid. Hence MSEDCL's stand is not legal. Multiparty Scheme &/or circulars are not approved by MERC. Hence the inconsistent conditions in these circulars are ultra vires.

Also, MSEDCL is the only licensee all over Maharashtra except Mumbai. MSEDCL has a monopoly. Consumers have no other option. Consumers cannot insist for any relief. On the contrary, MSEDCL insists illegal


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conditions on the consumers, imposes the infrastructure cost on the consumers against regulations & orders and without having any authority. Consumers have no other option but to give consent or sign or accept such illegal conditions.

Any such consent or agreement which is not in consonance with the law or statutory regulations or orders of MERC has no binding effect in law. MSEDCL cannot impose the conditions which would defeat the regulations or orders. This verdict is given by the Hon'ble Supreme Court & by the various Hon'ble High Courts in many cases. One such order of the Hon'ble High Court, Mumbai dated 18.01.2017 in W.P. No. 2798 of 2015 is kept on record. Also, this case is with respect to similar issue of DDF & Non DDF.

MSEDCL's stand/submissions are against the order of the MERC dated 08.09.2006 in Case No. 70 of 2005 known as "Schedule of Charges". Infrastructure cost recovery is clearly prohibited and disallowed in this order.

MSEDCL's stand/submissions are against its own Commercial Circular No. 43 dated 27.09.2006 in compliance of above-mentioned order & also duly vetted by the Commission.

(20) **SLC, ORC & DDF all are Infrastructure Charges under Different Names**

- All these 3 types of charges are the charges towards Infrastructure Cost. ORC was allowed up to 20.01.2005 i.e., up to the date of Supply Code Regulations. SLC was allowed up to 08.09.2006 i.e., up to the date of Schedule at charges. DDF is allowed from 20.01.2005, but in the cases only where the connection is actually DDF as per Supply Code Regulations & as per MERC Clarificatory Order dated 16.02.2008. In their case the connection is Non DDF. And as per MERC regulations & orders, in the case of all Non DDF connections, Infrastructure Costs cannot be recovered from the consumers. Hence, the Appellants are fully eligible for refund.

MSEDCL had used the word "DDF" in case of their "Non DDF" connection, intentionally in order to impose infrastructure cost on us and now again illegally denying the refund of "Non DDF" connection. MSEDCL has



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violated & violating the following provision of the Act, the Regulations & the MERC orders shortly listed as below,

- Section 43 of the Act - Universal Supply Obligation Cast on MSEDCL - Duty to supply on request.
- Regulation 3.3.3 of Supply Code Regulations - Infrastructure cost can be recovered only in DDF cases.
- MERC Order dated 08.09.2006 in Case No. 70 of 2005 Schedule of Charges - No recovery of infrastructure cost and Meter cost. It is to be claimed in ARR. Only Service Connection Charges & Processing Fees are allowed.
- MERC Order dated 17.05.2007 in Case No. 82 of 2006 - All over charged amounts must be refunded order Para 4 Para 9 reproduced in their submissions in Para 6 above.
- MERC order dated 21.08.2007 in Case No. 82 of 2006 - Para 7 & para 9 of the order is reproduced in their submissions in Para 7 above.
- MERC order dated 16.02.2008 in Case No. 56 of 2007 - Para 9 & 12 - DDF cannot be imposed. Paras reproduced in their Submissions in Para 8 above.
- MSEDCL's Own Circular No. 43 dated 27.09.2006 - Para 6.2 - No infrastructure cost recovery from the consumers is clearly mentioned.
- MSEDCL's Own Circular No. 22197 dated 20.05.2008 - Sr. No. 1 - All the infrastructure that will be created by MSEDCL is clearly mentioned.

(21) **Limitation : Higher Voltage Level etc. -**

The IGRC has ruled that the sanction is dated 09.11.2017, hence their complaint is beyond the period of 2 years limitation as per Regulation 6.6. But this ruling is wrong.



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Actually, the Appellants started the work in Nov. 2017 and completed it in Dec. 2017. Date of connection is 08.01.2018. Hence the earliest date of Cause of Action can be considered as 08.01.2018. The Appellants have filed their complaint & demanded refund on 06.12.2019 as per their letters submitted to MSEDCL. Then after, the Appellants filed their complaint before IGRC on 06.01.2020.

Date of cause of action is 08.01.2018 and date of refund demand is 06.12.2019 and on dated 06.01.2020 in IGRC. It fits well within the limitation period of 2 years. Hence the issue of limitation is not applicable in their case & their demand.

It is stated by IGRC that the supply is given from 33 KV, hence the consumer has to incur required expenses. Also, this point is clarified by MERC in its order dated 08.09.2006 - Schedule of Charges in its ruling on page 29 as below,

"As regards expenditure incurred on 33 KV and 11 KV infrastructure beyond distribution mains, which forms a distinct part of wheeling business i.e., system of wires and associated facilities, there is no provision in the Supply Code Regulations allowing licensee to recover it from prospective consumer. The expenditure incurred upstream of the distribution mains may be claimed through ARR."

Hence the findings of the IGRC are wrong.

- (22) **Prayer for Condonation of Delay** - If cause of action is considered as date of Connection dated 08.01.2018 then there is no delay, as Appellants have submitted their Complaint in IGRC on 06.01.2020 means within 2 years limit. But if the cause of action dated is considered as 17.11.2017 i.e., the date of Payment of Supervision Charges, then their application to IGRC is delayed by 1 month 20 days. The Appellants hereby apologize for the delay & pray the Hon'ble Ombudsman to please condone the delay and oblige.

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(23) **Common Legal Say in Infrastructure Cost Refund Cases** - Common & legal important considerations necessary to be observed with respect to refund of Infrastructure Cost are as below.

(1) **Infrastructure Cost Recovery not allowed** - as per Supply Code regulations and as per Order in case of "Schedule of Charges" dated 08.09.2006 in Case No. 70/2005 by MERC. This recovery is allowed only in DDF Cases on the basis of Supply Code Regulation No. 3.3.3 and as defined in the order dated 08.09.2006 and as clarified in the MERC Order dated 16.02.2008. Hence SLC/ORC/ORC-P/Actual Non DDF all recovered or imposed charges are refundable.

