

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 76 OF 2023

In the matter of interest on security deposit

Karanja Terminal & Logistics Pvt. Ltd. Appellant

V/s

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

Appearances: -

Appellant : 1. Umashankar Varma, Legal Consultant
2. Harshad Sheth, Representative

Respondent: 1. R.V. Bele, Executive Engineer, Vashi Circle
2. Pranav Chakravarty, Dy. Executive Engineer
3. Rajiv Waman, Asst. Law Officer


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

Date of hearing: 18th October 2023

Date of Order : 31st October 2023

ORDER

This Representation was filed on 2nd August 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 20th July 2023 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum). The Forum dismissed the grievance application of the Appellant by observing that the Appellant is claiming the refund of interest on the security deposit for the period from June 2017 to December 2022. The cause of action of the grievance in the present case arose in the year 2017 onwards. Therefore the grievance is not maintainable as the cause of action


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arose more than 2 years ago, and the Regulation 6.6 / 7.8 of CGRF & EO Regulations 2006/2020 provide that a grievance has to be filed within a period of two years from the date of cause of action. Hence the grievance is time barred.

2. Aggrieved by the order of the Forum, the Appellant filed this representation. The e-hearing was held on 18.10.2023 through video conference. The parties were heard at length. The Appellant's written submissions and arguments are as below:

- (i) The Appellant applied for fresh HT Power Supply on 21.02.2017 at 22 kV level for Connected Load of 1551 kW and Contract Demand of 1496 kVA for Port activity at Multipurpose Jetty, Karanja Creek, and Village Chanje Tal. Uran, Dist. Raigad. Since it is a critical activity and the Appellant needs uninterrupted power supply, the Appellant requested for power supply on Dedicated Express Feeder from the nearest EHV Substation to the site premises, and the Appellant was ready to bear the cost of the installation.
- (ii) The Respondent sanctioned power supply on a 22 kV Underground Express Feeder vide its letter dated 16.05.2017 from 220 / 22 kV GTPS Uran Substation under Dedicated Distribution Facility (DDF) Scheme with the following terms and conditions:-


(a) Estimated Cost: Rs. 38,45,321.53 under Dedicated Distribution Facility (DDF) Scheme

(b) Payments :

Table 1:

Firm Quotation for payment dated 16.05.2017	
Cost Head Description	Amount (Rs.)
Service Connection Charges	Nil
Security Deposit	80,55,000
Agreement Fees	430
Processing fees	1700
Supervision Charges	2,75,000
Total Charges recoverable	83,32,130

(c) Validity : Six months from the date of sanction


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- (iii) The Appellant paid this statutory amount of Rs. 83,32,130/- on 16.06.2017, including Security Deposit of Rs. 80,55,000/-.
- (iv) However, the Appellant could not complete the infrastructure work for releasing power supply within the prescribed time frame, as permission of the local authority and CIDCO was required for cable laying work. The same was apprised to the Respondent vide letter dated 12.12.2017.
- (v) CIDCO finally granted cable laying permission by its letter No. 692 dated 31.10.2018 after long persuasion. Hence the Appellant, by its letter dated 03.12.2018, requested to revalidate the said DDF Estimate. The Appellant completed a part of the Infrastructure Work of 22 kV cable laying, but could not complete the work due to objections and problems created by the locals against the project.
- (vi) The Respondent revalidated the sanction from time to time. The Respondent demanded additional payment for revalidation of the said sanction by its letter dated 31.01.2019 as below:

Table 2 :

Second Firm Quotation for payment dated 31.01.2019	
Cost Head Description	Amount (Rs.)
Service Connection Charges	Nil
Security Deposit Paid	80,55,000
Additional SD to be paid as per Schedule of Charges in force in view of Tariff order of the Commission from 01.09.2018	2,47,130
Total SD	83,02,130
Processing Fee	2400
GST At 18 %	432
Total Charges recoverable	2,49,962

- (vii) The Appellant paid this statutory amount of Rs. Rs. 2,49,962/ on 01.06.2019 including Security Deposit of Rs. 2,47,130 /-.
- (viii) The project kept getting delayed. The Respondent revalidated the said estimate from time to time and latest up to 18.07.2021 by its letter dated 18.01.2021.



