

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 136, 137,138,139 & 140 OF 2022

In the matter of refund of infrastructure cost

| Rep.No. | Appellant | Consumer No. |
|----------|--------------------|--------------|
| 136/2022 | Prachi Creations | 250499008390 |
| 137/2022 | Kamlesh Synthetics | 250499008400 |
| 138/2022 | Manomay Tex India | 250480018059 |
| 139/2022 | Palak Garments | 250480018032 |
| 140/2022 | Seema Synthetics | 250480018075 |

..... Appellant

V/s.

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

Appearances:

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

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


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

Date of hearing: 13th March 2023

Date of Order : 11th April 2023

ORDER

These five Representations were filed on 30th August 2022 individually under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Common Order dated 19th July 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum).


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2. The Forum, by its Common Order dated 19th July 2022 rejected these grievance applications in Case No.12 of 2020. The subject is common in nature; hence, all these representations are clubbed together for the purpose of the common order.


3. Aggrieved by the order dated 19th July 2022 of the Forum, the Appellants have filed these representations. The physical hearing was held on 13th March 2023. Both the parties were heard at length. The written submissions and arguments are stated in brief as below:

- (i) The Appellants are LT-V A-II Industrial –Power loom Consumers of the Respondent from 16.12.2005 at 33 KV level at Gat.No.755, 756, A/P.Tardal, Tal. Hatkanangale, Dist. Kolhapur. The Appellants made applications for extension of load under Multi-Party Group. The details of Sanctioned Load, Contract Demand, additional load applied etc. are tabulated below:-

Table 1

| Rep.No. | Appellant | Consumer No. | Existing Sanctioned Load (HP) | Addl. Load applied (HP) | Total Sanctioned Load(HP) | Existing Contract Demand (KVA) | Addl. Contract Demand (KVA) | Total Contract Demand (KVA) | Activity | Address |
|----------|--------------------|--------------|-------------------------------|-------------------------|---------------------------|--------------------------------|-----------------------------|-----------------------------|-----------|---|
| 136/2022 | Prachi Creations | 250499008390 | 50 | 55 | 105 | 42 | 45 | 87 | Powerloom | Gat.No.755,756, A/P.Tardal, Tal. Hatkanangale, Dist. Kolhapur |
| 137/2022 | Kamlesh Synthetics | 250499008400 | 50 | 110 | 160 | 42 | 103 | 145 | | |
| 138/2022 | Manomay Tex India | 250480018059 | 105 | 0 | 105 | 78 | 12 | 90 | | |
| 139/2022 | Palak Garments | 250480018032 | 105 | 0 | 105 | 78 | 12 | 90 | | |
| 140/2022 | Seema Synthetics | 250480018075 | 105 | 0 | 105 | 78 | 12 | 90 | | |

- (ii) This is a multi-Party group of 6 power loom consumers, out of which five Consumers applied to MSEDCL, Ichalkaranji Division for Load Enhancement under LT multi-Party Power loom Group Scheme as tabulated in Table 1. The then SE, MSEDCL, Kolhapur Circle approved these applications on 20/02/2018 vide letter bearing No. SE/KPL/DYEEI/T/1268 on the condition of Dedicated Distribution Facility (DDF), and directed them to complete the work as per estimate issued by Dy. E.E., MSEDCL,



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Ichalkaranji Rural Subdivision bearing no. DyEE/ICH/RSDN/T/933 dated 27/03/2018 with estimate amount of Rs. 27,44,300/- for 33 KV HT Line 0.28 kms with 7 poles, all the concerned infrastructure work including 630 KVA Transformer and HT & LT metering work.

- (iii) The Appellants received firm quotations/demand notes from MSEDCL on 13/07/2018, and paid 1.3% Supervision Charges of Rs. 7,344/- in each case on 20/07/2018. The Appellants completed all the Infrastructure & Metering work as per estimate. Then SE, MSEDCL, Kolhapur Circle issued Load Release Letters on 26/10/2018 and the load was released.
- (iv) The issue of refund of Infrastructure Cost was pending due to Stay given by the Hon'ble Supreme Court in the Civil Appeal filed by MSEDCL. Hon'ble Supreme Court dismissed the Civil Appeal and then it became clear that the Appellants can claim for the refund of all the expenses done for the Non DDF Infrastructure Works and/or Metering Works.
- (v) After the Final Decision of the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 dated 10/11/2016 regarding Refund of such charges, MSEDCL issued its first Refund Circular on date 12/10/2017. Further MSEDCL issued Amendment Circular on dated 29/12/2017.
- (vi) On the basis of all concerned Regulations, MERC orders, Supreme Court Order & MSEDCL Circulars, Appellants submitted their complaint & application for refund with interest before IGRC on 10/10/2019. But IGRC rejected it on 11/12/2019. Then Appellants submitted their grievance before the Forum on 24/02/2020. But the Forum also rejected their grievance on 19/07/2022.
- (vii) **Submissions/Grounds in Support of the Representation -**

E.E., MSEDCL, Ichalkaranji Division has not given any response to their verbal demand of Refund on the basis of the Order of the Hon'ble Supreme Court & concerned MERC Orders and Regulations. Also, Internal Grievance Redressal Cell (IGRC) and then after the


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Forum has rejected their grievances. This denial of refund is totally wrong, illegal and against the orders of the Hon'ble Commission & Hon'ble Supreme Court & MSEDCL's circulars itself. Their detailed submissions in this regard are given in the following paragraphs.