(2) **DDF** - Concept as per Regulation No. 3.3.3 of Supply Code Defined in Schedule of Changes Order dated 08.09.2006.

In the MSEDCL Comm. Circular No. 43 dated 27.09.2006 it is clearly stated that Infrastructure Cost cannot be recovered from the consumers except DDF. Hence in all Non DDF cases Infrastructure Cost is refundable.

(3) **Cost Recovered/Imposed** - In some cases the cost of infrastructure is recovered by MSEDCL, and the work is done by MSEDCL. In some cases, means in ORC-P and in so called DDF named cases, cost is imposed on the consumers. Here it is necessary to note that the principle is established by MERC and confirmed further by APTEL and further by Hon'ble Supreme Court that Infrastructure Cost cannot be recovered from Consumers. In many cases MSEDCL submits that cost is not recovered from consumers, hence they are not eligible for refund. But it is clear from the orders of MERC, APTEL & SC that such recovery is not allowed. Hence to impose the cost on the consumers has no sanctity in the eyes of the law. Hence any action taken by MSEDCL imposing the cost is abinitio void. All such estimates, directions or agreements or undertaking by the MSEDCL are illegal & void and such illegal actions must be rejected. It clearly means that such imposed costs must be refunded to the concerned consumers.



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(4) **Undertakings/Agreements/Affidavits of Consumers** - It is clear in Supply Code Regulation No. 19.1 that any terms & conditions of licensee and circulars, documents etc., which are inconsistent with the regulations shall be deemed to be invalid. Hence all such papers are invalid and needs to be rejected or should not be considered. This principle is clearly mentioned in the High Court Mumbai Order dated 18.01.2017 and High Court Patna Order dated 12.08.2008.

(5) **Limitation** – Hon'ble APTEL has clearly stated in its order dated 11.03.2011 that limitation is not applicable in the tariff related process. It should be noted that the case was regarding a refund of SLC means the infrastructure cost. Hence the refund in such cases is not hit by limitation.

(6) **Specified period for refund** - MSEDCL in its own circular dated 29.12.2017 has declared on the basis of board resolution that the earlier refund period is revised and should be considered as from 20.01.2005 (date of Supply Code Regulations) up to 20.05.2008 (Date of MSEDCL Circular) after due consideration of all concerned regulations, concerned MERC orders & directions and Hon. SC order. Hence this period cannot be curtailed by any other considerations.

(7) **Cause of Action** - It is clear that all the refunds were stayed by the Hon. S.C. order dated 31.08.2007. It is clearly mentioned by t in its order dated 16.02.2008 and also clearly mentioned by MSEDCL in its Circular dated 20.05.2008). Hence for the earlier period refund (i.e., 20.01.2005 to 20.05.2008) cases, the cause of action arises on dated 29.12.2017 i.e., the date of MSEDCL circular for refund specifying the concerned period. Hence in all such earlier period cases the cause of action arise should be considered as 29.12.2017 and not before that.

(8) MERC Order dated 29.11.2010 in Case No. 24 of 2007 Para 8 clearly states that the refund eligibility period starts from 20.01.2005 and not from



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08.09.2006. It is also repeated in MERC directions to MSEDCL dated 20.07.2017.

(9) **Important and Latest High Court Order:-**

It should be noted that fake bills & bogus demands by licensees are considered as Criminal offences by Allahabad High Court in its order dated 03.03.2022. It is with respect to fake bills and bogus demands by Discoms. Hon'ble Court has clearly stated that the Bogus demands of the Discoms is a Criminal Act and punishable under Criminal Procedure Code. Also, Hon'ble High Court has stated that such acts of the Discoms are violation of the fundamental rights of the consumers. Violation of fundamental rights means Violation of the Constitutional rights as per Article 14 & Article 21 of the Constitution. In such cases such violations cannot be and should not be allowed on any technical and/or procedural grounds. The same principle is applicable in their cases.

- (ix) The Appellant has referred to the H.C Order dated 08.06.2021 in WP no 7900/32017 . The Nagpur High court bench wherein consumers can approach IGRC within 2 years from date of cause of action and further to CGRF within 2 years from date of order to ICRC.

(x) **Nature of Relief Sought from the Electricity Ombudsman :-**

- (1) Their connections should be declared as Non DDF connections on the basis of Supply Code Regulations & Concerned MERC Orders & concerned MSEDCL Circulars.
- (2) The expenditure amount as per MSEDCL estimate Rs. 29,08,300/- should be refunded to the Appellants along with the interest thereon at bank rate from 08.01.2018 till the date of repayment, or alternatively the total amount should be credited in their further bills.
- (3) SoP Compensation, for delay in Complaint Resolution, amount Rs. 100 per week from 1st February 2020 should be awarded.



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(4) Any other orders may be passed by the Hon'ble Authority in the interest of justice, as it may think fit & proper.

4. The Appellant by its email dated 17.03.2023 has submitted a rejoinder. The prominent issues are highlighted below:

➤ **Hon'ble Supreme Court Order in Madras Port Trust Vs Hymanshu International dated 3rd January 1979. –**

"The plea of limitation based on this Section is one which the court always looks upon with dis favour and it is unfortunate that a public authority like the Port Trust should in all morality and justice take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

These directions are of the year 1979, thereafter 44 years have passed. If government authorities like MSEDCL still take the same plea, then it should not be relied upon. We request Hon'ble Ombudsman to adopt the view of the Apex authority.

➤ **Hon'ble Supreme Court Order dated 7th April 2017 in C. A. NO. 3883 OF 2007 National Insurance Co. Ltd. V/s Hindustan Safety Glass Works Ltd with C. A. No. 1156 Of 2008 National Insurance Co. Ltd. V/s Kanoria Chemicals & Industries Ltd.**

It is clearly stated in Para 18 that.

"In our opinion, in a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim."



