BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 53 OF 2021

In the matter of Retrospective Recovery for Multiplying Factor, and Tariff Difference

Manba Computech LLP. …… …… …… …….. ……..Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Wagle Estate (MSEDCL)…...Respondent

Appearances: -

Appellant : Ashok N. Patil, Representative

Respondent : Anil Patil, Executive Engineer

Coram: Deepak Lad

Date of Hearing: 13th August 2021

Date of Order : 15th September 2021

ORDER

This Representation is filed on 16th June 2021 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) against the Review Order dated 19th May 2021 in Case No. 48 of 2020, passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Urban Zone (the Forum).

Preamble

2. The Appellant had initially filed the grievance application on 20.09.2019 in the Forum (registered as Case No. 62/2019) for grant of interim relief against threat of disconnection along with basic prayers which are recorded at Para 2 of the Forum`s order and quoted below.

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"The applicant requested to MSEDCL to withdraw the illegal retrospective recovery regarding MF amounting Rs.29,42,410/- along with interest and DPC charges levied on recovery amount.

The interest on our Security Deposit of Rs.1,70,100/- has not been granted from dtd.30/03/2013. Please direct MSEDCL to grant the same.

The applicant requested to MSEDCL to convert our tariff from Commercial to Industrial and also direct MSEDCL to refund us the tariff difference between Industrial to Commercial category from dtd.30/03/2013 along with 9% interest as per section 62(6) of Electricity Act2003, MSEDCL commercial circular No. 212 and MERC Tariff Orders."

3. In the said case, the Forum has issued its order dated 18.08.2020 and has partly allowed the grievance. The operative part of which is as below:

"2. The respondent utility hereby directed to fix the tariff of IT industrial to the connection of the consumer.

3. The respondent is hereby directed to recover the arrears from the consumer for a period of 24 months prior to month of May 2019 in six equal installments.

4. The Respondent hereby directed to pay the interest on security deposit for the period, not paid for to the consumer"

4. Not satisfied by this order of the Forum dated 18.08.2020, the Complainant has filed Review Application with the Forum on 11.12.2020 which is registered as Case No. 48/2020 as per CGRF Regulations 2020.

The text and language of prayer in Review Application at the Forum not being comprehensive, it has been restated in a simplified form without loss of flavour which is as below:

i. to apply the LT-V Industrial tariff from the date of connection on 20.03.2013 and to refund the tariff difference between Industrial and Commercial Tariff Category with 9% interest as per Section 62(6) of Electricity Act, 2003 (the Act).

ii. to withdraw retrospective recovery of Rs. 29,42,410/- of 60 months along with DPC and interest as per the order of the Forum. The Appellant is ready to pay

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the MF Recovery as per Industrial Tariff for the period of 24 months prior to May-2019, as the Appellant has valid IT Registration Certificate required for Industrial Tariff.

iii. to grant the Interest on Security Deposit from the date of supply.

iv. The Respondent billed in October 2020 for Rs.7,57,646/- for 39588 units with debit bill adjustment. The 39588 Units were wrongly levied as per Commercial Tariff and for the period of 60 months period. The average units charged in earlier period are not deducted from the 39588 units and also the amount paid against the average bills in earlier period are not deducted from Rs.7,57,646/-.

v. The P.F. Penal Charges Rs. 49,234/- wrongly levied without any base.

vi. The 39588 units are levied one time without splitting the units and slab wise benefit tariff not given.

vii. To withdraw this illegal, wrongly levied bill as per Commercial tariff amounting Rs.7,57,646/-.

viii. In view of the above facts, it is kindly requested to issue clarificatory order for understanding of MSEDCL Authorities.

5. The Forum by its Order dated 19.04.2021, has dismissed the Review Application in Case No. 48 of 2020.

6. Aggrieved by the order of the Forum dated 19.04.2021, the Appellant filed this Representation which is stated in brief as below:

(i) The Appellant, Manba Computech LLP is a LT Industrial (IT/ITES) consumer (No. 000010916445) from 30.03.2013 at A-2/2, 8th Floor, Ashar IT Park, Wagle Estate, Thane (W). The premises of the Appellant is located in registered IT Park from the date of connection.

(ii) The Appellant is carrying out IT activities such as Software Development, data processing, etc. which is related to Information Technology/ Information Technology Enabled Services (IT/ITES). The Appellant is having all registration certificates.