- (1) **Work Done** - The work done by us as per estimate of MSEDCL is the extension of the existing HT 33 KV line up to their premises. The scope of the work was laying of @ 0.28 KM HT 33 KV line along with 7 poles and all the concerned infrastructure work including 630 KVA Transformer and HT/LT Metering work.

In case of Meter/Metering Cubical, Appellants wish to state that, as per MERC Order regarding "Schedule of Charges" dated 08/09/2006 in Case No. 70/2005 and corresponding MSEDCL Circular No. 43 dated 27/09/2006, meters are to be installed by the licensees. Also if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars.

- (2) **Feeder Details** - The name of the feeder is 33 KV Gangatara Feeder, which is emanating from 33/11 KV Shahapur Substation. Feeder from MSEDCL Substation was existing and Appellants have done only the further extension work of the existing feeder.
- (3) **Other Consumers** - There are many other HT & LT consumers getting power supply from the same 33 KV Gangatara Feeder.
- (4) **MERC Order 16/02/2008** - Only the extension work was done by us and many other consumers are getting supply from the same feeder. **"Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)"** is the Clarification given by MERC, on the demand of MSEDCL itself, in its order in Case No. 56 of 2007 dated 16/02/2008.
- (5) **Work Non DDF** - It is clear from the definition of DDF in the regulations & clarifications given by MERC in detail in the above-mentioned order, their


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feeder and the work done by us is clearly Non DDF. Hence Appellants are fully eligible for the refund of the said amount i.e. Rs. 27,44,300/- as per MSEDCL's own office estimate.

- (6) **MERC Order 17/05/2007** - Hon'ble MERC in its Order dated 17/05/2007 in Case No. 82 of 2006 has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts along with the interest thereon, that have been collected towards ORC, ORC-P or such other head based charges which are not allowed in Electricity Supply Code Regulations 2005 and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dated 08/09/2006.

Few Extracts of this Order are as below.

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


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

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

- (7) **MERC Order 21/08/2007** - Again the Hon'ble Commission has issued further Order dated 21/08/2007 in the same Case No. 82 of 2006, imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL for compliance as per Order dated 17th May 2007.

Few important extracts of this order are as below,

Para 7 - "Public Utilities such as MSEDCL are those industries who are affected with public interest and as such are subjected to regulatory


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Control and cannot be permitted to claim charges beyond what the legislature regards as legal."

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

- (8) **DDF Clarifications** - Again Case No. 56 of 2007 was filed by the same petitioner before MERC for the compliance of the directions issued on 17/05/2007 in Case No. 82 of 2006. In this case issues of ORC, DDF and Non DDF were fully discussed by the Hon'ble Commission. In this order, MERC has clarified the concept and issued detailed clarification on "DDF" on request of MSEDCL itself.


Few important extracts of this order are as below,

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

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

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

- (9) **Provisions of S.62 (6) of the E.Act 2003** - It is very much clear from the directions of MERC quoted in Para 7 above that "the directions of the


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Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally". Also it is clear from the directions quoted in Para 8 above that "consumers should not be burdened with infrastructure costs which are the liability of MSEDCL".


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

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

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

- (10) **MSEDCL Circular dated 20/05/2008** - After this order dated 16/02/2008, MSEDCL has issued circular on 20th May 2008 as Guidelines for release of new connections on the basis of above-mentioned MERC orders. The circular itself clarifies that all the Non DDF connections are refundable. MSEDCL has issued circular only for LT connections. Actually MERC order is for both LT & HT connections. It is clearly stated in this circular that in case of all LT industrial individual or group consumers, all the infrastructure will be created by MSEDCL and only SCC will be recovered.


MSEDCL Circular dated 21/12/2009 - MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21st December 2009 regarding refund of the infrastructure cost. It is pertinent to note here that it is


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clearly stated in the circular that the work may get executed under DDF & the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.

- (11) **MSEDCL Civil Appeal in Supreme Court** - In the meanwhile MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007), in which Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31/08/2007. Hence all the Refunds were stopped.
- (12) **Supreme Court Order dated 10/11/2016** - Finally the Civil Appeal filed by MSEDCL before the Hon'ble Supreme Court came for final hearing in the Year 2016. Hon'ble Supreme Court heard the matter, issued final order on dated 10/11/2016 and dismissed the Civil Appeal in toto.
- (13) **MSEDCL Circular dated 12/10/2017** - After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement concerned MERC orders in letter & spirit. MSEDCL issued circular for refund of SLC, ORC & meter cost after 11 months vide its circular No. CE/Dist./D-IV/MERC No. 25079 on 12/10/2017.
- (14) In this circular dated 12/10/2017, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by MERC in its order dated 16/02/2008 on demand of MSEDCL itself. But if the connection is actually Non DDF and it is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then in such Non DDF cases, the Infrastructure Cost imposed on consumers is nothing but ORC & refundable as per MSEDCL's own circular dated 20/05/2008. Hence the Consumers are eligible to get the refund along with the interest thereon.


