

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 165 OF 2023

In the matter of tariff difference between commercial and industrial for IT/ITES activity

A. B. Studios Pvt. Ltd. .... Appellant  
(Consumer No. 000430015770)

V/s.

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

Appearances: -

Appellant: 1. Chaitanya Chandratre  
2. Suraj Chakraborty, Representative

Respondent: 1. Dhananjay Mohod, Executive Engineer, Vashi Dn.  
2. Rajiv Waman, Asst. Law Officer, Vashi Circle  
3. Sanjay Pol, Addl. Executive Engineer, Koparkhairane Sub-Dn.


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

Date of hearing: 18<sup>th</sup> January 2024

Date of Order : 29<sup>th</sup> February 2024

### ORDER

This Representation was filed on 2<sup>nd</sup> November 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 27<sup>th</sup> July

  
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2022 in Case No. 64 of 2021-22 and Review Order dated 11<sup>th</sup> September 2023 in Case No. R-88 of 2022-23 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum).


2. The Forum, by its order dated 27<sup>th</sup> July 2022 dismissed the grievance application. The Forum had directed the Appellant to submit documentary evidence/ proof of the activity of IT/ITES in the premises from April 2020 to March 2021 within 2 to 3 days. However, the Appellant failed to submit the statutory documents for showing the activity of IT/ITES (*Note: Permanent Registration Certificate*). Therefore the Forum dismissed the case for noncompliance of its directions. The Applicant filed a Review Application in Case No. R-88 of 2022-23 on 22.08.2022. The Forum by its review order dated 11.09.2023 dismissed the review application.

3. Aggrieved by the original order and review order of the Forum, the Appellant has filed this representation. The e-hearing was held on 18<sup>th</sup> January 2024 through video conferencing. Parties were heard at length. The Respondent filed its reply on 28.12.2023. For easy understanding, first the Respondent's submissions and arguments are stated as below:

- (i) The connection details of the Appellant (A. B. Studios Pvt. Ltd.) i.e. Consumer Number, address, Sanctioned Load, Contract Demand etc., are tabulated as below:

Table 1:

Name of Consumer	Consumer No.	Address	Date of Supply	Sanctioned Load (HP)	Contract Demand (KVA)
A. B. Studios Pvt. Ltd.	000430015770	Unit No 123, Building No 02(A-3) Sector- 1, M.B.P. Mhape, Navi Mumbai	30.10.2010 (Original Consumer) & A. B. Studios Pvt. Ltd. from Oct. 2019	37	49

  
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- (ii) The electric supply vide Cons. No. 000430015770 was given in the name of Idea Business Solutions Pvt. Ltd. in 2010 for industrial purpose. LT-V Industrial tariff was applied from the date of supply till Dec.2016.
- (iii) In Dec.2016, inadvertently due to name similarities (the consumer was mistaken to be a mobile tower), the tariff of this consumer was changed to LT-Commercial as per Tariff Order dated 03.11.2016 of Maharashtra Electricity Regulatory Commission, wherein Commercial tariff was applied to Mobile Towers. This Tariff was challenged in the Court of Law by mobile tower companies. The Court issued an order to maintain the status quo. Hence, the disputed mobile tower cases were tagged under industrial tariff category in the billing system.
- (iv) The Appellant (A. B. Studios Pvt. Ltd.) never intimated the Respondent regarding purchase of this property in Oct. 2019 and that it was using power supply for its so-called IT/ITES purpose. The Appellant did not have a valid permanent registration certificate till date, and hence was supposed to be billed under commercial tariff category as per Tariff Orders of the Commission in force till March 2020, wherein it was compulsory to produce permanent registration certificate. Therefore, for the period Dec.2016 to Mar. 2020, the said connection was billed as per Industrial tariff.
- (v) The Appellant, A.B. Studio Pvt. Ltd. applied for change of name in Nov. 2019 from “Idea Business Solutions Pvt. Ltd.” to “A.B. Studio Pvt. Ltd.”