(iii) As per Tariff Orders of the Maharashtra Electricity Regulatory Commission (the Commission) industrial tariff is applicable to registered IT/ITES Units. The Appellant

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has duly registered its IT unit with Government Authorities and the Letter of Intent (LOI), IT Registration Certificate and Partnership Deed is kept on record.

(iv) The Appellant referred the order dated 14.05.2018 of the Hon'ble Electricity Ombudsman (Mumbai) in Representation No.28 of 2018 filed by M/s. Capital First Ltd (User). The Authority has directed that the Industrial Tariff shall be applied to the user of the power supply from the date of IT /ITES Registration certificate.

(v) Similarly in this case, though power supply stands in the name of Manba Computech LLP, the actual users are partners of Manba Computech LLP named Joshi Deshaware and Associates. The address mentioned in electricity bills and IT Registration Certificates is same. The LOI and IT Registration certificates are in the name of partners of M/s. Manba Computech LLP, which are kept on record.

(vi) The IT Registration Certificate is issued on 22.07.2016 and the Appellant has submitted this IT Registration Certificate to the Respondent on 16.12.2016 along with application for change of tariff category from Commercial to Industrial.

(vii) In MSEDCL's Commercial (Tariff) Circulars based on the Commission`s Tariff Orders, it is specifically instructed that, the field officers are directed to ensure that whenever the tariff category is redefined or newly created by the Commission, the existing / prospective consumers should be properly categorized by actual field inspection immediately and the data to be immediately updated in the IT database. However, it is regretted to note that, in spite of clear and specific guidelines from Head Office, the Appellant is wrongly categorized, and wrong tariff has been levied by the Respondent.

(viii) The Appellant is using supply for IT/ITES purpose, and the Appellant is having LOI and IT Registration Certificate, still MSEDCL has levied the recovery for change in MF as per commercial tariff, which is highly illegal and baseless.

(ix) The Ashar IT Park is registered IT Park, and the Appellant is registered IT firm with Government of Maharashtra (GOM), District Industries Centre, Thane. Hence, only industrial tariff is applicable to the Appellant.

(x) The Respondent issued following supplementary bills:

A. First Supplementary Bill: -

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The Respondent has issued the first supplementary bill of Rs.29,42,410/- for the recovery towards change in Multiplying Factor (MF) for 60 months (July 2014 to May 2019) on the basis of Commercial Tariff instead of Industrial Tariff. The recovery is wrong, illegal, baseless, time barred and not recoverable as per law.

B. Second Supplementary Bill: -

A second bill is issued in October 2020 dated 06.11.2020 by MSEDCL amounting to Rs.7,57,646/- for 39588 units. This bill is also wrong and baseless and not recoverable on following grounds; -

(a) The above accumulated 39588 units were wrongly levied as per Commercial Rates and for the period of 60 months, which is highly illegal, wrong, baseless, and not maintainable.
(b) The average units charged during 60 months' period are not deducted from the 39588 units.
(c) The amount paid against the average bills in earlier period are not deducted from Rs.7,57,646/-.
(d) Appellant`s MF is 1, then also bill wrongly calculated as per MF 4.
(e) The Appellant is using supply for IT/ITES purpose only and the LT Industrial Tariff is only applicable to the Appellant then also above 39588 units wrongly levied as per Commercial Tariff illegally.
(f) The P.F. Penal Charges of Rs. 49,234/- wrongly levied without any base.
(g) The 39588 units are levied one time without splitting the units and slab wise benefit tariff not given.

(xi) The Appellant referred the Commercial Circular of MSEDCL No. 212 dated 01.10.2013 for Guidelines for IT/ITES Units. It is specifically mentioned in the said paragraph, the Commercial tariff should be applied to consumer till the date of actual commencement of IT/ITES Activities. In this case, the Appellant is using the supply for IT/ITES Activities from the date of connection and the Appellant never used the supply for Commercial purpose at any time. Appellant`s Firm is IT unit situated in registered IT Park and there is no scope for running of Commercial activity. Hence, only industrial tariff is applicable to the Appellant.

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(xii) The Appellant referred the Commercial Circular of MSEDCL No.323 dated 03.04.2020 which is based on Commission's Tariff Order dated 30.03.2020 in Case No. 322 of 2019. As per this Circular, *"this tariff category shall also be applicable for use of electricity / power supply by an Information Technology (IT) or IT-enabled Services (ITeS) Unit as defined in the applicable IT/ITeS Policy of Government of Maharashtra.*" The Appellant's activity is IT/ITES as per Policy of Government of Maharashtra (GoM).