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At many places, Consumers had asked for refund of Infrastructure Expenses. But MSEDCL always took stand before various forums & courts that

"The issue of refund of Infrastructure Cost is pending before Hon'ble Supreme Court."

- (15) **Supply Code Regulations** - After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually using the phrase DDF and imposing cost on consumers is totally illegal & against the orders of the Commission. Such imposed condition & imposed cost is nothing but ORC. Actually such act & such conditions of MSEDCL are against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

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

- (16) **Interest** - As per provisions of Section 62 (6) of the Electricity Act 2003, it is binding on the licensee to refund the excess recovered amount to the concerned person/consumer along with interest equivalent to the bank rate.
- (17) Actually our expenditure on the concerned work is more than the estimate of MSEDCL. But logically and reasonably, Appellants can claim the estimate amount only. Hence, on the basis of all above mentioned grounds, Appellants are eligible to get the refund of estimate amount Rs. 27,44,300/- along with the interest thereon at bank rate from dated 26/10/2018 up to the actual date of repayment.


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(18) **Compensation** - Their complaint is a complaint other than bills. Hence as per SoP regulations 2014, Regulation No. 7.6, *"In other cases the complaint shall be resolved during subsequent billing cycle."* Appellants have filed their complaints to IGRC in October 2019. It is necessary & binding on MSEDCL to resolve it in subsequent billing cycle means maximum up to the end of November 2019. Hence Appellants are eligible for SoP Compensation of Rs. 100 per Week or part thereof from 1st December 2019.

(19) **Consumers Consent, Agreement, No Protest & Multiparty Circulars** -

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

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

Also MSEDCL is the only licensee all over Maharashtra except Mumbai. MSEDCL has monopoly. Consumers have no other option. Consumers can not insist for any relief. On the contrary, MSEDCL insists illegal conditions on the consumers, imposes the infrastructure cost on the consumers against regulations & orders and without having any authority. Consumers have no other option but to give consent or sign or accept such illegal conditions.


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Any such consent or agreement which is not in consonance with the law or statutory regulations or orders of MERC has no binding effect in law. MSEDCL cannot impose the conditions which would defeat the regulations or orders consistent to regulations. This verdict is given by the Hon'ble Supreme Court & by the various Hon'ble High Courts in many cases. Also, this case is with respect to similar issue of DDF & Non DDF. Also the conditions in MSEDCL Circulars Nos. 6 & 151, which are inconsistent or against the Regulations & orders, are invalid & illegal.


MSEDCL's stand/submissions are against the order of the MERC dated 08/09/2006 in Case No. 70 of 2005 known as "Schedule of Charges". Infrastructure cost recovery is clearly prohibited and disallowed in this order.

MSEDCL's stand/submissions are against its own Commercial Circular No. 43 dated 27/09/2006 in compliance of above-mentioned order & also duly vetted by the Commission.

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

- All these 3 types of charges are the charges towards Infrastructure Cost. ORC was allowed up to 20/01/2005 i.e. up to the date of Supply Code Regulations. SLC was allowed up to 08/09/2006 i.e. up to the date of Schedule at charges. DDF is allowed from 20/01/2005, but in the cases only where the connection is actually DDF as per Supply Code Regulations & as per MERC Clarificatory Order dated 16/02/2008. In our case the connection is totally Non DDF. And as per MERC regulations & orders, in case of all Non DDF connections, Infrastructure Costs cannot be recovered from the consumers. Hence Appellants are fully eligible for refund.

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



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again illegally denying the refund of "Non DDF" connection. MSEDCL has violated & violating the following provision of the Act, the Regulations, MERC orders & its own circulars shortly listed as below,

- Section 43 of the Act - Universal Supply Obligation Cast on MSEDCL - Duty to supply on request.
- Regulation 3.3.3 of Supply Code Regulations - Infrastructure cost can be recovered only in DDF cases.
- MERC Order dated 08/09/2006 in Case No. 70 of 2005 Schedule of Charges - No recovery of infrastructure cost and Meter cost. It is to be claimed in ARR. Only Service Connection Charges & Processing Fees are allowed.
- MERC Order dated 17/05/2007 in Case No. 82 of 2006 - All over charged amounts must be refunded order Para 4 Para 9 reproduced in their submissions in Para 6 above.
- MERC order dated 21/08/2007 in Case No. 82 of 2006 - Para 7 & para 9 of the order is reproduced in their submissions in Para 7 above.
- MERC order dated 16/02/2008 in Case No. 56 of 2007 - Para 9 & 12 - DDF cannot be imposed. Paras reproduced in their Submissions in Para 8 above.
- MSEDCL's Own Circular No. 43 dated 27/09/2006 - Para 6.2 - No infrastructure cost recovery from the consumers is clearly mentioned.
- MSEDCL's Own Circular No. 22197 dated 20/05/2008 - Sr. No. 1 - All the infrastructure will be created by MSEDCL is clearly mentioned.

