

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 47 & 50 OF 2023

In the matter of demand charges penalty during Covid 19 Pandemic

Rep.	Appellant	Consumer No.
47/2023	Cooper Corporation Pvt. Ltd.	190569024240
50/2023	Cooper Corporation Pvt. Ltd.	190569006591

.....Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Satara Circle (MSEDCL) . ....Respondent

Appearances:

Appellant : 1. R.N. Deshpande, Chief Finance Officer  
2. Kirti Bhoite, Manager  
3. Suresh Sancheti, Representative

Respondent : 1. Hanmant N. Dhok, Superintending Engineer (I/C), Satara  
2. Nisar S. Shikalgar, Jr. Law Officer  
3. Prajakta B Kadam, Asst. Accountant (HT)  
4. Sidharth Kulkarni, UDC (HT)


**Coram: Vandana Krishna (Retd. IAS)**

Date of hearing: 27<sup>th</sup> July 2023

Date of Order : 28<sup>th</sup> August 2023

### ORDER

These two Representations were filed on 24<sup>th</sup> April 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the separate Orders dated 23<sup>rd</sup> February 2023 passed by the Forum, MSEDCL, Baramati (the Forum). The Forum, by

  
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orders dated 23.02.2023 dismissed the grievance applications in Case No. 20 of 2022 & 21 of 2022.


2. The subject matter of these 2 representations is common in nature; hence they are clubbed together for the purpose of a common order. The e-hearing was held on 27.07.2023 through Video Conference. Parties were heard at length. The written submissions and arguments of the Appellants are as below:-

- (i) The Appellant is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the designing, manufacturing and distribution of automotive components, generators, and engines. The Appellant and the Respondent had entered into an agreement dated 10.10.2011 for supply of electricity to its iron and steel foundry. As per the agreement, the approved Contract Demand was 3500 KVA with a demand fixed charge of Rs.411/- per month. The Appellants are HT Industrial Consumers of the Respondent having Sanctioned Load, Contract Demand, Activities, etc. as below:

Table 1

Rep. No.	Appellant	Consumer No.	Sanctioned Load (KW)	Contract Demand (KVA)	Address	Date of Supply	Activity
47/2023	Cooper Corporation Pvt. Ltd.	190569024240	6092	3500	Plot No. K-10, Add. MIDC, Satara	04.12.2012	Iron and steel foundry
50/2023	Cooper Corporation Pvt. Ltd.	190569006591	9741	4974	Plot No.L-3, Add. MIDC, Satara	15.09.1982	

- (ii) Due to the Covid-19 Pandemic, the State Government imposed a lockdown which led to shutting down of manufacturing units, malls, etc. from 22<sup>nd</sup> March 2020. Since the manufacturing units were to remain shut during the lockdown, the fee to be paid for Contract Demand (CD) of electricity would have been an extra cost on the manufacturing units/industries. In order to ease the burden on

  
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industries, MSEDCL issued a circular/order by which it provided a facility to High Tension (HT) Consumers to reduce their Contract Demand online during the lockdown with an intention to help the manufacturing units to reduce their costs. As a result, industries would be required to pay lower charges for Contract Demand as per the reduced demand. To reduce the risk of Covid-19 spread, the manufacturing units were directed to file only online applications on the MSEDCL portal requesting for reduction (or increase) in Contract Demand. The said circular/order was issued as a welfare measure to facilitate easy and online applications, without personal visits or submitting hard copies.


- (iii) Accordingly, the Appellants on 25.04.2020 applied for reduction of Contract Demand as below:

Table 2

Rep. No.	Consumer No.	Original Contract Demand (KVA)	Reduction in Contract Demand (KVA)	Remarks
47/2023	190569024240	3500	1000	Online Application on 25.04.2020 on MSEDCL Portal
50/2023	190569006591	4974	1000	Online Application on 25.04.2020 on MSEDCL Portal

Copies of the acknowledgement of Demand change are kept on record. The above applications were accepted and approved by the Respondent, and CD was accordingly reduced.

- (iv) The Respondent vide its email dated 27.04.2020 also informed the Appellants about the new facilities at the Consumer Web Portal for online application of change in CD, and requested to submit requests, if any, through Web Self Service portal of MSEDCL.


  
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- (v) Within 15 days of filing the online application for reduction in CD, the Collector of Satara District allowed for opening of specific manufacturing industries in the area with prescribed Covid 19 guidelines. The Appellants could then resume full scale operations at the previous levels, with the corresponding electricity load. Considering this, the Appellants tried to submit an online application on 09.05.2020, for increase in Contract Demand. The Appellants made several attempts to file the application online, but due to technical reasons the same could not be done. An error in the form of “*Error occurred while creating load change request*” was displaying on the website of MSEDCL. Due to the lockdown, our staff as well as the MSEDCL officers were working from home, and interaction in person was not permitted, so the Appellants’ representative could not visit the MSEDCL office to submit the said applications physically.
- (vi) Since the MSEDCL website was not functioning properly and was showing “error” when the Appellants tried filing online applications for increase in Contract Demand, the said issue was immediately intimated to the ‘The Superintending Engineer, Satara Circle, MSEDCL’ and ‘The Chief Engineer (Commercial), MSEDCL, Mumbai on 09.05.2020 **vide emails**, and a request for increase in Contract Demands was made therein which is tabulated below:

Table 3:


Consumer No.	Initial Contract Demand	Reduced Contract Demand (KVA)	Partial Increase in Contract Demand (KVA) requested	Date of application	Remarks
190569024240	3500	1000	1800	Online Application on 09.05.2020 on MSEDCL Portal	An error in the form of “ <i>Error occurred while creating load change request</i> ” was displaying on the website of MSEDCL
190569006591	4974	1000	4000	Online Application on 09.05.2020 on MSEDCL Portal	

  
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Copies of the Appellants' email dated 09.05.2020 addressed to MSEDCL for increased Contract Demand, along with a screenshot of the webpage displaying the error, are kept on record.