The Appellant submitted the following documents with this application:-


- Letter of Intent (LOI) dated 30.08.2019 indicating purpose as **Animation, Visual effect, Gaming (IT/ITES)** signed by Technical Advisor, MIDC, Mumbai,
- The assignment deed dated 23.10.2019 between Swells Group India Pvt. Ltd. (Formerly known as Idea Business Solutions Pvt. Ltd.)

The change of name was effected in the month of Jan. 2020.

  
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- (vi) The order of the Commission was challenged by Bharti Airtel Ltd. and others before the Appellate Tribunal for Electricity (ATE), New Delhi vide Appeal No.337 of 2016 regarding the applicability of commercial tariff category to mobile towers. The ATE initially had directed to continue to bill the mobile towers under industrial tariff category till further order. Subsequently, ATE, by its final order dated 12.02.2020 directed to reclassify the use of mobile/ telecommunication towers etc. under Industrial tariff category instead of Commercial. After this decision of ATE, the tariff of all mobile towers was changed to Industrial in Apr. 2020, and the tariff difference between LT-II Commercial and LT-V Industrial for the previous period was credited in the energy bill of April 2020 of all mobile towers which were tagged as industrial consumers. Inadvertently, as Appellant had been tagged as a mobile tower, the tariff difference between commercial and industrial of the previous period was mistakenly auto credited by Rs. 2,80,531/- in the month of Apr. 2020. After this wrong credit came to notice, a debit adjustment of Rs.2,75,758/- (as per calculations) was charged in the month of Jul. 2020 by MSEDCL in the energy bill of the Appellant for nullifying the effect of the wrong tag tie –up in the system. *[This para is just for intimation and has nothing to do with the present grievance]*
- (vii) **The Asst. Engineer of the Respondent inspected the premises of the Appellant on 23.03.2021. During the inspection, it was observed that the activity of the Appellant was commercial in nature. However, the Appellant was being billed under industrial tariff category from April 2020 onwards. Therefore, the tariff of the Appellant was changed from Industrial to Commercial in Apr. 2021, and recovery of tariff difference between LT-V Industrial and LT-II Commercial of Rs.3,29,646/- was charged for the period of Apr. 2020 to Mar. 2021 in the energy bill of May 2021. [Note: This recovery of tariff difference is the basic grievance]**

  
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- (viii) The Appellant submitted a letter dated 28.05.2021 and requested for change of tariff from LT-II Commercial to LT-V Industrial. The installation of the Appellant was again inspected on 10.06.2021 wherein the activity of the Appellant was found as Animation, Visual effects, gaming etc. which is categorized presently as IT/ITES activities. The tariff of the Appellant was again changed from commercial to industrial in Aug. 2021. The tariff difference between commercial and industrial tariff category of Rs. 97,565/- for the period from Jul. to Aug. 2021 was credited in the Appellant's energy bill of Dec.2021.
- (ix) Industrial tariff is applicable to IT/ITES consumers since the inception of the IT/ITES policy 2003 (dated 12.07.2003.) However, the Hon'ble Commission in its Multiyear Tariff (MYT) order dated 26.06.2015 in Case No.121 of 2014 clarified that Industrial tariff shall be applicable to only those IT/ITeS consumers who had a permanent registration certificate. These provisions were continued by the Commission in its subsequent tariff orders as below:
- Case No.48 of 2016 dated 26.06.2015.
  - Case No. 195 of 2017 dated 12.09.2018.
- (x) The ATE in its Judgment dated 12 February 2020 (in Appeal No. 337 of 2016 & Others) ruled that tariff categorization cannot be based on any certification, and it should be based on the criteria specified under Section 62 (3) of the Act, i.e. purpose of use. The said Judgment of ATE was advisory in nature. Accordingly, the Commission removed the requirement of certification for claiming Industrial Tariff for IT and ITeS Units in its MYT Tariff Order dated 30.03.2020 **passed in Case No.322 of 2019 effective from 01.04.2020. This relaxation of the requirement of permanent registration certificate for IT/ITeS establishments is prospective in nature.** This was a policy matter, and the Respondent is bound to follow the Tariff Orders of the Commission.