(21) **Augmentation, Additional Load, Higher Voltage Level etc. -**


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MSEDCL claimed that the augmentation in connected load is more than 25% & hence it can recover the cost as per Supply Code Reg. 3.3.4. This claim is totally wrong. MSEDCL itself has stated that the earlier connected load was 675 HP/534 KVA and now revised load is 685 HP/589 KVA. Hence this regulation is not applicable in their case.


If it is true that Appellants have demanded for additional load. But in case of additional load, there is no provision to recover the infrastructure cost as per MERC order dated 08/09/2006 & MSEDCL circular No. 43 dated 27/09/2006. In the circular it is clearly stated in Para 1.3 that

"In case the consumer applies for additional load or contract demand i.e. extension of load & if the release of additional load/contract demand entails any works, MSEDCL may recover the normative charges for the total load/contract demand."

It is stated by IGRC that the supply level was changed from 11 KV to 33 KV, hence the consumer has to incur required expenses. Also this point is clarified by MERC in its order dated 08/09/2006. Schedule of Charges in its ruling on page 29 as below,

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

(22) **H.C. Nagpur Bench Order dated 21/01/2020 in WP No. 1588 of 2019 -**


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CGRF has relied on this order and observed that the case is similar to their case. Only on the basis of this H. C. Order, CGRF has rejected their grievance.

Comments - CGRF ruling is totally wrong. The case is not similar. Infrastructure cost was imposed on us by the MSEDCL in its sanction letter & estimate. Also the HC stated only that the conduct of consumer is inappropriate, only on the basis of consumer's consent. But it is nowhere considered that such illegal conditions of MSEDCL against the Regulations are bad in law. Actually the conduct of the MSEDCL is against the law, unethical and inappropriate. No reasoning is given in the HC order. Also HC erred that the illegal conditions of MSEDCL are null & void if not consistent with Supply Code Regulations, as mentioned in Para 15 above.

Regulations Prevail -


Regulations are subordinate legislations and its provisions prevail over the circulars, agreements or orders which are inconsistent with or in contravention of the regulations. Hence it is clear that the **inconsistent directions** of MSEDCL through its Multiparty Circulars, Stamped Agreements and Refund circulars are null & void. Inconsistent conditions cannot be imposed and if imposed, such conditions become ultra vires while deciding the representation on merits.

Hence the IGRC & the Forum orders are totally wrong, illegal and needs to be squashed and set aside.

(10) Nature of Relief Sought from The Electricity Ombudsman -

Appellants hereby humbly pray to the Hon'ble Ombudsman as below,

- i. Their connections should be declared as Non DDF connections on the basis of Supply Code Regulations & Concerned MERC Orders & concerned MSEDCL Circulars.


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- ii. The expenditure amount as per MSEDCL estimate Rs. 27,44,300/- should be refunded to us along with the interest thereon at bank rate from 26/10/2018 till the date of repayment, or alternatively the total amount should be credited in their further bills.
- iii. SoP Compensation, for delay in Complaint Resolution, amount Rs. 100 per week from 1st December 2019 should be awarded.
- iv. Any other orders may be passed by the Hon'ble Ombudsman, in the interest of justice, as it may think fit & proper.

4. The Appellant vide its email dated 17.03.2023 submitted a rejoinder. The important issues are highlighted are as below:

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


It is clearly stated that

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

Also it should be noted that these directions are of the Year 1979. Then after 44 years are passed. If still government authorities like MSEDCL takes same plea, then it should not be relied upon. We request Hon; able Ombudsman to adopt the view of the Apex authority.

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

It is clearly stated in Para 18 that.


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

- It should be noted that this is the case under the Consumer Protection Act. In this context, provisions in Electricity Act are as below,

Section 173. (Inconsistency in laws): Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

- Section 174. (Act to have overriding effect): Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- It is necessary to note that the provisions of the Consumer Protection Act have overriding effect considering Section 173 and Section 174 of the Electricity Act 2003. Hence it feel that these directions of Hon'ble Supreme Court are binding on all judicial and quasi-judicial authorities.
- The Appellant referred to the Recent MERC order dated 2nd September 2022 in Case Nos 62, 63 & 64 of 2022It is clearly stated and repeated in the order that the regulations are the laws, and its provisions cannot be overruled. Infrastructure cost cannot be recovered from any LT or HT and even EHV consumers. Only normative charges should be recovered, and the remaining amount should be claimed in ARR by the Distribution licensee and the Transmission licensee also. Also, it is clearly stated by the Commission that any inconsistent conditions cannot be imposed by the licensee on


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the Consumers. Also, it is clear that all the directions given in this order are applicable to both transmission and distribution licensees.

- MSEDCL stated that this order is not applicable in above mentioned cases, because the consumers themselves have applied for connections at Higher Voltage Level and hence they are bound to do the necessary expenses as per SoP Regulations 2014 Regulation No 5.3 proviso. But this is not true.