(xiii) **IT and ITeS Units:** Under existing tariff structure, IT and ITES units having registration under GOM's IT and ITES Policy are categorised under Industrial Category. The Appellate Tribunal of Electricity (ATE), in its Judgment dated 12.02.2020 in Appeal No. 337 of 2016 & Others, has ruled that tariff categorisation cannot be based on any certification under Policy and it should be based on criteria specified under Section 62 (3) of the Act. Accordingly, the Commission has removed the requirement of having registration under GOM Policy for claiming Industrial Tariff for IT and ITES Units.

(xiv) In view of the above recent directives of the Commission and MSEDCL`s Commercial Circular, there is no necessity to submit any kind of IT Registration Certificate for tariff conversion. It is therefore kindly requested to direct MSEDCL to convert the tariff from Commercial to Industrial Tariff Category with effect from the date of connection dated 20.03.2013.

(xv) The Forum has issued very strange order in Review Case and erroneously decided that the 24 months MF recovery shall be paid as per Commercial Tariff instead of Industrial Tariff. The Forum`s decision in Review Case is wrong and it is altogether contrary to its earlier decision of the original case. The Forum failed to understand the basic issue of the Appellant.

(xvi) The Respondent has changed the tariff category from Commercial to Industrial from November 2020.

(xvii) The Appellant is ready to pay the MF Recovery and accumulated units recovery as per Industrial Tariff for the period of 24 months prior to May 2019. The IT Registration is valid for the period of 22.07.2016 to 22.07.2019.

(xviii) In view of the above facts, the Appellant prays that the Respondent be directed

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(a) to quash and set aside both supplementary bills amounting Rs.29,42,410/- (For MF Recovery of 60 months) and Rs.7,57,646/- dated 06.11.2020.

(b) to grant 24 equal monthly instalments for payment of above revised recovery bill as per industrial tariff.

(c) to refund the excessively collected tariff difference amount between Industrial and Commercial Tariff Category with interest as the Appellant has valid IT Registration Certificate from 22.07.2016 to 22.07.2019 which was already submitted to the Respondent on 6.12.2016 along with application for change of tariff from commercial to industrial.

(d) to refund the excessively collected Tariff difference amount between Industrial and Commercial Tariff Category with 9% interest for the period of April-2020 to Nov-2020 as per MSEDCL Commercial Circular No. 323 dated 03.04.2020 based on Commission`s Tariff Order dated 30.03.2020 in Case No. 322 of 2019 which is applicable from 01.04.2020.

(e) to withdraw the entire Interest and DPC levied on above mentioned both supplementary bills till today.

(f) to grant the Interest on Security Deposit from the date of supply.

7. The Respondent filed its reply dated 09.07.2021 which is stated in brief as under:

(i) The Appellant is a Consumer (No. 000010916445) from 30.03.2013 at A-2/2, 8th Floor, Ashar IT Park, Wagle Estate, Thane (W) and billed under Commercial Tariff Category.

(ii) The Respondent inspected the metering installation of the Appellant on 10.06.2019. During inspection, it was observed that the Meter (Sr. No. 361452 of HPL make) having Meter CT Ratio as 50/5 A was installed. However, the external CT of 200/5 A was found connected. The Appellant's MF should have been 4 (four) however inadvertently, on record it is taken as 1 (one) and therefore, it was billed with MF as 1 (One) instead of 4(four).

(iii) Power supply of the Appellant was released on 30.03.2013 under Commercial Tariff Category. The MF fed to the System was Four (4). However, the Appellant's supply was permanently disconnected in January 2014 due to non-payment of

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arrears. Power supply of the Appellant was reconnected in June 2014 after payment of outstanding amount. The MF of the Appellant was fed wrongly as One (1) instead of Four (4) into the computerised billing system. This is an error on the part of the Respondent.

(iv) The supplementary bill of Rs.29,42,410.06 was sent to the Appellant on 05.07.2019 towards MF recovery for the period from July 2014 to May 2019 under Commercial tariff category as the Appellant`s billing tariff category was Commercial and not Industrial.

(v) The Appellant approached the Forum on 20.09.2019. The Forum issued order dated 18.08.2020 as quoted above at para 3.

(vi) The revised supplementary bill was therefore processed on 17.11.2020 as per the order of the Forum and submitted for approval to the higher authorities. Since the tariff applied to the Appellant was Commercial, revision was also under the Commercial tariff category. The order of the Forum for fixing the tariff at Industrial rate has been implemented on 23.11.2020.