  
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- (xi) In view of these tariff orders, the existing tariff of the Appellant at the relevant time could not be changed to industrial till March 2020 as the Appellant did not have a permanent registration certificate. *[Note: The Secretariat of this office telephonically requested the Appellant to submit its permanent registration certificate on 21.02.2024; however, the Appellant sent the copy of LOI which was already on record.]*
- (xii) As the Appellant did not hold a valid Permanent Registration certificate for the period Dec. 2016 to Mar. 2020 *[Note: actual period Oct. 2019 to Mar. 2020]*, the application of commercial tariff during part of the said period is legal and proper.
- (xiii) The Forum, by its order dated 27<sup>th</sup> July 2022 has already considered and addressed all issues and passed a reasoned order; therefore, it needs no interference. The Respondent prays that the representation of the Appellant be rejected.


4. The Appellant's written submissions and arguments are stated as below:

- (i) The Appellant is an IT/ITES unit as per the policy and guidelines of Government of Maharashtra (GOM). The connection details of the Appellant are tabulated in Table 1 of Para 3(i). The Appellant's business is concerned with computer graphics i.e. compositing multiple visual elements from various sources into a single image or sequence, especially compositing with green screen. With green screen footage, you take the subject in front of the green screen, key out the green, and then composite with a background or matte painting. They are also experts in rotoscoping which is an animation technique that animators use to trace over motion picture footage, frame by frame, to produce realistic action. (Originally, live-action movie images were projected onto a glass panel and traced onto paper). Due to the quality of services with cost effectiveness, many industries work with the Appellant.

  
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- (ii) Initially, the Appellant established its business in 2015 at Andheri, but due to the need for secure and large premises, shifted to New Mumbai. It purchased the said premises as shown in Table 1 from Idea Business Solutions Pvt. Ltd. on 23.10.2019. The Appellant applied for change of name in Nov. 2019 from “Idea Business Solutions Pvt. Ltd.” to “A.B. Studio Pvt. Ltd.” on the strength of the documents listed in para 3 (v). The change of name was effected in the month of Jan. 2020. The Appellant was billed under commercial tariff category from Oct. 2019 to March 2020. The Respondent changed the tariff category from commercial to industrial from April 2020 onwards.
- (iii) The Appellant put on record the Udyog Aadhaar Certificate dated 22.11.2019 indicating its activity as MSME.
- (iv) The Respondent inspected the installation of the Appellant on 23.03.2021. After inspection, the Respondent changed the tariff category to commercial without going into details of the purpose. The Respondent issued a tariff difference supplementary bill of Rs.3,29,646/- from LT-V Industrial to LT-II Commercial for the period of Apr. 2020 to Mar. 2021. The Appellant protested against this supplementary bill by its letter dated 28.05.2021 and requested for change of tariff from LT-II Commercial to LT-V Industrial. The Respondent re-inspected the installation on 10.06.2021, and this time found that the use was indeed IT related. The tariff of the Appellant was reverted from commercial to industrial in Aug. 2021. However, the tariff difference from commercial to industrial of only Rs.97,565/- (for the period from Jul. 2021 to Aug. 2021) was credited in the Appellant’s energy bill of Dec.2021. The period of April 2020 to March 2021 was not covered.
- (v) The Appellant filed a grievance application in the Forum on 02.08.2021 for refund of tariff difference of Rs. 3,29,646/- between commercial and industrial. The Forum by its order dated 27.07.2022 dismissed the grievance application. The Applicant

  
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filed a Review Application on 22.08.2022 which was also dismissed. The Forum failed to understand that the activity of the Appellant was IT/ITES from Oct. 2019 onwards.

- (vi) In view of the above, the Appellant prays that the Respondent be directed
- a) to refund the tariff difference of Rs. 3,29,646/- between commercial and industrial tariff category for the period from April 2020 to March 2021 along with interest of 6 %.
  - b) to revise the bill to industrial as per agreement and certificate of IT/ITES on record from Oct. 2019 onwards.

### **Analysis and Ruling**

5. Heard the parties and perused the documents on record. The details of the connection are tabulated in Table 1.

6. The Appellant contends that it is in the business of computer graphics of compositing of multiple visual elements from various sources into a single image or sequence. This activity squarely falls under IT/ITES and the Appellant is entitled to be billed under industrial tariff category from Nov. 2019 onwards. The Appellant put on record a copy of the Letter of Intent dated 30.08.2019 indicating its purpose as Animation, Visual effects, Gaming (IT/ITES) issued by the Technical Advisor, MIDC, Mumbai. The Appellant applied for change of name in Nov. 2019 from “Idea Business Solutions Pvt. Ltd.” to “A.B. Studio Pvt. Ltd.” on the strength of the documents as mentioned in Para 4 (iv). The change of name was effected in the month of Jan. 2020. The Appellant was billed under commercial tariff category from Oct. 2019 to March 2020. The Respondent changed the tariff category from commercial to industrial only from April 2020. It is seen that the Respondent has repeatedly changed the tariff category as mentioned in the above paras without application of mind.

  
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7. The Commission, through its various tariff orders has incorporated provisions regarding applicability of Industrial tariff to units possessing Permanent Registration Certificate from DIC regarding IT/ ITES Services. The relevant extract of the Tariff Order of the Commission dated 12.09.2018 in Case No. 195 of 2017 is as follows:

**“LT-V (B): LT - Industry – General**

Applicability:

*This tariff category is applicable for electricity for Industrial use, at Low/Medium Voltage, for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.*


.....  
*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. **Where such Unit does not hold the relevant permanent registration Certificate, the tariff shall be as per the LT II category, and the LT V(B) tariff shall apply to it after receipt of such permanent registration Certificate and till it is valid.**” ..... (Emphasis added)*

Considering the above tariff order of the Commission, the prayer of the Appellant for applying industrial tariff from Nov. 2019 to March 2020 does not stand on merit.

8. The following issue is framed for determination of this representation:-

➤ **Issue 1:** Whether the Appellant is entitled for industrial tariff category from 01.04.2020 onwards.

**Issue 1 is answered as AFFIRMATIVE.**

  
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The Commission has observed in its tariff order dated 30.03.2020 in Case No. 322 of 2019 as below:

*8.11 Tariff categorization*

*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.*

.....  
**ANNEXURE –I TARIFF SCHEDULE FOR FY 2020-21 to FY 2024-25**

**(With effect from 1 April, 2020)**


***LT V: LT- Industry:***

*Applicability:*

*This tariff category is applicable for electricity for Industrial use, at Low/Medium Voltage, for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.*

.....  
.....  
*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.*

***Maharashtra's Information Technology/Information Technology Enabled Services (IT / ITeS) Policy – 2015***

  
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#### 4. Definitions

i) to iv) .....