- MERC Ruling Para 18.3 of the above-mentioned order reads as below,


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

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

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

"....

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


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

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

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

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

- (i) The Appellants are LT-V A-II Industrial –Power loom Consumers of the Respondent from 16.12.2005 at 33 KV level at Gat.No.755, 756, A/P.Tardal, Tal. Hatkanangale, Dist. Kolhapur.
- (ii) The Multiparty Group consists of
 - (1) M/s Ashish International Pro. M K Laddha (Con. No. 250499008410, 105 HP)
 - (2) M/s Prachi Creation. (Con. No. 250499008390, 105 HP load)
 - (3) M/s Kamlesh Synthetics Pro. KK Ladha (Con. No. 250499008400, 105 HP load)


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- (4) Manomay Text India Pvt Ltd (Con. No. 250480018059 , 105 HP Load)
- (5) Palak Garments (Con. No. 250480018032, 105 HP Load)
- (6) Seema Synthetics (Con. No. 250480018075, 105 HP Load)
- (7) Ambika Synthetics, Prop. A S Laddha , 50 HP ----- Permanently Disconnected
- (8) Khusboo Syntex Prop. S H Ladda, 105 HP ----- Permanently Disconnected

Out of these eight consumers, five consumers have filed this representation. The details of Sanctioned Load, Contract Demand, additional load applied etc., are captured in Para 3(i) Table 1. These consumers are in a Multiparty Group in the same premises under one roof. The load is as per Commercial Circular No. 151 dated 25.11.2011.

- (iii) Initially, the Appellants - consumers were in Multiparty Group Agreement from 16.12.2005 and governed by then prevailing Commercial Circular No. 6 dated 12.05.2006, and connected on 11 KV Voltage Level abiding with the terms and conditions of the Commercial Circular No 6. They were 8 consumers under one shed initially. Thereafter 5 live consumers indicated in Table 1 at Para 3 (i) applied to avail power supply at 33 KV level as per application on **27.07.2017**, and the date of payment was **20.07.2018**. Accordingly, the Appellants laid the 33 KV line which is governed by Commercial Circular No. 151 dated 25.11.2011. The sanction of the load was done on higher voltage level (33 KV level) instead of 11 KV level as per request of the Appellants. **As prescribed in Regulation 5.3 of SoP regulations 2014, when supply is released at a higher voltage than what is envisaged under the SOP Regulations, expenses towards erection of infrastructure are to be borne by the consumer.** The said Regulation is produced as below: -

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

- (iv) The Forum Kolhapur and the Electricity Ombudsman have rejected similar cases to release of higher voltages in M/s Tirupati Magaswargiya Indus Co Ltd Vs


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MSEDCL in case No 39(2019-2020) and case no 61 of 2021 Respectively. (?). The Respondent has 11 KV network in the said premises, however only because of Appellants' application, the sanction was given on higher voltage level than prescribed in SOP regulations.

- (v) Further in Case No 5 of 2020 in M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others V/s MSEDCL, the Commission in its order para no.17 has cited the Judgment of the Hon'ble Supreme Court in case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. The ratio of the said judgment is applicable to the present case also.
- (vi) The consumers' plea for refund of infrastructure cost is misleading, as the date of connection of the Appellants was 16.5.2006. The supply was released on 11 KV voltage level. As per load enhancement request of the consumers, voltage level was enhanced from 11 KV to 33 KV. The 11 KV network was available at premises of the consumers. The consumers plea to consider this infrastructure in ARR is not relevant.
- (vii) The load of the single combined premises is 685 HP. As per SoP Regulations 2014, the consumer is eligible for only HT connection. However, the Appellants opted for Multiparty Group Agreement Scheme and hence, the consumers are enjoying the benefits of LT connection.

The work involved in this case is

- 1) 0.28 KM 33 KV HT line:
- 2) 630 KVA Transformer
- 3) 1 No. HT cubicle
- 4) 6 Nos of LT meters

The previously existing 315 KVA transformer and surrounding infrastructure was dedicated to the consumer, and MSEDCL cannot use this transformer as well as infrastructure since it was in the consumers' premises and covered under multiparty agreement. **At the time of load enhancement, the consumers shifted voltage level from 11 KV to 33 KV level. The then, existing asset of old transformer of**


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315 KVA, HT cubicle, load break switch, etc. was taken by the consumers and not by MSEDCL.