- (vii) The Appellants faced technical glitches while filing online applications on the MSEDCL website, and considering that even email is an electronic communication, the Appellants sent the said applications vide email.
- (viii) Basically, the intent of MSEDCL was to help industry and to reduce its cost, for which it introduced the system of electronic filing for change in Contract Demand. The Appellants were under the impression that the email sent by them is adequate compliance to the guidelines provided by MSEDCL, as the same is also an electronic communication. **The Appellants never received any communication from MSEDCL that their applications dated 09.05.2020 sent vide email were not acceptable** or faulty in some manner. **Also, the Appellants received regular electricity bills for the months of May and June 2020, and no penalty was imposed in the said bills.** Therefore, the Appellants were under the bonafide belief that their applications were accepted by MSEDCL. Hence, no further effort was made by them to submit online applications through the portal.
- (ix) It was only when the Appellants received the electricity bill on 06.08.2020 for the month of July 2020 that it noticed that the MSEDCL has levied a heavy penalty of Rs. 8.6 lakh and Rs. 63.68 lakh on the purported excess consumption. The said levy was imposed without considering the application for increase in Contract Demand by way of email dated 09.05.2020.
- (x) On receipt of the above electricity bill, the Appellants addressed several emails

  
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dated 09.08.2020, 12.08.2020 and 19.08.2020 to MSEDCL informing the latter about the email applications dated 09.05.2020 for increase in Contract Demand, and requested MSEDCL to revise the bills accordingly.

- (xi) In the meantime, the office of MSEDCL, vide an email dated 10.08.2020, forwarded the Appellants' request to the Head Office for non-imposition of penalty and revising the bills accordingly. However, since MSEDCL neither responded to any of these emails nor issued revised bills, having no option left and to save itself from incurring further penalty for late payment or disconnection of electricity supply etc., the Appellant paid the bills **under protest** in August 2020 and without prejudice to its rights.


- (xii) The Appellants were charged a total penalty towards excess CD as below:-

Table 4

Rep. No.	Consumer No.	Total Contract Demand Penalty
47/2023	190569024240	8,60,313/-
50/2023	190569006591	63,67,939/-

- (xiii) The Appellants did not receive any response to the protest raised by them. Being aggrieved, the Appellants filed a grievance application with the Forum on 08.06.2022. The Forum, by orders dated 23.02.2023 dismissed the grievance applications in Case No. 20 of 2022 & 21 of 2023. The Forum held that manual applications submitted offline, or even through email would not be accepted, considering the Covid-19 pandemic.

- (xiv) Being aggrieved by the Impugned Order dated 23.02.2023 passed by the Forum, the Appellants filed the present representations before the Electricity Ombudsman on the following grounds:-

  
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## GROUNDS

- A. The Forum has not considered the unprecedented time during the Covid-19 pandemic. Covid-19 practically stopped the functioning of all sectors. Taking this into consideration, the Government had taken various steps to ease the unpredicted situation; however, the Forum erred in imposing penalty merely on a technical ground. The Appellant has given some examples of initiatives announced by RBI, Finance Ministry, the Supreme Court, etc. to ease the economic distress caused by the pandemic lockdown.


### High Court Judgments

- B. Various decisions were taken wherein the Hon'ble Courts have taken a lenient view and shown sympathy with the assessee in the wake of the Covid-19 pandemic. Reliance is placed upon the decision of the Hon'ble Allahabad High Court in the case of **M/s Limra Developers versus Additional Commissioner and Another** reported in 2023 (1) TMI 380- Allahabad High Court wherein the Hon'ble Court held as under:

*"12. Looking to the fact that the appeal has been filed by the Assessee-petitioner at a delayed stage and in between the Covid 19 pandemic had intervened, taking sympathetic view, this Court finds that the Assessee cannot be left remediless and the Appellate Authority should have entertained the appeal and decided the same on merits. The business cannot be hampered and suffered on mere technicalities of law and the Appellate Authority should have considered the appeal on merits."*

- C. Reliance is also placed upon the decision of the Hon'ble Kerala High Court in the case of **Balachandran Iyyadurai versus Commissioner (Appeals) – V** reported in 2022 (3) TMI 732 - Kerala High Court, wherein the Hon'ble Court has taken a liberal approach in view of the pandemic and has held as under:

*"4. On a consideration of the circumstances pointed out by the learned counsel for the petitioner as well as after hearing the learned Government*

  
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*pleader, I am of the view that the respondent has adopted a hyper-technical approach in rejecting the appeal especially during these times of Covid-19 pandemic.*

*5. Though the petitioner is bound to cure the defects, within the time stipulated in the notice issued by the respondent, in the present circumstances, this Court is of the opinion that one more opportunity ought to be granted to the petitioner to rectify the defects. Interests of justice demand that a liberal approach is adopted, especially since the Covid-19 pandemic has affected every person, in every walk of life. The limitation periods had even been extended by the Supreme Court due to the unprecedented situation prevailing so that the litigants are not prevented from having access to justice, on account of prescribed periods of limitation. The impugned order is therefore liable to be set aside.”*

Various measures were undertaken by the RBI, Central as well as State Government and judiciary to prevent huge losses to the public at large. The Forum should have taken these into account and ought to have condoned the technical/procedural lapse and dropped the penalty imposed on the Appellants. The Forum should have taken a lenient view in the matter.