(vii) The Appellant filed review application with the Forum in Case No. 48 /2020 which is dismissed by its order dated 19.04.2021.

(viii) As per HO guidelines dated 26.07.2016, the Respondent can recover escaped billing.

(ix) First supplementary bill was issued in line with Section 56(2) of the Act which is quoted as below :

Section 56 (2) of the Act

"(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

(x) The Appellant has never applied to MSEDCL for tariff change from Commercial to Industrial tariff category for its so called IT business.

(xi) The Respondent prays to allow recovery towards application of wrong MF for the period July 2014 to May 2019.

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8. The hearing was held on e-platform on 13.08.2021 through video conferencing due to Covid-19 epidemic and the conditions arising out of it. During the hearing, the Appellant's representative argued the case, however, it is observed that he was not able to cohesively connect the threads of the case and was not therefore able to explain properly. This has also been reflected in its submission. The Respondent followed the suit as he too was not able to explain properly. Therefore, both the parties were directed to submit all issues connected with the case properly to get the correct picture. It appears that both the parties were not fully prepared to face the hearing.

9. In the meantime, the Appellant submitted its written argument on the date of hearing itself, important points of which in short are as below:

a) Power supply is used for IT and ITES purpose only. It is in the name of the Appellant and situated in registered IT Park. As per Commission's Tariff Orders, the IT and ITES purpose is covered under Industrial tariff. The Appellant is under a partnership deed arrangement, and its IT unit is duly registered with the Government Authorities and is having LOI, IT Registration Certificate.

b) As per the Forum's Order, the Respondent has to withdraw the supplementary bill from the CPL and has to levy Industrial (IT) tariff to it with effect from the date of connection i.e. .20.03.2013.

- The Respondent has not properly interpreted the Forum's order and causing injustice to the Appellant.

10. The Appellant in its additional submission on 17.08.2021 wherein it has quoted Section 56(2) of Electricity Act 2003 stating, it is crystal clear and squarely applicable here. The Appellant hereby submits strong objection in accordance with the Judgment dated 18.02.2020 of the Hon'ble Supreme Court of India in Civil Appeal of 1672 of 2020 (Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited V/s. Rahamatullah Khan alias Rahamjulla). The Hon'ble Supreme Court noted following observation in above order: -

"In the present case, the period of limitation would commence from the date of discovery of the mistake i.e., 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking

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recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act".

The Article 141 of Constitution of India is as below: -

Art. 141 provide that the law declared by Supreme Court shall be binding on all Courts within the territory of India. ... It provides that in order to do complete justice, Supreme court will have power to pass any judgment, decree or order as is necessary.

The Hon'ble Supreme Court directed in Civil Appeal of 1672 of 2020 dated 18.02.2020 the Licensee may take recourse to any remedy such as filing of Civil Suit for recovery of additional demand (retrospective recovery), but the Licensee is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act".

In view of the above-mentioned Judgment of Apex Court, the threats of disconnection given by MSEDCL are wrong, illegal, baseless, and not maintainable as per law. The MSEDCL cannot disconnect its power supply for time barred retrospective recovery.

11. The Respondent also submitted its additional submission on 24.08.2021 important points of which are as below:-

a. The Appellant has submitted the IT/ITES certificate in the name of Joshi Deshware and Associates, another certificate submitted in the name of Atul A. Joshi & Co. As per Commercial Circular 212 of the Respondent, the change in tariff category can be given after submission of certificate issued by various Govt. Authorities for IT/ITES. The Appellant has never submitted certificate in name of Manba Computech Pvt. Ltd. Hence, change in tariff category from 22.07.2016 to 22.07.2019 does not arise at all.

b. It is submitted that the second supplementary bill of Rs 7,57,646/- is not for 60 months but only for the period February 2020 to September 2020 (8 months) for 39588 units which are billed in the month of October 2020. In the same submission, it further stated that during this period, meter replacement was fed in respect of the Appellant, but meter was not physically replaced. The meter was replaced in the month of Sept 2020 and accumulated consumption of 39588 was billed in Oct 2020. This was Covid-19 epidemic period when readings were not taken, and bills were issued on average basis as per the Government

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guidelines. Moreover, the issue of this supplementary bill was not raised at the Forum. This bill is also at the Commercial tariff. The Appellant has prayed for Industrial tariff from April 2020 to Nov 2020 as per the Tariff Order issued by the Commission in the month of April 2020. This point is newly raised by the Appellant. The necessary action will be taken as per the Commission's order dated 30.03.2020 in Case No. 322 of 2019.

c. The PF Penal charges of Rs.49234/- was levied in the energy bill of October 2020 as per the order of the Commission and PF is calculated as per the formula given in tariff order.

d. Interest on Security Deposit from date of supply i.e. for the Financial Year 2013-14 to 2017-18 is calculated and added in the bill revision amounting to Rs. 62,939.71.