- (viii) At present, the 630 KVA transformer as well as extension of 33 KV line are dedicated to the Appellant consumers, and MSEDCL cannot use this asset since it is in the consumers' premises. The Respondent obeys the terms and condition of the multiparty agreement. Also, the portion of land where the earlier assets were installed is in the possession of these consumers, as it is the property of consumers itself. The Respondent referred to the Regulation 5.3 a(ii) of SOP regulations 2014 which read as


*“(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and contract demand not exceeding 80 kW/ 100 kVA in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187kVA
: Provided that in case of multiple consumers with contract demand more than 150 kW / 187 kVA, in the same building / premises as a single point supply in the Municipal Corporation areas where such limit would be 480 kW / 600 kVA.”*

- (ix) The said regulation was amended on **19.09.2017** and is read as:

*“(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and contract demand not exceeding 150 kW/ 187kVA.
: Provided that in case of multiple consumers in the same building / premises with cumulative contract demand exceeding 150 kW/ 187 kVA, such limit would be 480 kW / 600 kVA.”*

- (x) **The details of the premises: -**

Under the normal course, there should be physical and defined separation of premises for providing any connections. However, it is only because of multiparty connections that the parties are taking this liberty of common


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premises. Regulation 3.4.3 MERC (Conditions of Supply) Regulation 2005 states that

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


SOP regulation 2014 and further notification dated 18.09.2017 state that the limit of multiple connections land in a single building / premises is up to 600 KVA; however in MERC Supply Code Regulations 2005, it is clear that

“each separate establishment shall be given a separate point of supply”

- (xi) The word “separate establishment” is very important to understand that MERC SOP Regulations have increased the limit to 600 KVA, in view of multiple connections with specified demarking and physical separation, which is misinterpreted by the Appellants. Connections of Multiplex and malls can be incorporated in this provision, as all establishments are separate and have physical separation or identity.
- (xii) In the above case all the establishments are not separate and are in one shed without physical separation. However, they are given different point of supply, which signifies the violation of MERC Condition of Supply Regulation 3.4.3, and hence is clearly governed by Commercial Circular No 6. The purpose of all connections is for power looms.

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

- (xiii) MSEDCL has filed W.P. No 3386/2013 challenging the order dated 27.09.2012 passed by CGRF Kolhapur in Case No 35 To135 of 2012-13 whereby MSEDCL it was directed to refund the cost of meter to multiparty consumers. In the said writ petition Hon’ble High Court passed the interim order on 18.07.2013 and granted stay to the order of CGRF Kolhapur. The facts and law points involved in the said writ petition and the present case are identical & similar. Therefore the


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present case is liable to be dismissed or liable for stay till the decision of the Hon'ble High Court.

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

- (xiv) An amount which is not accounted for in the books of MSEDCL cannot be incurred in ARR. The benefits of LT connection are already availed by this group of consumers, and the same also must be withdrawn as per SOP regulation. The cost of infrastructure cannot be burdened to some other class of consumers.
- (xv) These consumers are governed by the prevailing commercial circular no 151 dated 25.11.2011. The connection is sanctioned vide no SE/KPC/DYEE(I)/122/2015-16 video 9532 & 9538 dated **24.11.2016**, and further revised as SE/KPC/DYEE(I)/153/2017-18 vide no **1432** dated **16.02.2017**. The consumers accepted the sanction and had paid the charges for connection on **7.12.2016** abiding with the terms and conditions of sanction. The consumers had paid the amount at that time without any protest or grievance, and done the work under DDF scheme, which is also in line with MERC Conditions of supply code Regulations 2005.
- (xvi) The Appellants had paid only 1.3% supervision charges, and no other ORC /SLC or any amount was recovered. However, Hon'ble Supreme court has directed in Civil Appeal No. 4305/2007 to refund the collected amount of SLC, ORC, and Meter charges to the consumers collected from 08.09.2006 to 30.04.2007. As the amount under ORC, SLC or consumer meter cost were not recovered, the question of refund does not arise in this particular case.
- (xvii) The consumer is abiding with one aspect of agreement, however, is denying the other aspect of expenses which are actually dedicated and used by himself only. In short, the consumer enjoyed the benefits under the multiparty scheme and afterwards they have opted for refund of infrastructure cost against the principle of equity. If the multiparty agreement has to be revoked, it must be revoked in toto, along with its benefits as well as costs.

Regulation 3.3.8 of Supply Code Regulations 2005 read as


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“3.3.8 Where the Distribution Licensee permits an applicant to carry out works under this Regulation 3.3 through a Licensed Electrical Contractor, the Distribution Licensee shall not be entitled to recover expenses relating to such portion of works so carried out by the applicant: Provided however the Distribution Licensee shall be entitled to recover, from the applicant, charges for supervision undertaken by the Distribution Licensee, at such rate, as may be approved in the schedule of charges under Regulation 18, not exceeding 15 per cent of the cost of labour that would have been employed by the Distribution Licensee in carrying out such works.”

(xviii) Regulations 3.3.3 read as

“3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.”


(xix) Also, further in Regulation 3.3.5 read as follows

“3.3.5 Where the Distribution Licensee has recovered the expenses referred to in Regulation 3.3.3 above at any time after the notification of these Regulations, the consumer shall be entitled to the depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations: Provided that where such facilities have been provided by the consumer, then such facilities may be retained by the consumer upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations.”

(xx) Also, further in Regulation 3.3.5 read as follows

“3.3.5 Where the Distribution Licensee has recovered the expenses referred to in Regulation 3.3.3 above at any time after the notification of these Regulations, the consumer shall be entitled to the depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations: Provided that where such facilities have been provided by the consumer, then such facilities may be retained by the consumer upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations.”