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- (ix) The Appellant has invested a heavy amount in the infrastructure cost and has completed a part of the work; however has been unable to complete the full work due to local social disturbance as well as technical difficulties. Finally, it was decided to close down this project due to many unavoidable reasons.
- (x) **Once it was decided to drop this project, the Appellant made an online application on 24.06.2022 for refund of the Security Deposit. Since there was no provision for request of refund of interest online, the Appellant applied separately on 27.06.2022 to the Respondent, Vashi circle for Interest on SD along with requisite documents.**
- (xi) **The Appellant received the refund of Rs. 83,02,130/- as SD on 02.12.2022 by RTGS in its bank account but without accrued interest.**
- (xii) The interest on SD was demanded as per Commercial Circular of the Respondent No.323 dated 03.04.2020. The Appellant also sent data of similar cases of refund of SD with interest to the Respondent, with a statement of SD Refund with accrued interest of 16 other HT Consumers of Vashi Circle and 7 HT Consumers of Palghar Circle, in cases where the consumers were permanently disconnected from the year 2004 onwards.
- (xiii) Since the Respondent did not take any action on the subject matter, the Appellant filed a grievance application with the Forum on 22.12.2022.
- (xiv) The Forum, by its order dated 20.07.2023 dismissed the grievance application of the Appellant by observing that the grievance application is **time barred** as per Regulation 7.9 of CGRF & EO Regulations 2020. The Forum failed to understand the basic issue that SD is a statutory payment, and whenever it is refunded, the Appellant is entitled to receive interest on SD as per Circulars issued by the Respondent from time to time.

Grounds:

- (xv) After receiving the online application on 24.06.2022, the Respondent was legally bound to issue the final bill and close the account as per Appendix A of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of


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Compensation) Regulations, 2005 (SOP Regulations 2005). The relevant portion of Appendix A is reproduced below:

Appendix “A”

Level of compensation payable to the consumer for failure to meet Standards of performance

Supply Activity/Event	Standard	Compensation
7. Other Activity		
Time period for payment of Final dues to the consumer from the date of receipt of an application for closure of the account	30 days	Rs.100 per week or part thereof of delay.

- (xvi) The Respondent failed to refund the security deposit amount of Rs. 83,02,130/- within the stipulated period of one month i.e. by 24.07.2022, and thus violated the provision of MERC SOP Regulations. It is pertinent to note that the Commission has continued the same provision in respect of closure of account in the prevailing Supply Code & SOP Regulations 2021.
- (xvii) Finally, the Respondent refunded the SD of Rs.83,02,130/- on 02.12.2022 after a lapse of 18 weeks. Hence, the Appellant is eligible for compensation of Rs. 100 per week or part thereof of delay.
- (xviii) As per the directives issued by the Commission in its various Tariff Orders, and as per the provision of MSEDCL's own Commercial Circular No. 323 dated 03.04.2020, it is mandatory for MSEDCL to refund SD along with interest to the consumer, when a consumer requests for closure of account.
- (xix) The cause of action arose on 24.06.2022 when the account was closed while the grievance was filed with the Forum on 22.12.2022. This is definitely not a delay of 2 years or more. The cause of action for refund of SD with interest is a continuous process, and SD is a statutory payment which is the legitimate right of a consumer. Hence, the Limitation Act is not applicable in the present case, and the grievance is not time barred.
- (xx) The Appellant prays that the Respondent be directed:-
- a. to refund the interest of SD of Rs. 4,76,236/- from 16.06.2017 to the actual


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date of release of interest.

- b. to pay compensation as per SOP Regulations in force.
- c. to pay suitable compensation for mental agony and harassment.