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- It should be noted that this is the case under the Consumer Protection Act. In this context, provisions in Electricity Act are as below,
- Section 173. (Inconsistency in laws): Nothing contained in this Act, or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.
- Section 174. (Act to have overriding effect): Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- It is necessary to note that the provisions of the Consumer Protection Act have overriding effect considering Section 173 and Section 174 of the Electricity Act 2003. Hence it feel that these directions of Hon'ble Supreme Court are binding on all judicial and quasi-judicial authorities.
- The Appellant referred to the Recent MERC order dated 2nd September 2022 in Case Nos 62, 63 & 64 of 2022It is clearly stated and repeated in the order that the regulations are the laws, and its provisions cannot be overruled. Infrastructure cost cannot be recovered from any LT or HT and even EHV consumers. Only normative charges should be recovered, and the remaining amount should be claimed in ARR by the Distribution licensee and the Transmission licensee also. Also, it is clearly stated by the Commission that any inconsistent conditions cannot be imposed by the licensee on the Consumers. Also, it is clear that all the directions given in this order are applicable to both transmission and distribution licensees.
- MSEDCL stated that this order is not applicable in above mentioned cases, because the consumers themselves have applied for connections at Higher Voltage Level and hence they are bound to do the necessary expenses as per SoP Regulations 2014 Regulation No 5.3 proviso. But this is not true.
- MERC Ruling Para 18.3 of the above-mentioned order reads as below,


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"18.3. In this regard, the Commission notes that although Supply Code Regulations 2021 is applicable to distribution licensee, it has stipulated certain responsibility on the transmission licensee in respect of EHV consumers. Further, said Regulations have been notified after due public consultation process. MSTECL had opportunity to object to such provisions. Once such provisions have been notified it becomes law and same needs to be complied with. Hence, in the opinion of the Commission, MSETCL cannot take such stand that said provisions of Supply Code Regulations are not applicable to it. This aspect needs to be considered from the responsibility of the Universal Service Obligation cast by the Electricity Act, 2003. All the concerned licencees are thus in a way bound by the same."

➤ MERC Ruling Para 18.7 of the same order reads as below,

"18.7. With regards MSETCL's contention of non-recovery of expenses incurred on providing supply to EHV consumers is concerned, the Commission in the Statement of Reasons published for the Supply Code Regulations, clarified the rationale behind the recovering only the normative expenses from the consumers, as below:

"....

The Commission clarifies that the Regulations only provide for recovery of charges incurred by Licensee for providing connection to consumer on normative basis as prescribed through the Schedule of Charges for the Distribution Licensee. Although, expenses incurred while providing connection to any consumer is normally specific to such consumer, it varies from consumer to consumer depending upon distance of consumer premises from Distribution mains and loading condition of distribution system in its area. All these would lead to consumer specific charges for releasing of new connection. To avoid such issues, Regulations allows only levy of normative charges for releasing of connection. Any remaining expenses incurred by licensee is recovered through ARR....

.....

The Commission has already specified Schedule of Charges for EHV connections for MSEDCL vide its Order dated 30 March, 2020 in Case No 322 of 2019, which provides actual cost, subject to ceiling of Rs. 5,00,000/-. Further, the Commission does not find merit in the suggestion that EHV consumers should bear actual cost of connection, as the Consumers at HT and LT level only bear the normative Schedule of Charges. Hence, to prevent discrimination between the different types of consumers on this aspect, the Commission opines



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that EHV consumers should also bear charges for their connection based on Schedule of Charges, if it is not opting for DDF."

Thus, to avoid consumer specific charges and to avoid possible disputes regarding the same, the Commission has allowed the levy of only normative charges from respective consumers. Balance expenses are allowed to be recovered from ARR of the licensee. Said practice has been adopted by the Commission since 2006 and continued in all subsequent Orders and Regulations of the Commission. As normative charges are being recovered from all consumers, allowing full recovery of actual charges from EHV consumers would create discrimination. Hence, the Commission in above statement of reasons for Supply Code Regulations 2021 has clearly ruled that only normative charges are to be recovered from consumers."

- It is clear from the Commission's analysis & rulings that this order is based on the provisions of the Act & Supply Code Regulations & earlier MERC orders from Year 2006. It is applicable to all the concerned stake holders in the State. Hence applicable in these cases also.

5. The Respondent, by its letter dated 15.11.2022 filed its reply and the hearing was held on 13.03.2023 at length. Its written submission and arguments are as below:

- (i) The grievance is not maintainable as per Regulation 7.8 of CGRF & EO Regulations 2020, wherein the Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. In the instant case, the Appellants have filed the grievance on 12.05.2020 with the Forum while the cause of action occurred on 20.04.2017 in four cases and on 17.11.2017 in the remaining two cases, when the Appellants paid supervision charges and invested the amount for executing the DDF work. On the same ground of limitation, the Forum as well as the Electricity Ombudsman has dismissed various grievance cases as being not maintainable.
- (ii) The Hon'ble Bombay High Court, Aurangabad Bench has passed Judgment dated 21.08.2018 in W.P No. 6859, 6860, 6861 & 6862 of 2017 regarding limitation and has ruled that



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“If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.”

- (iii) The Appellant has Referred to the High Court Mumbai (Nagpur Bench) dated 08.06.2021 in WP No. 7900/32017. The court has analyzed wherein consumers can approach IGRC within 2 years from date of cause of action and further to CGRF within 2 years from date of order to ICRC. However, this order is challenged by the Respondent in Supreme Court which is stayed by Hon Supreme Court(IA no 13387/2021). Hence the above High court decision has no relevance in this case.
- (iv) The Respondent referred to the order of Electricity Ombudsman in Rep. No. 189 and 190 of 2018 in case of Bombay Rayon Fashions V/s MSEDCL regarding refund of infrastructure cost . The Electricity Ombudsman have rejected the refund of infrastructure cost.
- (v) Further in Case No 5 of 2020 in M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others V/s MSEDCL, the Commission in its order para no.17 has cited the Judgment of the Hon’ble Supreme Court in case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. The ratio of the said judgment is applicable to the present case also. The observation of Commission in para 17 reads as under

“The Hon. Supreme in the case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. while disposing of the Civil Appeal No, 6036 ,6061, 6138 of 2012, 9304 of 2013, and 6835 of 2015 dated 16 October 2015 (2016) 3SCC 468, (Para 30), has held that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.”

The relevant extract of the Order is reproduced below :

“In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy

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resolution so that a vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence, we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.” (Emphasis added)

- (vi) From various citations, it is seen that the consumer has approached this Authority beyond the time framework prescribed in regulations, which was also upheld by various above said orders, and also by the Kolhapur Forum. Hence the Case is not maintainable on limitation grounds, hence liable for dismissal.