Analysis and Ruling

12. Heard the parties and perused the documents on record. The Appellant appears to have made confusing prayers like quashing the entire bill raised by the Respondent while agreeing to pay the recovery of 24 months. Similarly, it has deviated from prayers made at the level of Forum. It has also raised the issue of payment of interest on Security Deposit without clearly pointing out from which period it has not received.

There are three issues in this Representation which are framed as below.

(a) Whether registration in the name of Joshi Deshaware & Associates, and Atul A. Joshi & Co can be used by Manba Computech which is actually carrying the business of IT/ITES, is allowed for the purpose of tariff as per the tariff orders of the Commission?

(b) Issue of first supplementary bill of Rs.29,42,410/- for the recovery towards change in Multiplying Factor (MF) for 59 months (July 2014 to May 2019) on the basis of Commercial Tariff instead of Industrial Tariff.

(c) Quashing of second supplementary bill of Rs.7,57,646/- and waiver of power factor penalty which were not at the Forum level because the Appellant has filed

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the grievance with the Forum on 20.09.2019 when this supplementary bill, power factor penalty, etc was not issued.

The above issues are discussed and addressed as below: -

(a) Whether registration in the name of Joshi Deshaware & Associates, and Atul A. Joshi & Co can be used by Manba Computech which is actually carrying the business of IT/ITES, is allowed for the purpose of tariff as per the tariff orders of the Commission?

When the Commission issued order for application of Industrial tariff to IT/ITES business, it was specifically written that such businesses should have valid registration certificate of being IT / ITES as such, issued by GoM. On bare perusal of the Policy of the GoM with respect to IT/ITES business, it is seen that registration would be granted if certain conditions are fulfilled with respect to IT / ITES business. Therefore, conditions could not be same for all companies as mentioned by the Appellant the reason being all these companies are independent legal entities in the eyes of law notwithstanding whether one or more of the director/s is/are same. In my opinion, they ought to submit their financial returns to the appropriate authorities separately. This issue has not been touched upon by the Appellant nor did it undertake an exercise in this regard to prove their point. Therefore, conclusively for the purpose of this order, I am of the firm opinion that the Appellant cannot take shelter of registration certificate issued to somebody else, though their addresses are claimed to be same.

Therefore, issue (a) has been addressed accordingly.

(b) Issue of first supplementary bill of Rs.29,42,410/- for the recovery towards change in Multiplying Factor (MF) for 60 months (July 2014 to May 2019) on the basis of Commercial Tariff instead of Industrial Tariff.

MF has been wrongly considered as One (1) instead of Four (4) by the Respondent for arriving at KWH consumption from July 2014. The Respondent has corrected the MF from June 2019. Therefore, it has raised a supplementary bill of 59 (though both the parties have taken it 60 months) amounting to Rs. 29,42,410/-. This bill is at the Commercial

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tariff when the MF was wrongly considered as One (1). Until raising this supplementary bill by the Respondent, the Appellant never bothered to raise the issue of application of Industrial tariff instead of Commercial tariff. It has contested the issue for the first time by filing grievance with the Forum on 20.09.2019 while it is requesting for tariff change from 30.03.2013, the date of connection.

The Appellant on one hand, claims that it is having a valid registration of IT/ITES business, may be in the name of Joshi Deshaware & Associates, and on the other hand, it is taking shelter of the Judgment passed by ATE in Appeal No. 337 of 2016 which is issued on 12.02.2020. It is approbating and reprobating at the same time. The Judgment of ATE came to be delivered on 12.02.2020 whereas the Appellant's case is prior to 2020 and to be precise, the dispute is only for the period July 2014 to May 2019, when the Commission's order issued then was valid. It never disputed nor did it approach the Grievance Redressal Mechanism under the law for the so called wrongful application of Commercial tariff to it despite the Commission's order for application of Industrial tariff to IT/ITES business with valid Government registration certificate. Application of Industrial tariff to IT/ITES business with valid permanent registration with GoM for IT/ITES business was applicable till issue of Commission's order dated 30.03.2020 in Case No. 322 of 2019.