(xxi) The Respondent referred the orders passed by Hon'ble Electricity Ombudsman in support of its case which are as below:


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- a. Representation No.71, 72 73,74, 75 & 76 of 2022I in R/o Multiparty Group of Smt. Suyash Yantramag Audyogik Sahakari Sanstha Maryadit and other 5.
- b. Representation No .77, 78, 79, 80, 81 & 82 OF 2022 in R/o Multiparty Group of Sangram Textiles and other 5.
- c. Representation No 83 & 84 OF 2022 in R/o Multiparty Group M/s Mahalaxmi Textiles and other.


(xxii) The benefits of the Multiparty connections were beneficial for consumers and MSEDCL. In fact the benefits of consumers are rather more than MSEDCL

(xxiii) In view of the aforesaid facts, it is requested to dismiss the present application.

Analysis and Ruling

6. Heard the parties and perused the documents on record. The Appellants are LT-V A-II Industrial –Power loom Consumers of the Respondent from 16.12.2005 at 11 KV level at Gat.No.755, 756, A/P.Tardal, Tal. Hatkanangale, Dist. Kolhapur. These five Appellants are located at one premises under the multiparty Scheme. The 11 KV feeder was extended to the Appellants’ premises and 315 KVA (11KV/ 433 V) Distribution Transformer was installed in the premises. The Appellants are connected on LT power supply and are billed under LT Power loom tariff category from the date of release of connection.

7. Further, the Appellants applied for additional load under “LT Multi Party Power Looms Group” for their Units on 27.07.2017. They paid the supervision charges on 20.07.2018, which can be considered as the date of cause of action. The Appellant approached the Forum on 24.02.2020 which is within the prescribed period of two years from the date of cause of action. The details of Sanctioned Load, Contract Demand, and additional load applied are captured in Table 1 of Para 3(i). In addition, the Appellants specially opted for the additional load on 33 KV level instead of 11 KV level in the interest of superior quality of electric supply with comparatively less interruptions. The Appellants have given consent to sanction the load under Multiparty Group Agreement and with higher voltage level of 33 KV. As per SoP Regulations, the appropriate voltage level would be 11 KV; however, the Appellants preferred the higher 33 KV voltage level instead of 33 KV level.


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8. Considering the various submissions, arguments, judgments, orders referred to by the Appellants and the Respondent, this Authority has framed the following issue to decide these Representations.


Issue: Whether the Appellants are eligible for refund of infrastructure cost in view of work carried out under “LT Multi-Party Power Looms Group” Scheme and that too on 33 KV level voltage instead of 11 KV level?

The Appellants opted for Multi- Party Group connections where the Appellants have to incur the expenditure on their own, as they are the beneficiaries of the scheme, as all connections of power looms were given in one “premises” without any separation. The Respondent issued a Commercial Circular No. 6 of 2005 dated 01.09.2005 in the subject matter of “Power supply to individual entrepreneurs coming under one premise to establish Power- Looms”. The Respondent further issued a Commercial Circular No. 151 dated 25.11.2011 for re-delegation of power to field offices for sanctioning of load which were assigned in Head Office as per circular No. 06 of 2005. The preamble of circular No. 151 is reproduced as below:

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

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

“1. It is proposed to limit this facility only in respect of power loom consumer where there is a severe space constraint. This is applicable in respect of industrial complex building/shed.



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2. *An individual entrepreneur having load requirement up to 107 HP/201 HP form a group of max. 10/5 entrepreneurs situated in the same industrial complex building shed having total load of a Group shall be less than 500 KVA.*
3. *All these entrepreneurs can install a common transformer of appropriate capacity equivalent or more than the aggregate load requirement of all the entrepreneurs in the respective group.*
4. *All the individual entrepreneurs in the respective groups having load requirement up to 107HP/201 HP shall be Low Tension consumers of the Board. They will have to opt for M.D. base tariff.*

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

1. *The main consumer shall install & maintain the transformer of requisite capacity.*
2. *All the expenditure as may be required for release of Multi-Partite Connection will be borne by the consumer/consumers.*
3. *All these consumers billed on LOT. side must opt for LT-MD tariff and LT-TOD meters to be installed for all these consumers in case of LT connections.*
4. *The multi — Partite consumers shall be billed energy charges as per the energy actually consumed & recorded by the respective energy meters and shall be billed Demand Charges as per Billing Demand of the individual consumer, to be determined in accordance with the prescribed guidelines, tri partite agreement. Main consumer shall be billed on HT side metering.*
5. *As compared to the above, the Main consumer shall be billed energy charges on the basis of energy actually & collectively consumed by all the consumers & recorded in the meter installed on High Tension side less energy billed to the multi — Partite consumers.*
6. *Similarly, the Demand registered / consumed by the Main Consumer shall be equivalent to the Demand registered in the meter on High Tension side less aggregate of the 75% of the Demand recorded by the individual multi • — Partite consumer and based on derived Demand, the Billing Demand of the Main Consumer shall be determined. However, in case the derived Demand of the Main Consumer happens to be more than the Contract Demand, the Main Consumer shall be liable for penalty for exceeding Contract Demand.*
7. *All other NOCs, permissions, if any, will have to be obtained by the consumer before release of supply.*
8. *It will be mandatory for the main consumer of the group to ensure that the transformer is installed in a closed room and is accessible only to MSEDCL'S*


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

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

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

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

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


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

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

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

11. Under the above multi-party agreement, it is seen that the Appellants as well as the Respondent were both benefitted. In other words, this scheme got a good response precisely because it was a win-win situation for both parties.