Detailed Submissions:

- (vii) Intexo Corporation Prop. Dilip, Balkishan and other 5 at Gat No. 757, M No 5183 / 1 82 Tardal, Tal. Hatkanangale, Dist- Kolhapur Group was initially sanctioned connection for four members of multiparty group. The date of payment of supervision charges of four consumers of Multiparty group was 20.04.2017. The remaining two were also added to this multiparty Group, and paid the Supervision Charges on 17.1.2017. These cases are shown as below:
- 1) M/S Intexo Industries. Pro. Manish B. Porwal (Date of Payment- 20.04.2017)
 - 2) M/S Intexo weaving. Pro. Shri Kishan(Date of Payment -20.04.2017)
 - 3) M/S Intexo Airjet. Pro. Anjali Alok(Date of Payment -20.04.2017)
 - 4) Prabhavati Mundra (Date of Payment -17.11.2017)
 - 5) M/S Balkrishna Porwal(Date of Payment -17.11.2017)
 - 6) M/S Intexo Industries. Pro. Dilip (Date of Payment -20.04.2017)
- (viii) All these consumers have given consent for 33 KV level of power supply whereas these consumers all together are eligible for 11 KV level. In addition, as per MERC SOP Regulations 2014 Clause 5.3(ii)



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" LT connections 230V/440V is to be given for load upto 150KW/J87 KVA i.e., up to 201 HP",

- (i) As per the above regulations, the consumer was in fact eligible for HT connection, with its higher tariff. However, only because of Multiparty Circulars of the Respondent these six consumers were released on LT power supply. These consumers get the benefit of comparatively low tariff and a short span of payback period of actual cost of infrastructure incurred. . If the consumer now wants to back off from this multi-party agreement by expecting refund of infrastructure costs, he should also be ready to give up the benefit of LT connection and lower tariff, and should be willing to pay the tariff difference between LT and HT for all these years.

The details of the premises: -

Under the normal course, there should be physical and defined separation of premises for providing any connections. However, it is only because of multiparty connections that the parties are taking this liberty of common premises. Regulation 3.4.3 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 states that

"Unless otherwise specified all HT and LT charges refer to 1 point of supply, and each separate establishment shall be given a separate point of supply"

The MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations 2014 and further notification dated 18.09.2017 state that the limit of multiple connections' load in a single building / premises is up to 600 KVA; however in MERC Supply Code Regulations 2005, it is clear that

"each separate establishment shall be given a separate point of supply"

- (ix) The word "separate establishment" is very important to understand that MERC SOP Regulations have increased the limit to 600 KVA, in view of multiple connections with specified demarking and physical separation, which is



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misinterpreted by the Appellants. Connections of Multiplex and malls can be incorporated in this provision, as all establishments are separate and have physical separation or identity.

- (x) In the above case all the establishments are not separate and are in one shed without physical separation. However, they are given different points of supply, which signifies the violation of MERC Condition of Supply Regulation 3.4.3, and hence is clearly governed by Commercial Circular No 6. The purpose of all connections is for power looms.

The connections are to be physically separated for the provision of SoP Regulations amended Regulation 5.3.

- (xi) MSEDCL has filed W.P. No 3386/2013 challenging the order dated 27.09.2012 passed by CGRF Kolhapur in Case No 35 to 135 of 2012-13 whereby MSEDCL was directed to refund the cost of meter to multiparty consumers. In the said writ petition Hon'ble High Court passed the interim order on 18.07.2013 and granted stay to the order of CGRF Kolhapur. The facts and law points involved in the said writ petition and the present case are identical & similar. Therefore, the present case is liable to be dismissed or liable for stay till the decision of the Hon'ble High Court.

In short, the consumers first enjoyed the benefits under the multiparty scheme and afterwards they have demanded refund of infrastructure cost against the principle of equity.

- (xii) A further especially crucial point to be noted is that the amount which is not accounted for in the books of account of MSEDCL cannot be incurred in Annual Revenue Requirement. The benefits of LT connection are already availed by the consumer and the same also must be withdrawn as per SoP regulation particularly for this group. The cost of infrastructure cannot be burdened to some other class of consumers.
- (xiii) It is pertinent to note that the sanction of the load is made on higher voltage of 33 KV instead on 1 KV level as prescribed in MERC SOP regulation 2014. When power supply is released at a higher voltage than what is envisaged under the SOP Regulations, expenses towards the changes that are required for



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erection of infrastructure are to be borne by the consumer as per clause 5.3 of regulations:-

"Provided that in case the consumer who is eligible for single phase connection wants to avail supply at three phases, or any consumer who seeks supply at the voltage level higher than its eligible voltage, such consumer can avail such supply by incurring required expense."

(xiv) This Multiparty group agreement is governed by Commercial Circular No 151 dated 25.11.2011. The work involved in this case is.

- 1) 0.4 KM HT line, 2) 630 KVA Transformer 3) 1 No. of HT cubicle
- 4) 6 Nos of L.T. Meters

The 630 KVA transformer is dedicated to the consumer and MSEDCL cannot use this infrastructure as it is in the consumers' premises. The Respondent adheres to the multiparty agreement.

(xv) The consumers are governed by the then prevailing commercial circular no 151 dated 25.11.2011. These connections were sanctioned vide letter dated 05.07.2018. The consumers accepted the sanction and paid the necessary charges. The Appellants have to abide with the terms and conditions of sanction. These consumers had paid the requisite amount without any protest or grievance and done the work under DDF scheme which is also in line with MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 .

(xvi) The Appellants had paid only 1.3% supervision charges and no other ORC /SLC or any amount was paid. Hon'ble Supreme Court has directed in Civil Appeal No 4305/2007 to refund collected amounts of SLC, ORC, and Meter charges collected from 08.09.2006 to 30.04.2007. As the amount under ORC, SLC or consumer meter cost were not recovered in this case, the question of refund does not arise.

(xvii) The Appellants has submitted the DDF bond agreeing to create the infrastructure under DDF and also executed multiparty agreement. The applicant has been given three LT connections as per provision of Commercial Circular No151 dated 25.11.2011. Any breach of the Multiparty Agreement



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will attract the clubbing of these consumers and they will be billed as HT consumer. The consumer is abiding with one beneficial aspect of agreement, however, is denying the other aspect of expenses which are actually dedicated and used by himself only.