3. The Respondent filed its reply by email on 25.08.2023. Its submissions and arguments are stated as below:

- (i) The contents of para 2(i) are admitted.
- (ii) Pursuant to the application for new HT supply, the Technical Estimate was sanctioned vide letter dated 16.05.2017 under DDF Scheme. Thereafter, a Demand Note/Firm quotation of Rs.83,32,130/- was issued to the Appellant on 16.05.2017 whose details are tabulated in Table 1.
- (iii) The Appellant paid the total amount of Rs. 83, 32,130/- on 16.06.2017, out of which the Security Deposit Component was Rs.80, 55, 000/-, and the work was to be executed within six months from the date of sanction. The Respondent vide its letter dated 28.11.2017 informed the Appellant that the validity of work execution had expired on 16.11.2017.
- (iv) The Appellant reciprocated by its letter dated 03.12.2018 by informing the status of work progress. They had completed 50% work, and requested to revalidate the estimate of DDF scheme up to March 2019.
- (v) The Respondent vide its letter dated 31.01.2019 revalidated the previous sanction up to March 2019 with the terms and conditions of payment as tabulated in Table 2. The Appellant paid this additional amount of Rs. 2,49,962/- on 01.06.2019. Thus, the Appellant paid a total security deposit of Rs. 83,02,130/- till 01.06.2019.
- (vi) The Appellant was supposed to carry out the electrical installation work of the underlying 22 kV bay extension from the MSETCL 220/22/kV GTPS Uran Substation along with laying of 22 kV cable including allied metering works through a licensed electrical contractor, and on completion of this work, had to submit the Work Completion Report to the Respondent MSEDCL. Also, the Appellant had to submit the charging permission of the electrical installation from the Electrical Inspector so that the Respondent could charge the said installation, and in due course could be ready for


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release of supply. However, the Appellant failed to complete the required work.

- (vii) The validity of the estimate was further extended up to 30.06.2019 as per Appellant's request. The Appellant submitted the status report of the field work, and on 30.11.2020 requested for further extension up to July 2021. Accordingly, the validity of the estimate was extended up to 18.07. 2021 vide letter dated 18.01.2021 with the terms and conditions for payment as tabulated below:


Table 3

Third Firm Quotation for payment		
Cost Head Description	Amount (Rs.)	Remarks
Service Connection Charges	Nil	
Security Deposit Paid	80,55,000	Paid on 16.06.2017
Additional SD paid as per Schedule of Charges in force in view of Tariff order of the Commission from 01.09.2018	2,47,130	Paid on 30.05.2019
Total SD held	83,02,130	
Additional SD Demanded as per Schedule of Charges in force	1,06,767	
Processing Fee	2500	
GST At 18 %	450	
Total Charges recoverable	1,09,717	

However, the Appellant did not pay this statutory amount within the prescribed time.

- (viii) The Appellant neither completed the estimate work in time nor applied for further revalidation after July 2021. Therefore, the estimate stands cancelled on 18.07.2021.
- (ix) The detailed sequence of validity / extension of estimate is narrated below:-

Estimate No.	Sanction date	Valid up to
SE/VC/Tech/PNL/2017 /2487	16.05.2017	16.11.2017
SE/VC/Tech/PNL/2018-19 /785	31.01.2019	31.03.2019
SE/VC/Tech/PNL/2020-21/372	18.01.2021	18.07.2021


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- (x) On cancellation of the estimate, the Appellant vide letter dated 24.06.2022 and through online application No.233023 applied to the Respondent for refund of security deposit.
- (xi) The Respondent verified all documents of the Appellant and approved the said proposal of SD refund. The same has been refunded to the Appellant by RTGS on 02.12.2022. **Electric supply was never released to the Appellant in the period from 2017 till 2022 for not completing the estimated infrastructure work. Hence, the Appellant was not a consumer** as defined under Section 2 (15) of the Electricity Act, 2003 (the Act). The definition of a consumer is reproduced below:


"consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity ' to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be; "

- (xii) The Appellant has claimed interest on SD as per Circular No. 323 dated 03.04.2020. However, in Sr. No. 6 of this Circular, it is clearly mentioned that:

*"Such refund shall be made upon a request of the **person who gave the security**, and with intimation to the consumer if different from such person; and shall be made, at the option of such person, by way of adjustment in the next bill or by way of a separate cheque payment **within 30 days** from the receipt of such request"*

The Appellant never became a consumer of the Respondent. Hence, there is no merit in his claim of interest.

- (xiii) As per the provisions of Section 47 of the Act and the Tariff Order dated 30.03.2020 of the Commission in Case No. 322 of 2019, the Licensee is authorized to recover security deposit. Supply was never released to the


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Appellant and therefore the question of calculation of interest on SD does not arise at all.


- (xiv) The Appellant filed his grievance before the Forum on 22.12.2022. The Forum, after duly considering all records and material before them had rightly dismissed the grievance. Regulation 7.8 of CGRF & EO Regulations 2020 does not mandate a grievance to be entertained if it is more than two years old. Since the Appellant is demanding interest from 16.06.2017, the grievance becomes more than 2 years old.
- (xv) In view of the above, the Respondent prayed that the representation of the Appellant be rejected.

4. During the hearing, the Respondent was asked what loss, if any, it had to bear due to the repeated delays and extensions in the execution of the infrastructure works. The Respondent informed that a bay / feeder had to be kept reserved for the Appellant, and could not be used for other consumers or potential consumers. The Respondent was directed to submit details of the Express Feeder kept reserved for the Appellant at MSETCL 220 kV GTPS Uran Substation.

5. Accordingly the Respondent vide its letter dated 26.10.2023 informed this office that an email was sent on 18.10.2023 to MSETCL. The Chief Engineer MSETCL vide his email dated 23.10.2023 replied that the Appellant had paid Rs.96,411/- as supervision charges vide doc.100029536 dated 06.06.2017. Thereafter, the Appellant had not approached the MSETCL for further execution of construction of bay, and the bay was kept **unutilized for five years i.e. from 06.06.2017 to 05.05.2022**. Finally, the space proposed for construction of the said bay has been utilized for construction of 22 kV bokadvira bay under MSETCL Capex scheme. The 22 kV bokadvira feeder, which is incomer to 22 kV bokadvira substation, became operational on 05.05.2022. Thus, the bay which had been kept reserved for the Appellant remained unutilized for a period of 5 years.

Analysis and Ruling:

6. Heard the parties and perused the documents on record. The Appellant had applied for fresh HT Power Supply on 21.02.2017 on 22 KV express feeder for Connected Load of 1551


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KW and Contract Demand of 1496 KVA for port activity at Multipurpose Jetty, Karanja Creek, and Village Chanje. The Respondent sanctioned power supply on 22 KV Express Feeder on 16.05.2017 from 220/22 KV GTPS Uran Substation under DDF Scheme. The Appellant paid statutory charges along with Security Deposit of Rs. 80,55,000/- on 16.06.2017 and in due course of revalidation, the Appellant paid additional SD of Rs.2,47,130/- on 30.05.2019 as per Schedule of Charges in force.

7. The Appellant completed only a part of the infrastructure work within the prescribed time frame. There were delays in Cable laying work which required the permission of the local authority and CIDCO. Thus, the Appellant faced various teething troubles in completion of the remaining part of the infrastructure work. Finally the Appellant decided to close the project on 24.06.2022. The total SD was Rs.83,02,130/-(Rs. 80,55,000/- paid on 16.06.2017 & Rs. 2,47,130 paid on 30.05.2019).

8. The Appellant applied for refund of SD with interest on 24.06.2022 and made an online application on 24.06.2022 with the required documents. The Appellant received the refund of Rs.83,02,130/-on 02.12.2022 by RTGS, but without accrued interest towards SD.