The Appellants were benefitted in the following ways:


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- a) Got supply for power looms under the LT tariff category with more Government subsidy than HT tariff category.
- b) Space constraint issue was solved for individual consumers, by providing supply to multiple consumers in one premises.
- c) Common infrastructure including distribution transformer, metering kiosk etc. were developed by these multiple consumers in one premises resulting into reduction of cost.
- d) Less power interruption as the transformer and LT lines were dedicated to only these consumers.
- e) LT meters are installed in control panels in limited / compact space instead of separate CT meter box.

The Respondent was benefitted as below:

- a) Common infrastructure was provided by these multiple consumers thereby there was no burden on the Respondent to provide infrastructure, and hence, no budgetary provision was required to be made in its Annual Revenue Requirement.
- b) Common energy audit meter was installed in addition to the individual meters so that if there was any considerable difference in the energy consumption, the loss in consumption units was proportionately imposed on them. Hence the energy consumed was automatically audited.
- c) 100% recovery against energy consumption was ensured, as supply of all would be disconnected even if one consumer defaulted.

12. This scheme was initiated by the Respondent for multiparty power loom consumers in a common premises, through an agreement under certain terms and conditions as highlighted in in para 9 of this order. This was an internal arrangement by the Respondent for the welfare of the power loom industry in the State of Maharashtra to avoid its migration to other states. Even though the power looms set up in common premises were eligible to


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get a common HT connection with higher tariff, the govt, as a special case, applied concessional LT tariff with accompanying subsidy.

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


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

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

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

15. It is pertinent to note that the sanction of the load is made on higher voltage of 33 KV instead of on 11 KV level as prescribed in MERC SOP regulation 2014. When power supply is released at a higher voltage than what is envisaged under the SOP Regulations, related


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expenses are to be borne by the consumer. The Commission in its Supply Code and Standard of Performance Regulations 2020 has clarified this aspect. The Relevant regulations are quoted below:

“3.2. Except where otherwise previously approved by the Authority, the classification of installations shall be as follows: -

- a. Two wires, single phase, 230 / 240 volts- General supply not exceeding 40 amperes.*
- b. Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and Sanctioned Load/Contract Demand not exceeding-160 kW/ 200 kVA:*

Provided that in case of multiple Consumers in the same building / premises with cumulative Sanctioned Load/Contract Demand exceeding 160 kW / 200 kVA, such limit would be 480 kW / 600 kVA.

- c. Three phase, 50 cycles, 11 kV – all installations with Contract Demand above the limit specified in the clause (b) and up to 3000 kVA:*

Provided that in Metropolitan Area or in case of supply to an installation through an express feeder in other area, the Contract Demand limit would be 5000 kVA.

- d. Three phase, 50 cycles, 22 kV – all installations with contract demand above the limit specified in the clause (b) or clause (c) and up to 7500 kVA:*

Provided that in Metropolitan Area or in case of supply to an installation through an express feeder in other area, the Contract Demand limit would be 10,000 kVA.

- e. Three phase, 50 cycles, 33 kV – all installations with Contract Demand above the limit specified in the clause (b) or clause (c) or (d) above and up to 10,000 kVA:*


Provided that in Metropolitan Area or in case of supply to an installation through an express feeder in other area, the Contract Demand limit would be 20,000 kVA.

- f. Three phase, 50 cycles, Extra High Voltage – all installations with Contract Demand above the limit specified in the clause (d) or clause (e).*

Provided that in case the Consumer who is eligible for single phase connection wants to avail supply at three phase, or any Consumer who seeks supply at the voltage level higher than its eligible voltage, such Consumer can avail such supply, if it is technically feasible and by incurring required expense:

Provided further, the licensee may release electricity supply at the voltage higher or lower than specified above only under exceptional circumstances based on the technical feasibility and considering the system constraints:”

16. The Appellants referred to various orders of the Commission, and the Judgment dated


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10.11.2016 in Civil Appeal of 4305 of 2007 of Hon'ble Supreme Court based on the order dated 08.09.2006 in the matter of Schedule of Charges in Case No. 70 of 2005 of the Commission. However, the Appellant opted to take benefits of multiparty group connections without any pressure from the Respondent. Hence all these orders / judgements do not support the Appellants' claim. In addition, the Appellants also cited various judgments and orders which are not applicable in this instant case.

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

18. Hence, the Representations are rejected and disposed off accordingly.

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


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