- (xviii) From various citations above, it is seen that the consumer has approached the Forum beyond the time framework prescribed in the CGRF Regulations 2006 /2020, hence the Case is not maintainable on limitation grounds.
- (xix) The Respondent also relied on the decision of Hon'ble Bombay High Court, Judicature at Nagpur in W.P. No. 1588 of 2019 dated 08.01.2020 (MSEDCL V/s Electricity Ombudsman, Nagpur and M/s. Mahamaya Agro Industries Ltd). The reasoning and ratio of the said case is squarely applicable to the present case. The Hon'ble High Court has quashed the Order passed by the Electricity Ombudsman, Nagpur, in which the EO had directed MSEDCL to refund the cost of infrastructure of 0.4 km H.T. line to M/s Mahamaya Agro Industries Ltd. The relevant extract of the Hon'ble Bombay High Court, at Nagpur bench Order is reproduced below:

“28 I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter storeroom and then turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate. 29....

*30. In view of the above, the first Petition No.1588/2019 filed by the company is allowed in terms of prayer clause (1). **The impugned order dated 17.10.2018 shall stand quashed and set aside to the extent of the challenge and the conclusions arrived at by the forum by its order dated 25.06.2018 are sustained.**”*

- (xx) Review Petition in Case. No. 201 of 2020 is also dismissed by the Commission.
- (xxi) The Respondent referred to the orders passed by Hon'ble Electricity Ombudsman in support of its case which are as below:



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- (i) **Representation No.71, 72 73,74, 75 & 76 of 2022I in R/o Multiparty Group** of Smt. Suyash Yantramag Audyogik Sahakari Sanstha Maryadit and other 5.
- (ii) **Representation No .77, 78, 79, 80, 81 & 82 OF 2022 in R/o Multiparty Group of Sangram Textiles** and other 5.
- (iii) **Representation No 83 & 84 OF 2022** in R/o Multiparty Group M/s Mahalaxmi Textiles and others.
- (xxii) The Multiparty connections are beneficial for consumers as well as MSEDCL. In fact, the benefits of consumers are more than MSEDCL.
- (xxiii) In view of the aforesaid facts, it is requested to dismiss the present application.

Analysis and Ruling

6. Heard the parties and perused the documents on record. The Appellants are a Multiparty group of six power loom consumers. These six Appellants had applied on 26.07.2017 for fresh Power Sanction under LT Multiparty Power loom Group Scheme. The Respondent approved their applications vide its Revised Sanction Letters dated 09.11.2017 under Dedicated Distribution Facility scheme for an estimated amount of Rs.29,08,300/- for 0.40 km of 33 KV HT Line. The Appellants opted for the 33 KV Voltage level instead of 11 KV Voltage Level which is higher than the level specified in the Standards of Performance Regulations. The following are the details of load sanctioned of six Appellants under “LT Multi-Party Power Loom Group”:

Table


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Rep.No.	Appellant	Consumer No.	Address	Sanctioned Load (KW)	Contract Demand (KVA)	Estimate Amount (Rs.)	Details of work done	Supervision charges paid(Amount & date)	Date of connection	Activity
159/2022	Intexo Corpn.	250481021533	Gat. No. 757, M.No.5183/ 1 & 2, A/P.Tardal, Tal. Hatkanangale, Dist. Kolhapur	105	87	29,08,300/-	33 KV HT Line(0.40 km) ,630 KVA DTC , Metering cubicle, LT Metering etc.	17.11.2017	08.01.2018	Powerloom
160/2022	Intexo Weaving	250481021541		105	87			20.04.2017		
161/2022	Intexo Airjet	250481021550		105	87			20.04.2017		
162/2022	Intexo Inds.	250481021568		105	87			20.04.2017		
163/2022	Prabhavati Shrikrishna Mundra	250481024699		105	87			17.11.2017		
164/2022	Balkrishna Jankilal Porwal	250481024702		105	87			17.11.2017		

7. The Respondent approved these applications and issued an estimate under LT Multi Party Power Looms Group Scheme on 09.11.2017 with estimate amount of Rs. Rs. 29,08,300/- for 0.40 Km 33 KV HT Line, HT Cubicle, 630 KVA DTC including LT Metering work. The Respondent issued a Sanction Letter on 09.11.2017. The Appellants paid 1.3% Supervision Charges amount of Rs.7178/- in each case to MSEDCL as tabulated above and completed all the infrastructure work. **The cause of action arose when the Appellants paid the supervision charges on 20.04.2017/ 17.11.2017, thereby committing to carrying out the work.**

8. The various orders of the Commission, Judgment of the Tribunal, and Court with respect to the Schedule of Charges are summarised as below:

- (i) The Commission's order dated 08.09.2006 in Case No. 70 of 2005 regarding Schedule of Charges: -

Relevant portion of the order applicable in the instant representation is reproduced below: -

"The Commission totally rejects MSEDCL proposal to recover Service Line Charges from the prospective consumers except in cases of consumers requiring dedicated distribution facilities. As per the provision of the Act, developing infrastructure is the responsibility of the licensee. The Commission therefore directs that the cost towards infrastructure from delivery point of transmission system to distribution mains should be borne by MSEDCL. The



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recurring expenses related to the capital investment on infrastructure shall be considered during ARR determination [for detail ruling refer Section – III (6)].”

- (ii) ATE judgment dated 14.05.2007 in Appeal No. 22 of 2007 filed by MSEDCL against the Commission order in Case No. 70/2005 dated 08.09.2006. The relevant portion of the order is reproduced as below: -

“18. In view of the above, it is clear that the “Service Line Charges” as proposed by the appellant are being allowed to be recovered through tariff. If the aforesaid proposal on “Service Line Charges” made by the appellant is accepted it will amount to doubling of the recovery of the expenses from the consumers. The appeal is accordingly dismissed.”

- (iii) The Commission’s order dated 17.05.2007 in Case No. 82 of 2006:

In the matter of refund of monies collected by MSEDCL towards Outright Contribution Charges (ORC) and cost of meter while providing new connections against the Order dated September 8, 2006 in Case No. 70 of 2005 (Schedule of Charges Order).