- (xv) The Forum has erred in rejecting the grievance of the Appellants by merely stating that Appellants’ email dated 09.05.2020 cannot be considered as an official application for enhancement of load. The Forum failed to appreciate the submission made by the Appellants and completely overlooked the intention of the Maharashtra Electricity Regulatory Commission (the Commission) in allowing online revision of CD by HT industrial consumers. The Forum ought to have appreciated that **the Electricity Act, 2003 has not prescribed filing an application of increase/decrease of Contract Demand using website portal only.** The MSEDCL initiated electronic filing for the benefit of the consumer, and the said beneficial measure cannot be used to penalize them. This is merely a procedure formulated to ease operations for the ‘consumer’ during the period of Covid 19 pandemic.

  
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- (xvi) In any event, the Appellants were unable to make the request online on account of technical errors which were beyond their control. It is an admitted fact that the Appellants faced a technical glitch while filing an application to increase contract demand on 09.05.2020. On this count alone the penalty of Rs. 8,60,313/- (Rep. 47/2023) and 63,67,939/- (Rep. 50/2023) ought to have been dropped.
- (xvii) The Superintending Engineer, MSEDCL O&M Circle, Satara stated that they received a number of similar online applications from consumers situated in the Baramati Zone during that period. MSEDCL has not provided the date and time of the other Companies' applications. **Just because others may have been able to file their applications during a certain period of time, does not mean that when the Appellants were trying to file its application, the portal was working.**
- (xviii) In any event, this ought to be treated as an exceptional circumstance beyond the control of the Appellants. The Appellants did not have any other avenue available to request such a change since the office of MSEDCL was not physically operational. It was an uncertain time when everyone was in fear of life. Various employees of the Appellants' Company were covid positive and everyone was under stress and in panic. Accordingly, the Appellants had no other option but to file the demand change application vide an email dated 09.05.2020. As has been stated by the MSEDCL, **if two officers were present in the office, they could have acted on this email on time and could have informed the Appellants that the email application would not be allowed, or could have assisted the Appellants in getting the said application filed online.** However, the department opted to keep silent till issuance of the bill in the month of August 2020. Once the Appellants intimate their intention of increase of demand and send an email to the department, the onus is on the department to either accept

  
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or reject it, and clearly the same has not been discharged. With this background, the department, instead of condoning the procedural lapse, is penalizing the Appellants for the department's fault, which is illegal and unlawful.

(xix) The Appellants had sent an email to Chief Engineer, Commercial, Mumbai and also to Superintending Engineer, Satara, and office of MSEDCL on 09.05.2020. The Superintending Engineer, Satara on 10.08.2020 forwarded the Appellants' requests to the Head Office for non-imposition of penalty and revising the bills, which shows that even the department officials were considerate to the situation. In view of the above, the Forum should have appreciated that the only intention of the department was to facilitate processing of applications without the need for physical contact, and an email served the same purpose. There was no prejudice caused to MSEDCL on account of the same.

(xx) Though the requests for Contract Demand were made in May 2020, the penalties were imposed by MSEDCL for the first time vide the electricity bill dated 06.08.2020. It was only at this time **i.e. on 06.08.2020** that the Appellants for the first time learnt that the revision requested by the Appellants were not accepted. **The belated levying of penalty without any intimation by MSEDCL that the revision in Contract demand were in fact not accepted is entirely illegal. If the Appellants had been informed earlier that the revision were not accepted, it would have approached MSEDCL for clarification and necessary action.**

(xxi) It is well settled that substantial benefit cannot be denied due to procedural lapse. Reliance is placed upon the decision of the Supreme Court in the case of **Sambhaji & Anr. v Gangabai & Ors.** reported in (2008) 17 SCC 117 wherein the Supreme Court held as under:

*"9. All the rules of procedure are the handmaids of justice. The language*

  
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*employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.*

*10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.*


*11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.*

*12. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”*

(xxii) The purpose of procedures to is to provide a mechanism in order to give benefit of a legislation. In this case, the Appellant is being denied the rightful benefit of the Circular/Order on the sole basis that manual application through offline mode or through email will not be accepted in view of WSS portal, which is clearly contrary to the above principle.

(xxiii) Reliance is placed upon the decision of the Gujarat High Court in the case of **M/s. SK Likproof Private Limited versus Union of India** reported in 2023 (3) TMI 240 – Gujarat High Court wherein the Court held as under:

*“ 16. We need to take note of the order in case of M/s Yashi Constructions (supra)*


  
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*in SLP No. 2070 of 2022 where the Apex Court while endorsing the refusal of the relief by the High Court for extension of period to make the deposit under the scheme, held that the settled proposition of law is that the person who wants to avail the benefit of a particular scheme has to abide by the terms and conditions of the scheme. If the time extended is not provided under the scheme, it will then tantamount to modifying the scheme which is the prerogative of the government. Here is not the case where any extension sought for not having been granted where request on the part of the petitioner would also not tantamount to modifying the scheme as he were never at fault. Twice when he made an attempt, he failed on account of technical glitch .*

*22. Applying the ratio laid down by the Apex Court mutandis in the case of the present petitioner who were not under the fault when this amount could not get deposited with the bank and were recredited after having once gone to the bank, to deny him the benefit only because there were technical glitches about which it could not have done anything, would amount to leaving the petitioner remediless which is impermissible under the law and this also since has been succinctly addressed by the Apex Court., following the decision in the case of M/s Shekhar Resorts Limited (supra) this petition is being allowed. We notice that the recovery of the entire amount from the petitioner by the respondent were on the basis of liability declared under the SVLDRS Scheme and the payment having not been made in time. When the deposit within the stipulated time period is not disputed by the respondent and the technical glitch being the reason of the software not functioning of the bank that would surely not hold the petitioner liable or accountable for non-payment. The payment as per the directions of the committee were needed to be made by 30.6.2020 which instead had been made on 8.7.2020. Not only the Court can be oblivious of the Covid 19 pandemic being at its peak during that period for generating the payment were something where there were no say of the petitioner. Therefore, not only the respondent's denial for considering the case but later recovery of the entire amount of Rs 7,68,675/- on 11.7.2022 shall need to be reverted/refunded to the petitioner. Accordingly the petition is allowed."*

(xxiv) Reliance is also placed upon the decision of the Supreme Court in the case of **Mangalore Chemicals & Fertilizers Ltd. v Deputy Commissioner** reported in 1991 (8) TMI 83 - SUPREME COURT wherein it was held that the mere fact that a condition is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of

  
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procedure. It would be erroneous to attach equal importance to the non-observance of all the conditions irrespective of the purposes they were intended to serve.