#### v) Animation, Visual effects, Gaming and Comics(AVGC):

- **Animation** is a way of making a film by using a series of drawings, computer graphics, or photographs of two and three dimensional objects (such as puppets, clay models or paper cutouts) that are slightly different from one another and that when viewed quickly one after another create the appearance of movement. Animation shall include 2D Animation, 3D Animation, claymation, paper animation, stop motion, shadow animation, hard surface animation etc.,. Animations can be recorded on either analogue media, or on digital media.
- **Visual effects** are the processes by which imagery is created and / or manipulated outside the context of a live action shot. Visual effects involve the integration of live-action footage and generated imagery to create environments which look realistic, but would be dangerous, expensive, impractical, or simply impossible to capture on film. Visual effects include computer generated imagery using the affordable and user friendly animation and compositing software  
Visual Effects shall include rotoscoping, digital cleanup, VFX paint, morphing, DMP - (Digital Matte Painting), chroma key, compositing, tracking, pre-visualization, prep-wire removal, beauty pass, face & body replacement, modelling, shedders, texturing, lighting, animation, rigging, match move, FX (cloud, liquid, rain, water, dust, smoke, wind, fire, flame, blast, snow, ice, etc.), particle simulation, simulation - (fur, hair, cloth, crowd, destruction, etc.), background & set creation and extension, digital environment creation, miniatures for VFX, image processing, Digital Imaging (DI), colour correction etc.
- **A game** is an electronic game that involves human interaction with a user interface to generate visual feedback and immersive experience on a device which shall include 2D, 3D, video, hand held devices, mobile, virtual, console etc. .
- **Comics** is a visual medium used to express ideas via images, often combined with text, voice, sound or visual information. Comics shall include hand drawing, digital, 2D, 3D, motion graphics, motion comics.
- **Stereo conversion** is a specialised process in animation post production where the normal 2D or live action films are converted to stereoscopic form for an immersive experience. Stereo conversion shall include rotoscoping, layer painting, depth grading, tracking, element compositing, finalling, edging, particles etc.  
Virtual reality, augmented reality, motion capture, facial capture & performance capture, 3D printing, 3D mapping, simulation, digital streaming & content dissemination, rendering etc. shall be a part of AVGC



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Considering the tariff order of the Commission in Case No. 322 of 2019, the Appellant is entitled for Industrial tariff category for its IT & ITES activity with effect from 1<sup>st</sup> April 2020.


Issue 1 is answered accordingly.

➤ **Issue 2:** Whether the Appellant is entitled for refund of tariff difference of Rs. 3,29,646/- between commercial and industrial tariff category for the period from April 2020 to March 2021 which has already been paid by the Appellant?

**Issue 2 is answered as AFFIRMATIVE.**

The Respondent inspected the installation of the Appellant on 23.03.2021 and hastily came to the conclusion that the activity of the Appellant was commercial. It re-inspected the installation after about 5 months, on 12.08.2021 in the same year, and this time it confirmed the activity of the Appellant as IT & ITES and changed its tariff category from commercial to industrial, but only from Aug. 2021 onwards. At this point of time it should have changed the tariff to industrial right from April 2020. The tariff difference between commercial and industrial of Rs.96661/- was refunded but only from May 2021. The Respondent again inspected the installation on 16.12.2023 and confirmed that its activity is IT & ITES, and it is billed under Industrial tariff category at present.

Considering all the above events together, this authority has come to the conclusion that the Appellant's activity should be covered under industrial tariff from April 2020 onwards. The Appellant had already informed its activity as ITES at the time of change of name. However, due to non-availability of permanent registration certificate, the Appellant was billed under Commercial tariff category from Nov. 2019 to Mar. 2020. The Respondent has rightly billed the Appellant under Industrial tariff category from April 2020 onwards. **Hence, the retrospective recovery of**

  
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**Rs.3,29,646/- as the difference between commercial and industrial tariff category for the period from April 2020 to March 2021 is not maintainable.**

9. Similarly, the subsequent period from April 2021 onwards should also be covered under industrial tariff. Since the activity of the Appellant continues to be the same, there is no reason to again apply commercial tariff for this or the subsequent period.


10. The Forum failed to appreciate the Appellant's activity as IT / ITES, hence the Forum's order is set aside. The representation of the Appellant is principally allowed.

11. The Respondent is directed as under: -

- (a) to withdraw the supplementary bill of Rs. 3,29,646/- towards tariff difference between commercial and industrial tariff category for the period April 2020 to March 2021. The Appellant is also eligible for a refund of tariff difference between commercial and industrial tariff category from April 2021 to June 2021.
- (b) the interest and delayed payment charges levied, if any, be withdrawn from the date of issue of the supplementary bill which has been already paid.
- (c) Compliance to be submitted within two months from the date of issue of this order.
- (d) Other prayers of the Appellant are rejected.

12. The Representation is disposed of accordingly.

Sd/  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
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