- (iv) The Commission’s order dated 21.08.2007 in Case No. 82 of 2006:

In the matter of compliance by MSEDCL of directions issued under Order dated 17.05.2007.

- (v) Hon’ble. Supreme Court judgment in Civil Appeal No. 4305 of 2007 (DPR No. 20340 of 2007) filed by MSEDCL against ATE judgment in Appeal No. 22 of 2007:

“Refund is stayed till the matter comes up for hearing on the date fixed i.e. 14th September, 2007”

The above interim stay was continued by the Supreme Court vide its order dated 14th September 2007 as follows:

“Until further order, interim order passed by this Court shall continue to operate.”

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(vi) Commission's order dated 16.02.2008 in Case No. 56 of 2007:.

In the matter of Compliance of directives issued to MSEDCL under Order dated May 17, 2007 passed in Case No. 82 of 2006.

Relevant portion of the order (56 of 2007) is reproduced below: -

"12. Having heard the parties and after considering the material placed on record, the Commission is of the view as under:

(1) Since, MSEDCL do not have a clear conception of Dedicated Distribution Facility and the levy of ORC in the EA 2003 regime, it is necessary to provide guidance on the same and issue necessary directions as under:

(i) At many places prospective consumers with an intention to get better quality of supply seek Dedicated Distribution Facility, though distribution network is available in nearby vicinity, and it is possible to give supply by extending the existing network. Such consumers seeking a Dedicated Distribution Facility will have to pay the cost incurred in providing the Dedicated Distribution Facility. As per Regulation 2(g) of the Supply Code:

"(g) "Dedicated distribution facilities" means such facilities, not including a Service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises;"

It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as a facility solely or clearly dedicated for giving supply. Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers. The transformer or the substation can also form a part of Dedicated Distribution Facility if it is provided exclusively for giving supply to these consumers and no other consumer is fed from the said transformer/substation. Also, Dedicated Distribution Facility cannot be shared in future by other consumers. Such

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facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Section 43 of the EA 2003 read with the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. In fact, the licensee should take advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfil 'Universal Service Obligation' as per the spirit envisaged in the EA 2003 and the Regulations made thereunder.

(vii) The Commission's order dated 01.09.2010 in Case No. 93 of 2008:

In the matter of Petition of Akhil Bhartiya Grahak Panchayat, Latur seeking directions against MSEDCL for non-compliance of the Electricity Supply Code Regulations and the Electricity Act, 2003.

19. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

*iii. Regarding, 10,740 number of cases where MSEDCL has recovered charges other than approved Schedule of Charges; the Commission is of the view that these are only indicative cases found out on the sample checking basis. **MSEDCL either has to scrutinise details of all the consumers released during the period of 9th September 2006 to 20th May 2008 for charges levied other than approved Schedule of Charges or publicly appeal either through newspapers or electricity bills, asking the consumers to contact MSEDCL if such charges are levied on them during above period. Thereafter, MSEDCL should adjust the extra charges collected by MSEDCL in the energy bills of the respective consumers. If any consumer has any grievance regarding excess charges levied by MSEDCL and its refund, they may file the same before the concerned Consumer Grievance and Redressal Forum established by MSEDCL under the provisions of Section 42(5) of the EA 2003 read with the "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006". This directive of refund of excesses recovered charges will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007.*** (Emphasis added)

(viii) The Commission's order dated 08.12.2014 in Case No. 105 of 2014:



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In the matter of Petition of MRVGS for penal action against MSEDCL for breach of provisions of law in respect of new electricity connections to Agricultural consumers, and non-compliance of certain other directions. The relevant portion is reproduced below: -

“16. MSEDCL appears to have complied with the direction to ascertain if additional charges beyond the approved Schedule of Charges were recovered during the relevant period from consumers, or publicly appeal to affected consumers and refund the charges. Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response. However, MSEDCL should submit to the Commission, before the Technical Validation Session (TVS) in respect of its pending MYT Petition, the number of consumers identified, and additional charges refunded or pending for refund so far.

17. The Commission has noted MSEDCL’s submission regarding compliance of directions to review its Circulars and practices in the context of DDF, service connections, etc.

18. MSEDCL’s Reply in the present proceedings is silent on submission of a Schedule of Charges for DDF. While there may be complexities in such an exercise, the Commission directs MSEDCL to make its submission to the Commission on this matter before the TVS to be held on its pending MYT Petition, since the Schedule of Charges would also be addressed in those proceedings.

19. The Commission is of the view that, while there has been no breach of the provisions of law or the Commission’s Orders as contended in some matters, with regard to the remaining no useful purpose would be served by invoking Sections 142 and 146 of the EA, 2003 in view of the foregoing.”

(ix) Supreme Court judgment dated 10.11.2016 in Civil Appeal No. 4305 of 2007 filed by MSEDCL. Relevant portion of the judgment is reproduced below: -

“Ms. Rimali Batra, the learned counsel, appearing for the appellant has argued vehemently and has made all submissions, which could have been made. However, we are unable to agree with her submissions. The impugned judgement does not require any interference.

The Civil Appeal is dismissed. Pending application, if any, stands disposed of.”

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(x) Letter dated 20.07.2017 from the Commission to MSEDCL for compliance of Commission's directives regarding refund of amount recovered other than approved schedule of charges after judgment dated 10.11.2016 of Supreme Court dismissing Civil Appeal No. 4305 of 2007.

9. On close scrutiny of the legal travel of the case, it is noted that the issue of SLC was taken up at ATE and then in Supreme Court by MSEDCL. The Commission has also accepted the reality that there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities). The Commission in its order dated 17.05.2007 in Case No. 82 of 2006 has stipulated a period of refund for amount collected towards **ORC, Cost of Meter and CRA from 08.09.2006 to 30.04.2007**. However, this refund could not take place because of a specific order of the Commission dated 16.02.2008 in Case No. 56 of 2007 due to Civil Appeal No. 4305 of 2007 pending in Supreme Court and stay thereon.

10. Considering the various submissions, arguments, orders, judgments, referred to by the Appellants and the Respondent, this Authority has framed the following two issues A and B to consider the maintainability as well as merit of these Representations.

Issue A: Whether grievances submitted before the Forum are maintainable as per Regulation 6.6 of CGRF Regulations 2006?

Issue B: Whether the Appellants are eligible for refund of infrastructure cost in view of work carried out under "LT Multiparty Power Looms Group" Scheme?

Issue A:

11. All these six Appellants had applied for Power Supply at LT side under "LT Multi Party Power Looms Group" to their Industrial Units for Connected Load 105 HP & Contract Demand 87 KVA vide applications in the year 2007. The Respondent approved these applications and issued an estimate under LT Multi Party Power Looms Group Scheme on 09.11.2017 with estimate amount of Rs. Rs. 29,08,300/- for 0.40 Km 33 KV HT Line, HT Cubicle, 630 KVA DTC including LT Metering work. The Respondent issued a Sanction



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Letter on 09.11.2017. The Appellants paid 1.3% Supervision Charges amount of Rs.7178/- in each case to MSEDCL as tabulated above and completed all the infrastructure work. **The cause of action arose when the Appellant paid the supervision charges on 20.04.2017/ 17.11.2017** thereby committed to carrying out the work.

In exercise of the powers conferred on it by sub-sections (r) and (s) of Section 181 read with sub-sections (5) to (7) of Section 42 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, the Commission notified the CGRF & EO Regulations 2006. If the Respondent failed to take cognizance of the consumer's complaints / grievances, the consumer can approach the Grievance Redressal Mechanism framed under the Act, and the Regulations made thereunder.

The Regulation 6.6 of CGRF Regulation, 2006 states that,

“The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”

In the instant cases, the Appellants have filed grievance applications in IGRC on 06.01.2020 while the cause of action was 20.04.2017 and 17.11.2017, when the Appellant paid supervision charges of Rs. Rs. 5589/- to the Respondent. The IGRC, by its order dated 28.02.2020, has rejected the complaints. The Appellants approached the Forum on 12.05.2020 i.e. about 2.5 years from the cause of action. This exceeds the prescribed period of two years, and therefore, these cases do not fit into the regulatory matrix relating to the limitation period stipulated under Regulation 6.6 of the CGRF Regulations 2006.

The Appellants cited the order dated 08.06.2021 of the Hon'ble High Court Bombay, Bench Nagpur in Civil Writ Petition No. 7900 of 2017 on limitation. However, the Hon'ble Supreme Court vide order dated 08.09.2022 passed in SLP No. 13387/2021 has stayed the operation and future effect of judgment and order dated 08.06.2021 passed by the division bench of Nagpur High Court in WP No. 7900/2017.

The Hon'ble Supreme Court in its judgment dated 13.03.2019 in Civil Appeal No. 2960 of 2019 has laid down that there is no necessity to go on merits, and a plaint can be rejected, if it is clearly barred by limitation. Considering the above statutes, the case is time barred as per Regulation 6.6 of CGRF & EO Regulations 2006 and the present Regulation 7.8 of CGRF & EO Regulations 2020. Issue A is answered as NEGATIVE.



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Issue B:

12. The Appellants have opted for “Multi- Party Group connections” wherein the Appellants have to incur the expenditure on infrastructure on their own, as they are the beneficiaries of the scheme under which, as a special case, all connections of power looms are given in one “premises” without any separation. The Respondent issued a Commercial Circular No.6 of 2005 dated 01.09. 2005 in the subject matter of “*Power supply to individual entrepreneurs coming under one premise to establish Power- Looms*”. The Respondent further issued a Commercial Circular No. 151 dated 25.11.2011 for re-delegation of power to field offices for sanctioning of load which were assigned in Head Office as per circular No.6 of 2005.

The preamble of Circular No. 151 is reproduced below:

“In view of upward trend for cloth in market, various power loom consumers under one premises/shed are coming up in our State at different locations. The individual entrepreneurs coming under one premises/shed to establish power loom generally needs power supply at Low Tension. As such, all the individual entrepreneurs have to take High tension power supply, which most of the times becomes difficult due to space constraint. It would also not be possible to insist on all individual entrepreneurs to install their own transformers, metering KIOSKS etc. which would occupy considerable space in such common premises/sheds.”

The Respondent issued the following guidelines for multi-party consumers as per Commercial Circular No. 06 of 2005 dated 01.09. 2005:

- “1. It is proposed to limit this facility only in respect of power loom consumer where there is a severe space constraint. This is applicable in respect of industrial complex building/shed.*
- 2. An individual entrepreneur having load requirement up to 107 HP/201 HP form a group of max. 10/5 entrepreneurs situated in the same industrial complex building shed having total load of a Group shall be less than 500 KVA.*
- 3. All these entrepreneurs can install a common transformer of appropriate capacity equivalent or more than the aggregate load requirement of all the entrepreneurs in the respective group.*



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4. *All the individual entrepreneurs in the respective groups having load requirement up to 107HP/201 HP shall be Low Tension consumers of the Board. They will have to opt for M.D. base tariff.”*

Additional guidelines are given under Commercial Circular No. 06 of 2005 dated 01.09. 2005 which are reworded in Commercial Circular No. 151 of 2011. The same are reproduced below:

“1. *The main consumer shall install & maintain the transformer of requisite capacity.*

2. *All the expenditure as may be required for release of Multi-Partite Connection will be borne by the consumer/consumers.*

3. *All these consumers billed on LT side must opt for LT-MD tariff and LT-TOD meters to be installed for all these consumers in case of LT connections.*

4. *The multi — Partite consumers shall be billed energy charges as per the energy actually consumed & recorded by the respective energy meters and shall be billed Demand Charges as per Billing Demand of the individual consumer, to be determined in accordance with the prescribed guidelines, tri partite agreement. Main consumer shall be billed on HT side metering.*

5. *As compared to the above, the Main consumer shall be billed energy charges on the basis of energy actually & collectively consumed by all the consumers & recorded in the meter installed on High Tension side less energy billed to the multi — Partite consumers.*

6. *Similarly, the Demand registered / consumed by the Main Consumer shall be equivalent to the Demand registered in the meter on High Tension side less aggregate of the 75% of the Demand recorded by the individual multi • — Partite consumer and based on derived Demand, the Billing Demand of the Main Consumer shall be determined. However, in case the derived Demand of the Main Consumer happens to be more than the Contract Demand, the Main Consumer shall be liable for penalty for exceeding Contract Demand.*

7. *All other NOCs, permissions, if any, will have to be obtained by the consumer before release of supply.*

8. *It will be mandatory for the main consumer of the group to ensure that the transformer is installed in a closed room and is accessible only to MSEDCL'S*



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authorized personnel. Further a cable will have to be laid through duct in the adjoining closed room for distributing the said connections. The cable and meter room will also be under the control of the company and only company's authorized personnel will have access to the same. All the meters will be placed in the distribution room. Further the secondary side of transformer will also be sealed and necessary arrangement will have to be made for the sealing by the consumer.

9. The MSEDCL shall not be responsible for any loss that may be caused to any of the individual consumer from a particular group due to failure of the said transformer or the company shall not be liable for any alternate arrangement of maintaining the power supply in such circumstances.

10. All the individual consumer from the respective groups shall have to execute tripartite/multipartite agreement with the company and in case there happens to be agencies sponsoring such group of consumers then such agency shall also be a party to tripartite/multipartite agreement,

11. All the consumers availing power supply by such arrangement shall be billed as per the provisions of the tariff prevailing from time to time and shall also be liable for all such incentives/disincentives as may be applicable.

12. In addition to the above-mentioned multipartite agreement, all the consumers will also have to execute a separate agreement with the MSEDCL.

13. Whenever a group of entrepreneurs is given power supply from a common transformer, these entrepreneurs shall also pay to the company the cost of installation of Metering on High Tension side of the said transformer.

14. In case the sum of the units consumed by the group of consumers are less than the units rerecorded in H.T. meter, then the difference will be distributed proportionately among the group of consumers as an assessed unit. However, no benefit will be extended to consumers in case the meter on HT side records less reading than the reading of combined group of consumers.

15. In case of default in payment of energy bill by any one of the consumers from the said group and/or breach of the provisions of the tariff/conditions of supply, the disconnection of power supply to be effected at the main point of supply, which will



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automatically results in disconnection of power supply of all the consumer at the same time.”

13. Under the above multi-party agreement, it is seen that the Appellants as well as the Respondent, both benefited. In other words, this scheme got a good response precisely because it was a win-win situation for both parties.
14. The Appellants were benefitted in the following ways:
- (a) Got supply for power looms under the lower LT tariff category as a special case with more Government subsidy than HT tariff category.
 - (b) Space constraint issue was solved for individual consumers, by providing supply to multiple consumers in one premises.
 - (c) Common infrastructure including distribution transformer, metering kiosk etc. were developed by these multiple consumers in one premises resulting into reduction of cost.
 - (d) Less power interruption as the transformer and LT lines were dedicated to only these consumers.
 - (e) LT meters are installed in control panels in limited / compact space instead of separate CT meter box.
15. The Respondent was benefitted as below:
- a) Common infrastructure was provided by these multiple consumers, thereby there was no burden on the Respondent to provide infrastructure, and hence, no budgetary provision was required to be made in its Annual Revenue Requirement.
 - b) A common energy audit meter was installed in addition to the individual meters so that if there was any considerable difference in the energy consumption, the loss in consumption units was proportionately imposed on them. Hence the energy consumed was automatically audited.
 - c) 100% recovery against energy consumption was ensured, as supply of all would be disconnected even if one consumer defaulted. This scheme was initiated by the



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Respondent for the multiparty power loom consumers in particular premises through an agreement under certain terms and conditions as highlighted in para 8 of this order. This was an internal arrangement by the Respondent for the welfare of the power loom industries in the State of Maharashtra to avoid its migration to other states.

16. The Respondent cited WP No. 1588 of 2019 in Case of MSEDCL V/s Mahamaya Agro Industries and others. The reasoning and ratio of the said case is squarely applicable to the present case. The Hon'ble High Court has quashed the Order passed by the Electricity Ombudsman, Nagpur, in which the EO had directed MSEDCL to refund the cost of infrastructure of 0.4 km H.T. line to M/s Mahamaya Agro Industries Ltd. Nagpur High Court Judgement in Writ Petition No. 1588 of 2019: - The relevant extract of the Hon'ble Bombay High Court, at Nagpur bench Order is reproduced below:

“28 I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter storeroom and then turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate.

29.....

30. In view of the above, the first Petition No.1588/2019 filed by the company is allowed in terms of prayer clause (1). The impugned order dated 17.10.2018 shall stand quashed and set aside to the extent of the challenge and the conclusions arrived at by the forum by its order dated 25.06.2018 are sustained.” (Emphasis added)

Considering the above facts, the Appellants are not eligible for refund of infrastructure cost in view of work carried out under “LT Multi Party Power Looms Group” Scheme. The Representations do not stand on merit. “Hence Issue B” is answered as NEGATIVE.

17. The Appellants referred to various orders of the Commission, and the Judgment dated 10.11.2016 in Civil Appeal of 4305 of 2007 of Hon'ble Supreme Court based on the order dated 08.09.2006 in the matter of Schedule of Charges in Case No. 70 of 2005 of the Commission. However, the Appellant voluntarily opted to take benefits of multiparty group



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connections. Hence all these orders / judgments do not support the Appellants' claim. The Appellants also cited various other judgments and orders which are not applicable in these instant cases.

18. The Respondent pointed out that as per Standard of Performance Regulations, the main supply of the Appellant would be 11 KV level; however the Appellants opted for 33 KV voltage Level instead of 11 KV level. As per various regulations in force, the Appellants have to incur all expenditure for the 33 KV voltage level.

19. The Appellants pointed out that the Multi Party Power Loom scheme is not approved by the Commission, though it has been in existence from the year 2005. The Respondent is advised to approach the Commission for appraisal of the Multi Party Scheme.

20. The Forum, by its Common Order dated 18th August 2022 has analysed the grievance rightly and rejected these grievance applications. Considering the above facts, the Appellants' Representations are time barred and also do not stand on merit. Hence, the Representations are rejected. The Forum's order is upheld.

21. The Secretariat of this office is also directed to send a copy of this order to the Director (Commercial) MSEDCL, who was previously advised to take up the issue of "Multi-Party Power Loom Scheme" before the Commission.

Sd/-
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary

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