(xxv) It is a settled law that technical error/glitches in the system cannot be fatal to the rights of the assessee/consumer and in fact in such cases rights of the assessee/consumer have been restored. A similar view has been taken by the Kerala High Court in **Popular Vehicles and Services Ltd V/s. Union of India** 2019(22) GSTL 183 (Kerala) and **BMW India Financial Services Pvt Ltd V/s. Union of India** 2020 (43) GSTL 326 (Bom).

(xxvi) The technical difficulty was not on account of any wilful neglect on the part of the Appellants, and in fact occurred due to a system error at the end of the MSEDCL. In fact, while seeking earlier reduction of contract demand, the Appellants had used the same channel and sought reduction in contract demand. Therefore, a substantial benefit cannot be denied on a procedural lapse. The hyper – technical approach of the authorities is contrary to the intent and purpose of the beneficial scheme.

(xxvii) The Appellants have various plants having different consumer numbers for which demand change applications were filed on 13.05.2020 and those were filed without any hurdle. Since for the issue at hand, the Appellants tried applying for demand change on 09.05.2020 and the same could not happen, it sent an email to department **and was always under bonafide belief that the same has been considered to be valid by the department. Since the department did not respond to Appellant's email intimating the rejection to the same, it believed it to be filed. If the Appellants would have been made known that the application vide email is not accepted, they would have filed the same one more time along with other applications on 13.05.2020.**

  
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(xxviii) It is further submitted that a rightful benefit of a scheme cannot be curtailed due to technical glitch. Reliance is placed upon the decision of the Madhya Pradesh High Court in the case of **M/s Balaji Services & Anr. v Union of India & Ors.** reported in 2021-TIOL-2023-HC-MP-ST wherein the Madhya Pradesh High Court held as under:


*“20. A plain reading of the aforesaid paragraphs makes it clear that the 'Scheme' is a beneficent one and aim and object of the 'Scheme' is to unload the baggage of pending litigation relating to service tax and excise duty. While interpreting a beneficent provision, its aim and object cannot be ignored.*

...

*24. The other judgments cited by learned counsel for the petitioners are not directly related to the 'arrear category'. However, the judgment of M/s Hitech Projects Private Limited (supra) makes it clear that if a mistake has taken place during lock down period, the hyper technical approach should not be adopted. In the case of Nagen Hospitality Services Private Limited (supra), the Orissa High Court opined that hyper technical approach is not correct. **If there is any difficulty in accepting the online form because of any technicality reason, offline form / procedure through manual process be followed.** The documents filed with the rejoinder 17.03.2021 (Annexure-P/15) shows that pursuant to Court orders, the respondents have decided to accept offline / manual application.”*

(xxix) Reliance is also placed upon the decision of the Punjab and Haryana High Court in the case of **M/s. Shoe Sales Corporation and M/s. Kapoor International versus Union of India and Others** reported in 2023 (2) TMI 667 - Punjab and Haryana High Court wherein the Court held as under:

*“With respect to question of limitation, first of all the object of the SVLDR Scheme has to be seen. The main object of the scheme were to reduce litigation, service tax and central excise cases and to free large number of small taxpayers of their pending disputes with the tax administration. The petitioner in its application dated 14.10.2019 wanted to consider its case under the SVLDR Scheme against demand of penalty of Rs.1,98,597/- and redemption fine of Rs.9,64,062/-. The application of the petitioner were rejected merely on the ground that redemption fine were not part of the scheme and this aspect has already been considered by the Gujarat High Court in Synpol Products Pvt. Ltd.'s case (supra). As per the case of the respondents, order dated 23.12.2019*

  
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were served upon the petitioner through speed post on 04.01.2020 and as per the petitioner, letter/order dated 23.12.2019 (Annexure P-5) were received vide letter dated 01.01.2021 from the Assistant Commissioner of Central GST, Faridabad when the petitioner made a letter dated 15.12.2020 to the latter. The petitioner immediately filed instant writ petition on 07.01.2021. **Since, the object of the SVLDR Scheme were to reduce litigation and the said Scheme is for the benefit of small tax payers, hence, for all intents and purposes, delay can be condoned by the Court as observed by the Supreme Court in the case of Centaur Pharmaceuticals Pvt. Ltd. and anr. Vs. Standfort Laboratories Pvt. Ltd. that suo motu order extending limitation period on account of COVID-19 would also include the period which can be condoned in exercise of the statutory discretion.** It is further observed that since the designated committee had wrongly rejected the case of the petitioner, there were no occasion for the petitioner to file a fresh application within the stipulated time and, hence, his case cannot be rejected on the ground of limitation. Keeping in view the aforesaid judgment passed by Gujarat High Court, upheld by the Supreme Court after dismissal of Special Leave to Appeal (C) No. 449 of 2021 and the object of the SVLDR Scheme, writ petitions are allowed and the orders of the designated committee are being set aside. The matter is remanded back to designated committee to consider the case of the petitioner(s) as per the SVLDR Scheme and redetermine payable including redemption fee/fine under the SVLDR Scheme by passing fresh order.”

The Supreme Court in the case of **L & T Housing Finance Ltd. Versus Trishul Developers and another** (2020) 10 SCC 659 held that an action cannot be held to be bad in law merely on raising a trivial objection which has no legs to stand unless the person is able to show any substantial prejudice. In this case, MSEDCL has faced no prejudice or loss, and therefore the ratio laid down by this judgment is squarely applicable to the facts of the present case and the Impugned Order deserves to be set aside on this count, alone.

Reliance is also placed upon the Punjab & Haryana High Court’s decision in one of the beneficial schemes under indirect tax in the case of **Loyalty Solutions and Research Pvt Ltd V/s. Union of India & Ors.** 2021 (2) TMI

  
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814 Punjab and Haryana High Court, wherein the Court held as under:

*“It is settled law even under taxation that if a person is eligible to one or another benefit, he should not be denied said benefit on procedural or technical grounds. The requirement of strict compliance of conditions is necessary to ascertain eligibility, however procedural formalities need not to be strictly complied with. Filing of one or more declarations has been prescribed by Rules whereas conditions of eligibility have been prescribed by Finance Act, 2019. The filing of separate declaration is not even condition whereas it is sort of procedure. Once an assessee complies with conditions prescribed by Finance Act, 2019 and no prejudice is caused to the revenue by filing of single declaration instead of multiple, we do not find any reason to deny benefit on the ground of non-compliance of any condition which is purely procedural in nature.”*

(xxx) The Appellants pray that the Respondent be directed to waive of the penalty of CD from May 2020 to August 2020 and refund thereof.

3. The Respondent filed its written reply dated 30.05.2023. Its written submissions along with its arguments on 27.07.2023 are stated as below: -

- (i) The Appellants are HT Industrial Consumers of the Respondent having Sanctioned Load, Contract Demand, Activity, etc., as captured at Para 2 (i) Table 1.
- (ii) The Respondent, MSEDCL specially provided an online Auto Approval Facility for change of load/CD through WSS Portal during the Covid-19 Pandemic. There was complete lockdown from 22.03.2020 throughout the State. Due to this, only 5% staff of the Respondent was working physically during April and May-2020 in MSEDCL Offices for emergency work. Auto generated emails from *billing@mahadiscom.in* had been sent to all HT consumers, in which it was clearly specified that **"Manual Applications submitted offline or through Mail will not be accepted"**. In these mails, a link for load/demand change was clearly sent, along with instructions on the detailed procedure to change the load or demand of the Consumer.
- (iii) The Commission issued practice direction and allowed online revision of CD by LT/HT industrial Consumers due to Covid-19 epidemic. The online


  
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facility was made available by the Respondent for revision of CD up to 20% of existing CD with “auto approval” system. The Respondent issued the above-mentioned email to all consumers for the awareness of consumers.

- (iv) The Appellants applied online on 25/4/2020 for CD reduction from 3500 KVA to 1000 KVA (Rep. 47/2023) & 4974 KVA to 1000 KVA(Rep. 50 /2023) in the auto approval mode, and accordingly, the load of the Appellants were reduced to 1000 KVA as summarized in Para 2, Table 2.
- (v) The Respondent provides SMS facility for every service. This SMS is sent on the mobile number of the consumer registered with the Respondent. When the Appellants applied online on 25/4/2020 for load reduction to 1000 KVA, an SMS of its acknowledgement was sent on the registered mobile on the same day. Further, another SMS of load reduction to 1000 KVA was also sent on the same mobile number.
- (vi) References given by the Appellants of RBI Initiative, Central Govt. Initiative, High Court Judgments, etc. are not applicable to this case because the Commission had already directed all licensees to set up an **Online WSS Portal** for facilitating change of CD in its practice direction, hence a manual application submitted offline, or through email, would not be accepted.
- (vii) Considering the critical pandemic situation and to ensure full implementation of the Government directives of ensuring social distance in order to control the spread of Covid-19 and in order to minimize public interface of Distribution Licensee’s personnel, the Commission provided certain relaxations in the Supply Code to all the Distribution Licensees from performance of services which are not directly linked to maintaining continuity of power supply.
- (viii) The date and time of the other companies who filed their applications was already provided to Appellants, along with written statement filed before the Forum during the hearing.

  
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- (ix) MERC in its Tariff Order dated 30/3/2020 held that Demand charges of 20<sup>th</sup> March 2020 to 30<sup>th</sup> June 2020 will be charged in the subsequent three billing cycles i.e., July to Sept. 2020. Sanctioned load of consumers were continuously shown on the May and June 2020 electricity bills, and consumers were aware about the said facts.
- (x) The Appellants mentioned that in their bonafide belief they submitted their application through email, when they were unable to file it online due to a technical glitch. It should be noted that **without getting any confirmation of change in contract demand from MSEDCL, the Appellants utilized excess demand above the sanctioned demand.** Therefore, penalty charged to the consumer is correct and as per guidelines given by the Commission.
- (xi) Appellants tried to apply on 8/5/2020 with a request to increase contract demand, but its applications were not received due to a technical error, and the same could not be submitted online. An error in the form of “*Error occurred while creating load change request*” was displaying on the website of MSEDCL. This error may have occurred due to wrong operation of portal, as well as poor connectivity on the Appellants’ side. A number of other applications from consumers were successfully received in that period; therefore, it is not admitted that online facility of MSEDCL was not functional.
- (xii) The Appellants have already used this auto approval portal for reduction of contract demand, which reveals that the consumers were aware of the auto approval scheme, & the conditions of the said scheme are binding on them. If consumers’ valid applications are not present in WSS portal, the Respondent is not technically able to increase the contract demand only on the basis of email. The Appellants did not submit the required documents for enhancement of load as per guidelines given by the Commission e.g., A1 application, Load Form, Load list etc. **Only on the basis of a single email, enhancement of load is not allowed.**

  
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- (xiii) The Respondent has produced a list of other consumers who also applied online for change in contract demand with load. **On going through the list it appears that there are 3 other connections released in the name of Appellants having consumer no. 190569021060, 190569006159, 190569021870 which had also applied for increase in contract demand with load on 13/5/2020 for auto approval, and the same has been effected in the system.** The same consumers failed to apply for change in contract demand with load for 2 consumer numbers, 190569024240 and 190569006591. This proves that the online system of Respondent was working during that period, but the consumer failed to apply for 2 out its 5 consumer numbers. Therefore, penalty charged in the bills for the period April 2020 to August 2020 of Rs.8,60,313/- (Rep. 47/2023) and Rs.63,67,939/- (50/2023) are correct.
- (xiv) **When the Appellants got knowledge that Rs.8,60,313/- (Rep.47/2023) and 63,67,939/- (Rep.50/2023) were charged as penalty, they made a valid online application only on 19/8/2020 for change in contract demand from 1000 KVA to 1800 KVA and 4000 KVA respectively.** The Appellants received their monthly electricity bills wherein the reduced contract demand of 1000 KVA was clearly mentioned, but they failed to keep a watch on that. When acquainted with the facts that Rs.8,60,313/-(Rep. 47/2023) and 63,67,939/-(Rep.50/2023) were charged to them as penalty for exceeding this CD, they took the defense that online facility of MSEDCL was not functioning properly, that they had sent an email on 9.5.2020, and informed to treat this email as a valid application for enhancement of additional load. The Appellants did not say anything about the applications of their other consumer numbers for enhancement of load having consumer no. 190569021060, 190569006159, 190569021870.
- (xv) Appellants successfully applied on 13/5/2020 for change of contract demand of their other consumer numbers 190569021060, 190569006159,

  
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190569021870, and at that time they also had an opportunity to apply for enhancement of contract demand of Consumer No. 190569024240 and 190569006591, but they failed to do so, hence penalty charged to the Appellants is correct as per rules and regulations.

- (xvi) **The electricity bills for the Month of May 2020 were issued on 16/6/2020, wherein details of the existing contract demand – 1000 KVA, & contract demand used by the consumer – 1428 KVA, was specifically mentioned. Thus, the bill itself indicates that Appellants have utilized excess demand. Therefore, the statement made by the Appellants that for the first time they learnt this on 6/8/2020 is totally wrong.**
- (xvii) On the basis of an order passed by the Commission, the Respondent issued a Commercial Circular No. 323 dated 03/04/2022, wherein guidelines were given to put a moratorium on (i.e.to delay) the payment of fixed charges of electricity bills under Industrial and Commercial category for the next three billing cycles beginning from the lockdown date of 25/3/2020. So, even if the readings of the lockdown period were available (through automatic meter reading system), the Respondents could not impose penalty charges during this period due to the directives of the Commission. After that, from the month of July 2020, demand charges and other charges of the lockdown period were charged to the Appellants.
- (xviii) The Respondent vide its mail informed its consumers to apply online for reduction in contract demand with Auto approval. It is specifically mentioned in point no. 2 of the email:- *"Apply for reinstatement of contract demand up to original contract demand with Auto approval."*
- (xix) Respondent relies on the judgment passed by the Electricity Ombudsman in Representation No.43/2021 decided on 9/7/2021 & Representation No. 96/2022 decided on 4/11/2022. The circumstances and facts are the same and the decision of these orders is squarely applicable to these two representations. Hence, the Representations should be dismissed.

  
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## Analysis & Ruling

5. Heard the parties and perused the documents on record. The Appellants' basic information regarding original and reduced sanctioned loads, etc., are captured in Table 1 at Para 2 (i).

6. A complete lockdown was imposed during the Covid-19 Pandemic from 22.03.2020 throughout the State with strict restrictions on the movement of people. Therefore, the Respondent MSEDCL specially provided Online Auto Approval Facility for change of load / Contract Demand through WSS Portal. The Respondent had only about 5% working staff during April to June 2020 for emergency work. Auto generated emails from *billing@mahadiscom.in* had already been sent to all HT consumers, in which it was clearly specified that **"Manual Applications submitted offline or through Mail will not be accepted"**. In these mails, a link for change in load / demand change was provided along with instructions on the detailed procedure on how to change load or demand of Consumer.


7. The Commission in its Tariff Order dated 30.03.2020 in Case No. 322 of 2019 has stated that :-

### *"APPLICABILITY OF THE ORDER*

*11.1.1 This Order shall come into effect from 1 April, 2020.*

### *Special Interim Dispensation:*

*11.1.2 This Tariff order is being issued at a critical time when the country is passing through one of the most debilitating epidemics in the form of Covid19. In fact taking note of the current situation prevailing in the state, commission issued a practice direction on 26/3/2020 whereby meter reading and physical bill distribution work was suspended and utilities were asked to issue bills on average usage basis till the current crisis gets subsided. Commission is aware that a number of industrial and commercial establishments have been shut down due to the lockdown enforced by Government.*

  
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11.1.3 *To mitigate to some extent the difficulties being faced by the Electricity consumers of Maharashtra and all out efforts to contain the spread of Corona Pandemic, the Commission deems it fit to put a moratorium on payment of fixed charges of the electricity bill by consumers under Industrial and Commercial category for next three billing cycles beginning from the lockdown date of 25/3/2020.”*

Accordingly, MSEDCL issued a Commercial Circular No.323 dated 03.04.2020 regarding Revision in Electricity Tariff from 1<sup>st</sup> April 2020 as per Tariff Order of the Commission in Case No. 322 of 2019 dated 30<sup>th</sup> March 2020. The circular itself clarifies ***moratorium on payment*** as below:

*“Accordingly, the guidelines as under are issued for implementation of the said Order of the Hon’ble Commission without prejudice to the right of MSEDCL to take any action as provided in the law.*


**1. Applicability of Tariffs**

- a) *The revised Tariff as per this Order shall be applicable from 1 April, 2020 and will be continue to be in force till further Orders.*
- b) *Where the billing cycle of a consumer is different from the date of applicability of the revised tariffs, the tariffs should be applicable for the consumption on pro-rat basis. The bills for the respective periods as per the existing and revised tariffs shall be calculated based on the pro rata consumptions (units consumed during the respective periods arrived on the basis of average unit consumption per day multiplied with number of days in the respective period falling under the billing cycle).*

**2. Special Interim Dispensation in view of epidemic Covid19:**

*To mitigate to some extent the difficulties being faced by the Electricity consumers of Maharashtra and all out efforts to contain the spread of Corona Pandemic;*

- a) *Commission issued a practice direction on 26/3/2020 whereby meter reading and physical bill distribution work was suspended and utilities were asked to issue bills on average usage basis till the current crisis gets subsided.*
- b) *To put a moratorium on payment of fixed charges of the electricity bill by consumers under Industrial and Commercial category for next three billing cycles beginning from the lockdown date of 25/3/2020.”*

  
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From the above, it is clear that demand charges and other charges such as penalty applicable to consumers were put on hold for three months from April to June 2020. In these instant cases, they were billed with CD of 1000 KVA from April to June 2020, which were reconciled with the actual recording in the month of July 2020.

Various relevant Practice Directions of the Commission in respect of Covid -19 Pandemic are summarized below:

- **Practice Direction issued by the Commission dated 26<sup>th</sup> March 2020:**  
**MEASURES TO MINIMISE PUBLIC INTERFACE IN VIEW OF CORONAVIRUS EPIDEMIC (COVID-19): MERC (ELECTRICITY SUPPLY CODE AND OTHER CONDITIONS OF SUPPLY) REGULATIONS, 2005 (The Supply Code)**


**Practice Direction:**


- a. *Distribution Licensee shall ensure continuity of supply. Complaints related to restoration of supply as also the safety related complaints shall continue to be attended by Distribution Licensee.*
- b. *The Distribution Licensees may suspend other non-essential services which require visiting consumer premises or meeting consumer in person i.e. Meter reading, Billing, Offline Bill Collection at Bill Payment Centres, release of new connections etc.*
- c. *Wherever Automated Meter Reading facility is available, same shall be used for meter reading.*
- d. *In absence of Meter reading the Consumers shall be intimated through digital channels such as email, sms, mobile app about their estimated bill computed on average basis as per Supply Code Regulations.*
- e. *For bill payment, Distribution Licensee shall facilitate and update alternate payment modes i.e. digital payment mode.*
- f. *All the above measures shall be communicated through social media, electronic media and print media for wider publicity.*

*This Practice Direction shall remain in vogue till such time the Government's Order imposing restrictions on account of COVID-19 is in force.*

- **Practice Direction issued by the Commission dated 9<sup>th</sup> May 2020:**  
**CLARIFICATIONS RELATING TO BILLING OF CONSUMER DURING COVID-19 LOCKDOWN: MERC (ELECTRICITY SUPPLY CODE AND OTHER CONDITIONS OF SUPPLY) REGULATIONS, 2005 (The Supply Code).**

**Practice Direction:**

  
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a. ....

e. *Utilities are free to extend any further concessions as part of their business needs from out of their 'return on equity' amount or any other own 'reserve' that they have built in their accounts over time.*


➤ **Practice Direction issued by the Commission dated 21<sup>st</sup> May 2020:**

REVISION OF CONTRACT DEMAND IN A BILLING CYCLE MERC (ELECTRICITY SUPPLY CODE AND OTHER CONDITIONS OF SUPPLY) REGULATIONS, 2005 (The Supply Code)

**Practice Direction:**

- a. *HT Industrial and HT Commercial consumers shall be allowed to revise their Contract Demand upto 3 times in a Billing Cycle. Provided that subsequent to third change in Contract Demand in a Billing Cycle by HT Consumers, for the remaining period of that particular billing cycle, maximum possible Load Factor Incentive shall be restricted to 10% of energy charges as against 15% provided in Tariff Order. For subsequent Billing Cycle, maximum limit of Load Factor Incentive shall be restored to 15% till consumer does not exercise its option of Changing Contract Demand for the third time in that Billing Cycle.*
  - b. *LT Industrial and LT Commercial consumers having demand-based tariff shall be allowed to revise their Contract Demand upto 2 times in a Billing Cycle.*
  - c. *Consumer shall apply to the concerned Distribution Licensee at least 3 days in advance for revision in Contract Demand.*
  - d. *Distribution Licensee shall grant such revision in Contract Demand after receipt of completed application from requested date subject to technical feasibility.*
  - e. *Component of electricity bill which are linked to Demand such as Demand Charges, Penalty for exceeding Contract Demand and LFI shall be computed by applying proportionate rates to the respective Billing Demand corresponding to time intervals between revisions in Contract Demand.*
  - f. *All other electricity bill component shall be computed for the period of billing cycle.*
- Etc.*

8. The Commission, in its Order dated 31.07.2020 in Case No. 137 of 2020 pertaining to the Revision/ Change in Contract Demand, has referred to practice direction dated 21.05.2020, allowing Industrial and Commercial consumers to ramp-up their production/activities post lockdown. The Commission extended the applicability of its Practice Direction till 31.03.2021 by its further order.

  
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9. The Web Self Service (WSS) portal of the Respondent for auto approval of CD started in April 2020 and was available 24/7 ("twenty-four by seven") for 52 weeks till 31.03.2021. In other words, this portal was available every day. The Appellant Company itself had successfully increased Contract Demand on 13.05.2023 for their other Consumer Nos. 190569021060, 190569006159, 190569021870 except for these two Consumers No. 190569024240 and 190569006591. This clearly establishes that the Appellants did not operate the WSS Portal carefully, and wrongly alleged that the auto approval WSS portal of the Respondent was showing error due to some technical issue, which does not have any merit in the instant cases. If there was a genuine problem in applying online, the Appellants could have easily communicated with their sister concerns and got their help to apply online. This clearly indicates that there was a lapse from the Appellant's side, and they are trying to shift responsibility on the Respondent.

10. Apart from this, the bills for Consumers No. 190569024240 and 190569006591 of July 2020 including the penalty, were delivered to the Appellants by email in the first week of August 2020. Hence the Appellants had an opportunity to at least escape from the penalty from around 10<sup>th</sup> to 21<sup>st</sup> August 2020 by applying for auto approval on the WSS portal immediately. This would have saved them a penalty of about Rs.7 lakhs. However, they went on to apply only on 19.08.2020.


11. The Respondent has put on record the list of other consumers who availed this facility online during the concerned period, including on 8<sup>th</sup> May 2020, the day the Appellants claimed that the WSS Portal was showing alleged error. Other factors are also important and have to be taken into consideration while determining whether the portal itself was faulty / not functioning, or whether it was not handled or operated properly for feeding the required consumer's data like browser issue, wrong handling of portal, firewall issue, etc. If entries are fed correctly, it is confirmed by OTP on the authorized mobile number of the consumer. Therefore, the intent of sending an email has no meaning and is not sufficient to waive the CD penalty.


  
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12. The above “auto approval” online facility was provided to the consumers during the Covid-19 Pandemic. It is a matter of record that as per practice directions issued by the Commission on 21.05.2020 for revision of contract demand, MSEDCL provided a special online facility to apply for change in contract demand up to 3 times in a billing cycle for HT Consumers. Accordingly, due to closure of industries, the Appellants applied online on 25.04.2020 through the WSS Portal, the auto processing approval system of MSEDCL solely dedicated for load/demand change applications through **online mode only**. It was the Appellants’ own decision to reduce the demand to 1000 KVA due to the lockdown, which is captured in Para 2 (iv) Table 2. As this reduction of Demand was more than 20 % of the sanctioned Contract demand, it was properly accepted by the computerized system of WSS portal. Thus the Appellants were fully aware of the functioning of this online mode.

The Appellant contended that after the Collector of Satara District allowed functioning of certain manufacturing units, the Appellant tried to submit an online application for increase in Contract Demand i.e. for resuming the original CD, through WSS Portal on 09.05.2020 for enhancement of loads from 1000 KVA to 1800 KVA (Rep. 47/2023) & 1000 KVA to 4000 KVA (Rep. 50/2023), with several attempts, but due to technical reasons the same could not be submitted online. An error in the form of “*Error occurred while creating load change request*” was displaying on the website of MSEDCL. Since the MSEDCL officers were working from home and interaction in person was not permitted, the Appellants’ representative could not visit the MSEDCL office to submit the said application physically. However, this issue was immediately intimated to the ‘The Superintending Engineer, Satara Circle, MSEDCL’ and ‘The Chief Engineer (Commercial), Mumbai MSEDCL’ on 09.05.2020 vide email, and a request for an increase in Contract Demand was made therein, which are captured in Para 2 (x) Table 3. The Appellants thus contend that they made a valid service request. The snapshot of service request is as below:

  
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<b>Web Self Service</b>	Load Change/ Demand Change Request	Welcome POOJA SOMNATH KADAM
My Account	*Errors occurred while creating load change request	
	APPLICATION FROM SERVICE REQUEST ID []	
	<b>Instruction for filing the Form</b>	
	<ul style="list-style-type: none"> <li>Kindly fill complete and correct information in relevant column</li> <li>Applicant will be solely responsible for incomplete or incorrect information</li> <li>Applicant is requested to note the request id for future tracking of the application</li> <li>Please Click Here to know your relevant for Change Load/Demand</li> </ul>	
	General instruction	
	Service Requested : Select	
	Consumer Category : Select	
	Application Date : 08-May-2020	
	Application Details:	
	Name	
	Existing Consumer No.	
	Tariff	

From this snapshot, it is not clear whether the 'Error' occurred precisely because the Appellant did not even enter the basic data of Consumer Number, Mobile Number, and tariff code, etc., or did not enter it correctly. This possibility cannot be ruled out.

13. MSEDCL has charged and recovered penalty for exceeding the contract demand from 08.05.2020 to July 2020 which is tabulated as below: -

Rep. No.	47/2023			50/2023		
Consumer No.	190569024240			190569006591		
	CD Sanctioned (KVA)	CD Recorded (KVA)	CD Penalty (Rs.)	CD Sanctioned (KVA)	CD Recorded (KVA)	CD Penalty (Rs.)
मे-20	1000	1428	263862.00	1000	3469	1522138.50
जून-20	1000	297	0	1000	4003	1851349.50
जुलै-20	1000	1507	312565.00	1000	3977	1835320.50
<b>Total CD Penalty</b>			<b>5,76,427.00</b>			<b>52,08,808.50</b>

  
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14. The Appellants' email to the Respondent's Superintending Engineer on 09.05.2020 for change in CD cannot be considered as a valid application for enhancement of loads considering the special circumstances of the Covid-19 Pandemic. **The Commission had already directed to all licensees in its practice direction dated 21.05.2020 to set up an online WSS portal for facilitating change of CD. Hence, manual applications submitted offline or through email could not be accepted.** The other three sister concern companies of the Appellants have availed these WSS facilities without any technical hitch in the same O & M Circle. Hence, the grievance of the Appellants does not stand on merit.

15. In view of the above observations, these two Representations are rejected. The Forum's orders are upheld.


16. The ratio of various orders and judgments referred to by the Appellant is not applicable in the instant Representations.

17. The secretariat of this office is directed to refund Rs. 25000/- each in Representation No. 47 of 2023 and 50 of 2023 deposited by the Appellant.

18. The Representation is disposed of accordingly.

Sd/

(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