9. The following issues are framed for consideration :


Issue 1 : Whether the Appellant is a consumer? And whether the Appellant is entitled for refund of SD with interest in this specific case ?

A 'Consumer' is defined under Section 2 (15) of the Act. The definition of a consumer is already referred in Para 3(xii).

A 'Complainant' is defined under Regulation 2.1(c) of CGRF & EO Regulations 2020 which is reproduced below:

"Complainant" means any Consumer as defined in Section 2 (15) of the Act and includes prospective Consumer, who files the Complaint or Grievance or Representation against the Distribution Licensee;"

We have already examined the Circular No. 323 of the Respondent in para 3 (xii). It mentions that ***"such refund shall be made upon a request of the person who gave the***


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security, and with intimation to the consumer if different from such person; and shall be made, at the option of such person, by way of adjustment in the next bill or by way of a separate cheque payment within 30 days from the receipt of such request.” This indicates that the refund must be made to any person, even if not the consumer directly.


By a simple reading of the definitions of ‘Consumer’ and ‘Complainant’ together, it is clear that **the Appellant was a prospective consumer of the Respondent**. Being a prospective consumer, he is entitled to receive refund of security deposit with interest, after confirming that he would not be availing of the new connection. Issue 1 is answered in the AFFIRMATIVE.

Issue 2 : Whether the grievance before the Forum is time – barred?

The main grievance relates to non-payment of interest. This grievance first arose only when the expectation first arose to receive interest (with the SD refund). This expectation could not have arisen before 24.06.2022, when the Appellant first applied for refund of SD. Therefore, there is no question of the grievance being time barred, as the grievance was filed before the Forum on 22.12.2022, i.e. after 6 months of the start of the grievance. Issue 2 is answered in the NEGATIVE.

Issue 3 : Whether the Appellant is entitled for refund of interest on SD from April 2017 to 2022?

In the instant case the electric supply was not released to the Appellant due to various hurdles faced by it for laying of 22 KV underground cable. Finally, the Appellant declared that he would be unable to execute the required infrastructure works, and hence closed the said project. The Appellant applied for refund of SD on 24.06.2022. Had he executed the project, and if for some reason his account had been closed around 24.06.2022, he would have received refund of SD and interest only from the date of closure of the account. Similarly, had the Appellant executed the project, and if for some reason (such as non-payment of dues) his account had been made PD at a later date, he would have been entitled to receive interest on SD only from the date of PD. Therefore, the date of closing the account of the prospective consumer will be considered as the Deemed Date for accrual of interest. Accordingly, the Appellant will be entitled to get interest as per the provisions applicable to a PD consumer.


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As per regulations and circulars, the period for refund of SD is within one month from the date of application. If not done within one month, the SD is refunded with interest.

In the instant case, due to the reasons explained above, the Appellant is not eligible for interest component from 2017 to the date of declaration of closing the account (application for refund of SD : 24.06.2022), and also for a further period of one month for processing the application; i.e. for administrative work, i.e. up to 24.07.2022.

A claim of interest on SD of any prospective consumer is not valid from the date of payment of SD, as per the Firm Quotation/Demand Note, to the date of release of supply. Interest on SD is payable to the consumers, in general, only from the date of release of supply, which is normally auto-generated by the software system. In this case, there is no date for release of supply. We, therefore, hold that the interest is payable from the date when the account was closed and the SD refund became due, i.e., 24.07.2022. Issue 3 is answered accordingly.

10. The Forum's order is set aside in toto.
11. In view of above, the Respondent is directed: -
 - (a) to refund the interest on SD as per the rates prescribed by the Commission from 24.07.2022 till the date of refund of SD i.e., 02.12.2022.
 - (b) Other prayers of the Appellant are rejected.
 - (c) The compliance report to be submitted within a period of two months from the date of this order.
12. The representation is disposed of accordingly.

Sd/-
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Electricity Ombudsman (Mumbai)


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