Therefore, prayer of the Appellant for application of Industrial tariff instead of Commercial tariff till 31.03.2020 does not sustain. However, the period of assessment of 59 months is not correctly taken in view of the provision of Section 56 (2) of the EA 2003. Catena of Judgements in this regard have been issued by the Constitutional Courts.

The Larger Bench of Bombay High Court has issued the Judgment dated 12.03.2019 in W.P. No .10764 of 2011 and others, which has interpreted Section 56 (2) of the Act. The relevant portion of the Section 56 (2) of the Act, and the Larger Bench Judgment is quoted below.

Section 56 (2) of the Act

> *"(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such*

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sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

The Larger Bench Judgment dated 12.03.2019 of the Bombay High Court.

"76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression "when such sum became first due" appearing in subsection (2) of Section 56.

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition.

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The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by sub-section (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as

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recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable."

As a result of the above discussion, the issues referred for our opinion are answered as under:

(A) The issue No. (i) is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

(B) As regards issue No. (ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

(C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.

Therefore, in view of the above, recovery of 59 months from July 2014 to May 2019 by way of issue of supplementary bill Rs. 29,42,410/- by the Respondent towards correction in multiplying factor is not correct. The period of assessment will be limited to 24 months prior to issue of supplementary bill which came to be issued in June 2019. The period therefore will be from June 2017 to May 2019 with Commercial tariff.

The issue (b) has been addressed accordingly.

(c) Quashing of second supplementary bill of Rs.7,57,646/- and waiver of power factor penalty which were not at the Forum level because the Appellant has filed the grievance with the Forum on 20.09.2019 when this supplementary bill, power factor penalty, etc was not issued.

This issue was not taken up by the Appellant in its original grievance application in Case No. 62 of 2019 at the Forum. Therefore, it can not be addressed at the Appellate level notwithstanding that the Appellant has raised it in its Review Application at the Forum in Case No. 48 of 2020. Nevertheless, if the Respondent's response on this issue

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is seen then nothing survives in this issue. This also gets subsequently addressed as the tariff would be applicable as an Industrial tariff category from 01.04.2020 which has been discussed and explained in later part of the order.

The Commission has issued order dated 30.03.2020 in Case No. 322 of 2019 which is effective from 01.04.2020, pursuant to ATE Judgment. In this order at para 8.11 under Tariff Categorization it has stipulated at sub-para 8.11.5 as below:-

> *"8.11.5 IT and ITeS Units: Under existing tariff structure, IT and ITeS units having registration certificate under GoM's IT and ITeS Policy are categorised under Industrial Category. The APTEL in its Judgment dated 12 February, 2020 in Appeal No. 337 of 2016 & Others has ruled that tariff categorisation cannot be based on any certification under Policy and it should be based on criteria specified under Section 62 (3) of the Act.* ***Accordingly, the Commission has removed the requirement of having certification under GoM Policy for claiming Industrial Tariff for IT and ITeS Units****" **(emphasis added)***

In view of the stipulation at para 8.11.5 quoted above the Respondent ought to apply the appropriate Industrial tariff applicable to IT / ITES business of the Appellant from 01.04.2020. Therefore, from 01.04.2020 till the application of this tariff by the Respondent, amount towards tariff difference from Commercial to Industrial needs to be refunded to the Appellant.

13. The Appellant and the Respondent have referred various Judgements / orders. However, in view of the detailed discussion and analysis as above I do not find it necessary to delve into it.

I therefore passed the following detail order.

(a) The Respondent to revise the supplementary bill of Rs.29,42,410/- towards recovery by way of application of correct multiplying factor for 24 months only instead 59 months. The period of recovery will be June 2017 to May 2019 and the tariff category will be Commercial Tariff without DPC and interest.

(b) The Respondent to issue bill with Industrial Tariff Category from 01.04.2020 till it actually applied the said tariff as per Commission`s MYT Order dated 30.03.2020

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in Case of 322 of 2019 and difference to be paid by way of adjustment in the ensuing bills.

(c) Interest of Security Deposit calculated by the Respondent for the Financial Year 2013-14 to 2017-18 be given in the ensuing bill of the Appellant.

(d) Other prayers of the Appellant are rejected.

(e) The order of the Forum is modified to the extent above.

(f) The Respondent is directed to take suitable action against the erring officials.

(g) Compliance to be submitted within two months from the date of issue of this order.

(h) The secretariat of this office is directed to refund the amount of Rs.25000/- deposited by the Appellant to the Respondent for adjusting it against the ensuing bills of the Appellant.

The Representation is disposed off accordingly.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai