BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 98 OF 2020

In the matter of load factor incentive and billing

Linde India Limited ……..……..…..……..…..……. Appellant

V/s

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

Appearances: -

For Appellant : 1.Satish Shah, Representative
2. T.N. Agrawal, Representative

For Respondent : 1. Madan Sangale, Executive Engineer (Adm), Vashi
2. Pranay Chakraborty, Dy. Executive Engineer

Coram: Deepak Lad

Date of Hearing: 14th January 2021

Date of Order : 1st March 2021

ORDER

This Representation is filed on 2nd December 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 30th September 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

The Forum, by its Order dated 30.09.2020 has dismissed the grievance application in Case No.90/2019.

2. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

(i) The Appellant is an HT consumer (No.028619018861) connected on 100 KV from 21.03.1994 having Connected Load (CL) of 24.20 MW with Contract Demand (CD) of 17.10 MVA at present.

(ii) The Appellant had availed Open Access (OA) power of 4.25 MW and at that time CD retained with MSEDCL as 12.25 MVA, totaling CD of 16.50 MVA as per No Objection Certificate (NOC) dated 28.04.2017 issued by the Chief Engineer (Commercial) [CE (Comm.)] of the Respondent, for the period from 01.05.2017 to 31.05.2017. However, on its further request letter submitted with the Respondent, OA permission was cancelled by CE (Comm.) vide letter No.11118 dated 12.05.2017 for the period from 12.05.2017 to 31.05.2017.

(iii) As per the prevailing Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations 2016 (DOA Regulations 2016), after having availed the OA, if the consumer intends to revise CD, it needs to apply in the prescribed A1 form. The Appellant had never submitted separate application for revision of CD. Hence, its CD after exit of OA of 4.25 MW with effect from 12.05.2017 should have been continued as 12.25 MVA. However, the Respondent issued bills of June 2017, July 2017 and September 2017 with CD as 16.50 MVA instead of 12.25 MVA. The Appellant had therefore lost Load Factor (LF) Incentive during this period. Further, the Respondent issued bill of August 2017 with correct CD as 12.25 MVA. However, as it had exceeded demand to 12.328 MVA, it was not eligible for LF incentive for the month of August 2017. Again, in September 2017, the Respondent changed CD to 16.50 MVA without any base and intimation to it.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(iv) Due to incorrect consideration of CD while billing for the month of June 2017, July 2017 and September 2017, Appellant had lost LF incentive without any fault on its part. This dispute was taken up with the Respondent MSEDCL vide various letters dated 09.08.2017, 14.08.2017, 21.08.2017, 03.10.2017, 13.11.2017 and 09.03.2018 with personal follow up from time to time.

(v) Since the LF incentive issue has not been settled by Superintending Engineer, Vashi (SE Vashi), the Appellant had filed grievance with Internal Grievance Redressal Cell (IGRC) on 31.05.2019 by email followed by submission of hard copies on 04.06.2019. The IGRC conducted hearing on 06.09.2019 but failed to deliver decision even after more than 6 months period lapsed from date of lodging the grievance with IGRC.

(vi) After waiting almost for 6 months for IGRC decision, the Appellant had approached the Forum and filed grievance on 24.12.2019. The Forum scheduled the hearing on following 5 different occasions.

- 1st hearing held on 21.01.2020: Respondent failed to attend.
- 2nd hearing held on 28.01.2020: Respondent failed to attend.
- 3rd hearing held on 04.03.2020: Respondent failed to attend.
- 4th hearing held on 04.03.2020: Hearing held, and Respondent attended the hearing & submitted their say.
- 5th hearing held on 09.09.2020.

(vii) The Forum finally passed its order on 30.09.2020 and order copy was received on 05.10.2020. Since the Appellant is not satisfied with the decision of the Forum, the present representation is filed as per CGRF Regulations, 2006.

Nature of Grievance:

(viii) The Appellant had availed partial OA of 4.25 MW and CD retained with MSEDCL was 12.25 MVA as per OA NOC issued by the Respondent on 28.04.2017. On the request letter submitted with MSEDCL, partial OA permission was discontinued by CE (Comm.) vide letter No.11118 dated12.05.2017 for the period of 12.05.2017 to 31.05.2017.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(ix) After cancellation of partial OA, Appellant continued to avail full power from MSEDCL with retained capacity of 12.25 MVA. When Appellant received electricity bill of June 2017 on 12.07.2017, Appellant came to know that the MSEDCL had considered 16.50 MVA as CD in place of 12.25 MVA retained CD at the time of exit from partial OA on 11.05.2017. The Appellant had therefore lost LF incentive due to incorrect CD considered by MSEDCL as 16.50 MVA in place of 12.25 MVA for June 2017 and July 2017. This fact was brought to the notice of CE (Comm.) vide letter dated 09.08.2017 and, also by personal visit to the HO to resolve this billing error. The CE (Comm.) assured to correct the billing error and accordingly the SE (Vashi) was instructed vide email dated 11.08.2017 to correct the CD as 12.25 MVA in the billing system from June 2017 onwards. As per HO instructions, SE (Vashi) acted to correct CD as 12.25 MVA in billing month of August 2017. Further, the MSEDCL in the month of September 2017 considered CD as 16.50 MVA instead of 12.25 MVA without any intimation or notice to the consumer.

(x) In October 2017, the MSEDCL changed the CD to 12.25 MVA after furnishing Undertaking by the Appellant on stamp paper for retention of CD to 12.25 MVA with additional CT Error Compensation Factor (CTECF) at 0.4% on KWH and demand consumed as per letter of CE (Dist./Testing) dated 30.10.2017. In the Undertaking submitted, the Appellant had mentioned to revise CD 12.25 MVA w.e.f. June 2017 onwards as approved by competent authority of MSEDCL. The letter of CE (Dist./Testing) issued on 30.10.2017 indicates only about charging of CTECF at 0.4% and not related with period of implementation of CD reduction of 12.25 MVA.

(xi) Regarding implementation date for CD revision to 12.25 MVA from the month of June 2017 onwards, the CE (Comm.) instructed the SE (Vashi) vide email dated 11.08.2017 to correct total CD from 16.50 MVA to 12.25 MVA and revise the bills from June 2017 onwards with corrected CD.

(xii) Despite the above instructions and follow up with SE (Vashi), 12.25 MVA was not implemented with effect from June 2017, therefore Appellant had lost LF incentives for three months i.e., June 2017, July 2017 and September 2017.

(xiii) The SE (Vashi) had implemented decision of CE ((Dist./Testing)) in the bill of August 2017 and from October 2017 for reduced CD to 12.25 MVA. However, this effect was not given for 3 months i.e., June 2017, July 2017 and September 2017.

(Dilip Dumbre)
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Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(xiv) As per DOA Regulations 2016 and procedure issued by MSEDCL, CD cannot be reinstated to 16.50 MVA without submission of application by the Appellant after exit from OA and further Appellant is required to execute agreement for reduced CD of 12.25 MVA.

Action on Grievance initiated by SE, (Vashi):

(xv) On the Appellant's follow up with MSEDCL Vashi and MSEDCL HO, the SE (Vashi) had sent various letters to CE (Comm.). In the first letter dated 04.09.2017, it is mentioned that the instruction was received by SE (Vashi) via e-mail dated 11.08.2017 from CE (Comm.) to correct the total CD from 16.50 MVA to 12.25 MVA in the billing system and revise the bill from the month of June 2017 onwards.

(xvi) The SE (Vashi) referred the issue again with CE (Comm.) vide letter No.5339 dated 22.09.2017 and submitted calculations for LF incentive amount Rs.151.53 lakh for 2 months (June 2017 and July 2017) and sought approval of CE (Comm.) The SE (Vashi) again sought guidance from CE (Comm.) vide letters dated 29.09.2017, 15.11.2017 and 28.03.2018.

Response by HO, MSEDCL.

(xvii) The CE (Comm.) directed vide email dated 11.08.2017 to SE (Vashi) for revision of CD from 16.50 MVA to 12.25 MVA effective from June 2017 onwards. When such a clear instruction was issued by CE (Comm.) to change CD to 12.25 MVA from June 2017, the SE (Vashi) should have implemented change of CD to 12.25 MVA with effect from June 2017 instead of seeking guidance again and again from CE (Comm.)

(xviii) When the Appellant's team visited office of CE (Comm.) to follow up for bill revision, it was clearly informed that the CE (Comm.) has already given clear instructions vide email dated 11.08.2017 and the same should be followed by SE (Vashi) to change CD to 12.25 MVA w.e.f. June 2020.

(xix) The CE ((Dist./Testing)) vide letter No. 26431 dated 30.10.2017 advised SE (Vashi) to apply CTECF at 0.4% in the billing till Current Transformers (CTs) of appropriate ratio are provided for which the Undertaking / Consent was taken and accordingly the MSEDCL recovered this error factor through the energy bills. Appellant never took any objection on

(Dilip Dumbre)
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Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

CTECF and not violated any condition of CE (Dist./Testing) letter dated 30.10.2017 and the Undertaking submitted.

Regulatory Provisions:

(xx) As per Regulation 4.2 of DOA Regulations 2016, the CD of Appellant availing Long Term Open Access (LTOA) or Mid Term Open Access (MTOA) shall be governed by the provisions of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) and Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations, 2014) of the Commission.

Based upon the above DOA Regulations 2016, the MSEDCL had also issued Procedure for Distribution Open Access, relevant Para No. 4 is reproduced below.

"4. REVISION IN CONTRACT DEMAND.

4.1 The Consumer seeking LTOA or MTOA may revise his Contract Demand as per the provisions the Electricity Supply Code & MERC (Standard of performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 as amended from time to time:

4.2 A consumer availing STOA shall not be eligible to revise his Contract Demand during the tenure of the STOA, but may do so at the time of applying for Open Access.

4.3 As per the Supply code provisions the consumer should execute fresh agreement with MSEDCL for such revised load before the second billing cycle.

4.4 Revision in Contract Demand shall be applicable to existing Open Access Agreements or contracts."

(xxi) The MSEDCL issued procedure for revision of CD vide Circular No. CE/COMM/OA/23459 dated 26.07.2016, according to which separate application has to be filed for reinstating CD after exit from OA. Appellant had never filed any application for reinstating CD to 16.50 MVA.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(xxii) As per Regulation 6.8 of the Supply Code Regulations, the Distribution Licensee shall increase or reduce the CD / sanctioned load of the consumer upon receipt of an application for the same from the Appellant.

> "*Provided that where such increase or reduction in CD/ sanctioned load entails any works, the Distribution Licensee may recover expenses relating thereto in accordance with the principles specified in Regulation 3.3, based on the rates contained in the schedule of charges approved by the Commission under Regulation 18.*"

Regulation 18 is for charges payable for revision of CD, i.e. processing fee, supervision charges etc. Appellant had not paid any of such charges to MSEDCL for revision of CD to 16.50 MVA. Hence, revision of CD to 16.50 MVA made by SE (Vashi) with effect from June 2017 is illegal and against the Regulations quoted above.

Comments on the Forum's order dated 30.09.2020:

(xxiii) The Forum mainly rejected the application on the reason that the Appellant had given Undertaking dated 31.10.2017 on stamp paper of Rs.200/- stating that Appellant agree to CTECF (0.4%) and also agreed to replace the CTs of 100/1A with 75/1A. The contents of the agreement are once again reproduced below.

> *"We agree to levy additional 0.40% CT error compensation factor in the monthly energy bills on total KW units consumption and on KVA MD recorded in order to compensate the loss, if any, due to limits of error of higher CT ratio (100/1A) in recording in lower loads.*
> *We shall replace the existing 100/1A CTs by commensurate CT's of ratio of 75/1 within a period of three months from the date of this approval or till the replacement of CTs whichever is earlier.*
> *The above-mentioned conditions remain binding on us and we will not raise any dispute in the matter after supply is released and maintained at 12250 KVA, by approaching any regulatory authority or Court in this regard.*
> *All statutory rules & regulations mentioned in the letters shall remain binding on us.*
> *We request you to please retain our CD to 12.25 MVA from June-2017 onwards as approved by the competent authority of MSEDCL in the letter under reference."*

Looking to the above wordings in the Undertaking, it is evident that Appellant had never denied at any point about levy of CTECF of 0.40% and also the CTs of ratio 75/1A were provided/charged within 3 months i. e. on 25.01.2018 as per letter No.97/2018 dated

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

25.01.2018. Appellant has, therefore, fulfilled both the conditions of the Undertaking and not raised any dispute on these conditions after release of supply to 12.25 MVA. The dispute is about date of implementation of revised CD 12.25 MVA which Appellant had requested in the same Undertaking to make it effective from June 2017 onwards as approved by CE (Comm.).

In the order of the Forum, at last para, it is further stated that "*There is no material wrong, fault or loss to the parties as they are agreed with the situation*. *Hence we found that applicant fails to prove the fault or respondent also fails to prove the claim as per prayer."*

The Appellant only agreed in the Undertaking to bear CTECF at 0.40% and to replace the CTs within 3 months. Appellant never agreed to sacrifice LF incentive which is payable by the Respondent as per the Commission's tariff order if load factor goes above 75%.

In view of above, the contention of the Forum about breach of undertaking is incorrect and therefore Appellant appeals to set aside the Forum's order dated 30.09.2020.

Prayer:

a) The Respondent be directed to revise the bills for 3 months with sanctioned CD 12.25 MVA as per direction dated 11.08.2017 of CE (Comm.).
b) To refund the amount on account of LF incentive for the month June 2017, July 2017 and September 2017.
c) To compensate as per Regulation 8.2 (c) of the CGRF Regulations 2006.

3. The Respondent filed its reply by letter dated 21.12.2020 stating in brief as under: -

(i) The Appellant is a HT Industrial Consumer (No.028619018861) on 100 KV voltage level from 21.03.1994 at present having CL of 24.20 MW with CD of 17.10 MVA at Plot No. T-8, MIDC Industrial Area, Taloja.

(ii) The Appellant, vide its letter dated 04.02.2017, requested for reduction of CD which was forwarded by SE (Vashi) to the SE (Testing Quality Assurance) [SE (TQA)] for metering specifications. The SE (TQA) vide letter No. 237 dated 12.05.2017 forwarded the metering specifications to CE (Dist./Testing) for

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

approval. As the Appellant was availing OA for short term, the CE (Comm.) vide letter No.6735 dated 23.03.2017 has given approval for STOA for the period 01.04.2017 to 30.04.2017 (April 2017) with allotted OA CD of 9 MVA and retained MSEDCL CD as 16.50 MVA.

(iii) The Appellant vide email dated 28.04.2017 informed MSEDCL that they are surrendering CD up to 4.50 MW only with MSEDCL for the month of May 2017. The CE (Comm.) has granted OA permission vide letter No.09935 dated 28.04.2017 for wheeling power of 4.25 MW for the month of May 2017. Thus, after OA permission for the month of May 2017, the Appellant's CD became 12.50 MVA but again the Appellant vide email dated 12.05.2017 informed that they were in PPA from 27.02.2017 with generator M/s. Lloyds Metal & Energy which was terminated on dated 09.05.2017 and requested MSEDCL to cancel STOA NOC for the period 12.05.2017 to 31.05.2017 and surrender the corridor to Maharashtra State Load dispatch Centre, Mumbai which was allocated to them for this period.

(iv) The STOA was cancelled by the CE (Comm.) vide letter No.11118 dated 12.05.2017 as per request of the Appellant for the period 12.05.2017 to 31.05.2017. Thereafter, the Appellant's CD became 16.50 MVA after restoration to normal from OA.

(v) Previously, Appellant, by its letter dated 04.02.2017 applied for reduction of CD from 16.50 MVA to 12.50 MVA which was in process at HO level for approval from Competent Authority. As the Appellant has requested to cancel the STOA, the Commercial Cell has cancelled it on 12.05.2017. Further, it has directed on 11.08.2017 to revise the bills from the month of June 2017 with CD 12.25 MVA. Accordingly, Respondent has given the effect of 12.25 MVA CD in the billing month of August 2017. But it is pertinent to mention here that the Appellant has exceeded the demand of 12.25 MVA in the month of August 2017, and therefore not eligible for LF incentive in the month of August 2017.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(vi) The CE ((Dist./Testing)) vide letter No. 23579 dated 26.09.2017 informed the Appellant to replace the existing metering as proposed by SE (TQA) for availing reduction in CD to the extent of 12.50 MVA at 100 KV level.

(vii) The Appellant vide letter dated 03.10.2017 requested the Respondent`s Corporate office (CE Dist./Testing) for retention of CD on existing CTs with CTECF. Accordingly, the CE ((Dist./Testing)) vide letter No.26431 dated 30.10.2017 has accorded approval for utilizing existing CTs of Ratio 100/ l A instead of 75/1A for availing CD of 12.25 MVA subject to the following conditions.

- Additional 0.4% CTECF should be levied in the monthly energy bill on total KWH unit's consumption and on KVA MD recorded, to compensate the loss if any due to limits of errors of higher CT ratio (100/1A) in recording at lower loads.
- The Appellant should replace the existing 100/1 CT's by the commensurate CT ratio of 75/1 A within period of three months from the date of this approval or till the replacement of CTs whichever earlier.
- The above condition shall remain binding on the Appellant and they shall not create any dispute in the matter after release of supply and shall not approach any regulatory authority/Court in the matter.
- All other statutory rules and regulations along with all other conditions as mentioned in the letters under reference shall remain binding on the Appellant.
- The Appellant shall submit Undertaking for all above conditions on Rs.200/- stamp paper to SE (Vashi) before release/effect of supply.
- The SE(TQA) Kalyan shall verify fulfilment of all other necessary requirements pertaining to testing as per procedure.

(viii) On receipt of approval from competent authority, the Appellant submitted its Undertaking on Rs.200/- stamp paper vide its application dated 31.10.2017. The

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Appellant agreed to levy additional 0.4% CTECF in the monthly energy bills on total KWH consumption and on KVA MD recorded in order to compensate the loss, if any, due to limits of error of higher CT ratio (100/1A) in recording in lower loads. It is necessary to replace the existing 100/1A CTs by commensurate CT's of ratio of 75/1A within a period of three months from the date of this approval or till the replacement of CTs whichever is earlier. The above-mentioned conditions remain binding and Appellant will not raise any dispute in the matter after supply is released and maintained at 12.25 MVA, by approaching any Regulatory Authority or Court in this regard. All statutory rules and regulations mentioned in the letters shall remain binding on the Respondent.

(ix) Accordingly, this office effected the change of existing CD from 16.50 MVA to 12.25 MVA in the billing month of October 2017 thereby applying CTECF.

(x) Further, after completion of CT replacement work by Appellant and subsequent execution of agreement for load reduction with Respondent, the release order is issued for reduction of CL from 24.20 MW to 18.717 MW and CD from 16.50 MVA to 12.25 MVA from 01.02.2018.

(xi) The Forum, by its order dated 30.09.2020 has rightly dismissed the prayer of the Appellant.

Reply on Merits: -

(xii) The Competent Authority while according to its approval clearly mentioned the condition in its approval for retention of 12.25 MVA CD subject to condition that the Appellant shall not create any dispute in the matter after release of supply and shall not approach any regulatory authority/Court in the matter.

(xiii) In pursuance of that approval letter of Competent Authority, the Appellant submitted the Undertaking to that effect on Rs.200/- stamp paper and thereby agreed that it will not raise any dispute or approach any Authority / Court in this matter.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(xiv) Owing to acceptance of conditions vide Undertaking submitted by Appellant, the Applicant has no locus standi in this matter. This Appellant cannot approach to the Forum / Hon'ble Electricity Ombudsman for the grievance in this matter, as per the Undertaking given by it to the Respondent.

(xv) There is no breach of any regulatory and no loss is caused to the Appellant and hence the Respondent is not liable to pay any compensation amount as claimed unnecessarily by the Appellant.

(xvi) It is therefore prayed that the Representation of the Appellant be rejected.

4. The Appellant filed additional submission dated 11.01.2021 on Respondent's reply which is stated in brief as under: -

(i) The Respondent referred NOC quantum for the month of April 2017 which is not relevant as it had exited from OA in the month of May 2017 based upon volume of OA and CD retained with MSEDCL while granting NOC for the month of May 2017. In case of STOA, NOC is issued on monthly basis for the volume of OA required by the consumer and accordingly retained CD with MSEDCL changes every month. In the month of May 2017, retained CD with MSEDCL was 12.25 MVA and hence after exit from OA on 12.05.2017, the retained CD should have been continued as 12.25 MVA instead of 16.50 MVA.

(ii) The Respondent mentioned that after surrendering OA quantum 4.25 MVA in May 2017, retained CD was 12.25 MVA but the Respondent stated as wrong figure 12.50 MVA.

(iii) The CE (Comm.) in its Letter No 11118 dated 12.05.2017 states regarding cancellation of STOA from 12.05.2017 to 31.05.2017. Nowhere it is mentioned by CE (Comm.) in this letter about retained CD of 16.50 MVA with MSEDCL. Hence, the statement made by the Respondent about retained CD as 16.50 MVA is false.

(iv) It is agreed that the CE (Comm.) directed to revise the bills from June 2017 onwards considering CD of 12.25 MVA. On the basis of these directives issued

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

by the CE (Comm.) vide email dated 11.08.2017, the SE (Vashi) acted in August 2017 and revised CD as 12.25 MVA. But again, in the month of September 2017 reversed CD to 16.50 MVA in place of 12.25 MVA allowed in August 2017 without any basis or reasons. When CE (Comm.) instructed to revise CD of 12.25 MVA with effect from June 2017, why MSEDCL failed to adhere instruction issued by CE (Comm.) vide email dated 11.08.2017.

(v) In October 2017, the MSEDCL changed the CD to 12.25 MVA after furnishing Undertaking by the consumer on stamp paper for retention of CD to 12.25 MVA with additional CTECF at 0.4% on KWH and KVA demand consumed as per letter of CE (Dist./Testing) dated 30.10.2017. In the Undertaking submitted, it is mentioned to revise CD of 12.25 MVA with effect from June 2017 onwards as approved by competent authority of MSEDCL. The letter of CE (Dist./Testing) issued on 30.10.2017 indicates only about charging of CTECF 0.4% and not related with effective date of implementation of CD reduction of 12.25 MVA.

(vi) The Undertaking given by the Appellant is as per the letter dated 30.10.2017 of CE (Dist./Testing) about CTECF 0.4% levied by MSEDCL after reduction of CD to 12.25 MVA by utilizing existing CTs of ratio 100/1A instead of 75/1A. The Appellant has no dispute against MSEDCL for levy of CTECF 0.4%. The Appellant had to give this Undertaking on stamp paper of Rs.200/- forcefully to get 12.25 MVA CD reduction implemented without change of CTs.

(vii) The CE (Comm.) has accepted MSEDCL's mistake and accordingly directed SE (Vashi), MSEDCL to revise the bills of Appellant with reduced CD. Hence, clear case for revision of bill is made out by the Appellant. So far as alleged Undertaking dated 31.10.2017 which was a pre-condition for regular electricity supply at reduced CD of the Appellant, which was issued under pressure from the monopolistic power supplier and was issued only because Appellant was eager to get the CD reduced to12.25 MVA as early as possible. It is important to note that, said Undertaking itself contains a clear clause to retain CD to the

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

tune of 12.25 MVA from June 2017 onwards. However, this important aspects and hostile situation under which such forced undertaking was issued was not at all considered by the Forum, hence present appeal is filed with Hon'ble Electricity Ombudsman, Mumbai.

(viii) It is important to note that SE (Vashi) was legally required to issue monthly bills with reduced CD from June 2017 onwards in absence of consumer's application to reinstate the CD to 12.25 MVA. For the sake of moment and argument, if it is considered that alleged Undertaking dated 31.10.2017 was issued by present Appellant willfully, which itself is against the basic principles of law of equity and legal provisions and hence the same is not applicable for the simple reason that it is against public policy and law of estoppels cannot operate in such case.

(ix) Based on Appellant's letter dated 03.10.2017 for using reduced CD of 12.25 MW on existing CTs with CTECF, the same was granted by CE (Dist./Testing) for utilizing existing CTs, however compelled Appellant to submit Undertaking to that effect. Given no option and choice, the Appellant issued Undertaking and accepted to compensate the loss, if any, for errors that may occur due to higher CT ratio in recording lower loads. The same has nothing common with revision in bills in reduced CD. Appellant never waived its rights to revise bills with respect to reduced CD. The same is clearly mentioned in last two lines of the Undertaking.

(x) Seeking revision of bill, as approved by CE (Comm.), is legal right of the Appellant and the same is legally binding on Respondent. Right of disputing monthly bill and raising a grievance is statutory right of the consumer. Any statutory or legal right which is inherent cannot be waived by any such act and therefore principle of estoppel is not applicable based on alleged Undertaking is not applicable in present case. Any condition which is against the statute is not operative; there can be no estoppels against the law. This ratio has been upheld in order dated 19.08.2016 by the Commission in Case No. 94/2015, (Ref. Section 16.3, 19.1, 24B & 26B. Appellant also referred the law laid down by

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Hon'ble Supreme Court in INDIRA BAI Vs. NAND KISHORE, 1991 AIR 1055 wherein it has been held that "*There can be no estoppel against statute. Equity usually follows law, therefore, that which is illegal cannot be enforced by resorting to rule of estoppel.*"

(xi) Considering the above aspects, coupled with legal provisions cited by in the appeal and law laid down by Hon'ble Supreme Court as well as the Commission, the Appellant is entitled for revision in bills as prayed. Hence, the appeal be allowed.

5. The hearing was held on 14.01.2021 on e-platform through video conferencing due to Covid-19 epidemic. During the hearing, the Appellant argued in line with its written submission. The Appellant argued that the Appellant had availed OA power of 4.25 MW and CD retained with MSEDCL as 12.25 MVA, totaling to 16.50 MVA for the period from 01.05.2017 to 31.05.2017. Due to unstable power market condition, the Appellant requested vide its letter dated 12.05.2017 to cancel OA power of 4.25 MW. Accordingly, the CE (Comm.) vide letter dated 12.05.2017, has cancelled the STOA power from 12.05.2017 to 31.05.2017. As per the DOA Regulations 2016, if the consumer intends to revise CD, it needs to apply in the prescribed A1 form. The Appellant had never submitted separate application for revision of CD. Hence, its CD after exit of OA of 4.25 MW with effect from 12.05.2017 should have been continued as 12.25 MVA. However, the Respondent issued bills of Jun-2017, July-2017 and Sept-2017 with CD as 16.50 MVA instead of 12.25 MVA. The Appellant had therefore lost LF Incentive during this period. The Respondent issued bill of August 2017 with correct CD as 12.25 MVA. However, it did not get the LF Incentive for August 2017 as it exceeded the CD of 12.25 MVA. Again, in September 2017, the Respondent changed CD to 16.50 MVA without any base. The Respondent changed the CD to 12.25 MVA in October 2017 after furnishing Undertaking by the Appellant on stamp paper for retention of CD to 12.25 MVA with additional CTECF at 0.4% on KWH as existing CTs are of ratio 100/1A instead of 75/1A as per load calculation. This is in pursuance of the approval from the Respondent's CE (Dist./Testing) letter dated 30.10.2017. However, it was clearly stated in that Undertaking that

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

CD of 12.25 MVA be revised with effect from June 2017 onwards as approved by competent authority of the Respondent. The letter of CE (Dist./Testing) issued on 30.10.2017 indicates only about charging of CTECF 0.4% and not related with effective date of implementation of CD reduction 12.25 MVA. The Appellant argued that the Appellant has no dispute against MSEDCL for levy of CTECF 0.4%. The Appellant had to give this Undertaking on stamp paper of Rs.200/- forcefully to get 12.25 MVA CD reduction implemented without change of CTs. The Appellant prays that the Respondent be directed to refund the amount on account of LF Incentive for the month June 2017, July 2017 and September 2017.

6. The Respondent argued that the Appellant requested for reduction of CD from 16.50 MVA to 12.50 MVA vide its letter dated 04.02.2017. This was approved by the Competent Authority of the Respondent at HO vide its letter dated 25.07.2017. While according to this approval, there were some important conditions such as Appellant agreeing to application of CTECF of 0.4% till the replacement of CTs, replacement of existing CTs of 100/1 A by 75 /1 A within three months, undertaking on stamp paper of Rs.200/- for not agitating against application of CTECF. Accordingly, the Appellant submitted an undertaking. In pursuance of that approval, the Appellant submitted the Undertaking and agreed not to approach any Regulatory Authority / Court. Owing to acceptance of conditions vide Undertaking submitted by Appellant, it does not have any locus standi in this matter and it cannot approach the Forum / Hon'ble Electricity Ombudsman for the grievance in this matter. There is no breach of any regulatory provision and no loss is caused to the Appellant. Hence, the Respondent is not liable to pay any compensation amount as claimed by the Appellant. It is, therefore, prayed that the Representation of the Appellant be rejected.

7. Post hearing, on 10.02.2021, a letter was issued to both the parties to submit certain documents which were mentioned in the correspondences but not submitted with the representation / reply. The information sought from both the parties is as below: -

(a) Whether the Appellant availed any Open Access immediately prior to May 2017.

(i) If yes, from when and what was the quantum of such Open Access and what was the CD considered for billing during this period.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(ii) *Whether during this period prior to May 2017, if it has availed Open Access what was the CD considered for billing and whether load factor incentive was given.*

(iii) *If No, then what was the CD for a period of approximately six months prior to May 2017. Detailed documentation with respect to (i), (ii) and (iii) above shall be submitted.*

(b) Apart from the Open Access issue, whether the Appellant separately applied for reduction of CD from 16500 KVA to 12500 KVA and whether such reduction was granted by MSEDCL H.O. (vide its letter no. 18224 dated 25.07.2017). Copy of the entire correspondence right from application form, bond executed, if any, sanctioned letter from the competent authority with all enclosures showing clearly despatch number, date, etc. with respect to this issue.

(c) Copy of the Consumer (Appellant) Undertaking dated 28.07.2017 on Rs.500/- stamp paper.

(d) Copy of the load reduction sanction granted by SE Vashi vide No. SE/VC/T/HT/2017-18/4686 dated 19.08.2017.

(e) When the issue of CT compensation factor arose in this case and whether, this factor was applied to KWH and recorded demand. Correspondence with respect to this issue shall be submitted.

(f) Copies of all letters (total 8) quoted at reference of letter of CE/Testing/Linde India/26431 dated 30.10.2017, and also copies of total 22 letters quoted at reference in letter No. SE/VC/T/HT/EHV/Linde/002342 dated 28.03.2018.

Analysis and Ruling

8. Heard the parties and perused the documents on record. Pursuance to the directives from this office vide letter dated 10.02.2021 to submit the additional information, both the parties submitted the information. From the record, I noted the following sequence of events: -

Part A – Regarding Initial Application for Reduction in Contract Demand

(a) The Appellant applied to SE (Vashi) for reduction of CD from 16.50 to 12.50 MVA on 04.02.2017 who in turn sent it to the HO Mumbai for approval.

(b) The HO vide its letter No. SE (Comm.-I) Co-ord cell /Linde India Ltd./18224 dated 25.07.2017 approved reduction of CD from 16.50 to 12.50 MVA with the primary conditions such as

"1. The reduction in Contract Demand from 16500 KVA to 12500 KVA will be effective after replacement of existing CT's & PT's as per specifications provided by SE (TQA), MSEDCL Kalyan.

2. The CT ratio of metering shall be commensurate with reduced Contract Demand. SEM metering approval should be approved from Competent Authority as per procedure.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

3. Existing metering CT's with ratio 100/1 Amp shall be replaced by commensurate 75/1 Amp ratio. CT's for main & additional Check metering at consumer end and at Substation end in case of Express Feeder for availing reduction in Contract Demand.
4. The metering arrangement needs to be replaced / modified. The same shall be done in consultation with S.E.(TQA). MSEDCL Kalyan and S.E.(O &M) MSEDCL Vashi.
5. Any increase or any additional expenditure, if required, for any reason to effect the load reduction will be borne by the consumer.
6. The applicant will not have any claim on reduced load after reduction. Whenever, the applicant requires any additional load in future, the applicant has to complete all the formalities and will be liable to pay charges as per rule. Also, the enhancement (if any) as may be requested by the consumer in future will be subject to the technical feasibility."

Further, this approval letter provides for submission of an undertaking /affidavit towards accepting the above conditions by the Appellant on a stamp paper of Rs.200/- before effecting the reduction of CD.

(c) The Appellant submitted this undertaking on 28.07.2017 on stamp paper of Rs.500/-.

(d) The Appellant though submitted the above Undertaking, it simultaneously issued a letter to the Respondent first on 14.08.2017 and then on 21.08.2017 requesting the Respondent to allow to keep the existing CTs of 100/1A as procurement of new CTs of 75/1A will take approximately 3/4 months. In the same letter, it further requested that till the CTs are physically replaced, it agreed to bear application of CT error compensation factor (CTECF) for using existing CTs. The Appellant further said that it be allowed reduction of CD to 12.50 MVA without change of CTs by application of CTECF at least for 12 months period.

(e) However, CE (Dist/Testing) of the Respondent vide its letter No.23579 dated 26.09.2017 rejected the request of the Appellant for reduction of CD without replacement of existing CTs. This letter is addressed to SE Vashi with copy to the Appellant.

(f) Notwithstanding the rejection by CE (Dist/Testing) for reduction of CD from 16.50 MVA to 12.50 MVA without replacement of CTs, SE Vashi again sent a letter to its CE (Comm.) on 29.09.2017 with the complete updated status of the case which it intended to submit for information and perusal. In this letter, it has

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

specifically stated that "*Further vide email dtd. 11.8.2017 received from your office, it has been instructed to correct the total CD from 16.50 to 12.25 MVA in the billing system and revise the bills from the month of June 2017 in respect of the above said consumer i.e. M/s. Linde India Ltd. (HTC No.028619018861) being partial OA permission issued for the month of May 2017 as consumer requested to cancel STOA permission from 10.05.2017.*"

(g) It is noted that the CE (Dist/Testing) who rejected the reduction of CD without replacement of CTs on 26.09.2017, it approved the same on 30.10.2017, however, with the application of CTECF and without replacement of existing CTs. This approval was again with certain conditions, which are as below: -

"1) Additional 0.4% CT error compensation factor shall be levied in the monthly energy bill on total KWH units consumption and KVA MD recorded in order to compensate the loss, if any, due to limits of errors of higher CT ratio (100/1 A) in recording at lower loads.

2) M/s. Linde India shall replace existing 100/1 A CTs by the commensurate CT ratio of 75/1 A within a period of three months from the date of this approval or till the replacement of CTs, whichever earlier.

3)The above condition shall remain binding on M/s. Linde India Ltd. and there shall not create any dispute in the matter after release of supply and shall not approach to any Regulatory Authority / Court in the matter.

4) M/s. Linde India Ltd. shall submit undertaking for the above conditions on Rs.200/- stamp paper to SE Vashi before release / effect of supply."

The Appellant submitted an Undertaking as desired above.

Part B – Regarding Short Term Open Access (STOA)

a) The Appellant availed STOA of 9 MVA in April 2017 and retained CD with MSEDCL was 16.50 MVA.

b) Similarly, the Appellant applied for STOA of 4.25 MW for the period from 01.05.2017 to 31.05.2017 with retention of CD to (16.50 – 4.25) 12.25 MVA with the Respondent.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

c) The Appellant through its email dated 12.05.2017 applied for surrendering 4.25 MW STOA from 12.05.2017 to 31.05.2017. This request was approved by CE (Comm.) vide its letter No.11118 dated 12.05.2017. This letter does not say anything extra than approving the surrender request. Thus, from 12.05.2017, there was no OA during May 2017.

d) The Appellant, however, did not separately apply for increase in CD from 12.25 MVA to 16.50 MVA.

e) The Respondent while billing the Appellant for the month of June and July 2017 considered the CD as 16.50 MVA instead of 12.25 MVA and load factor incentive was calculated accordingly.

f) The Appellant vide its email dated 11.08.2017 requested the Respondent to consider CD as 12.25 MVA and to recalculate the load factor incentive for the month of June and July 2017.

g) The Respondent considered CD as 12.25 MVA for the month of August 2017. However, the load factor incentive was not applicable for August 2017 as the Appellant exceeded the CD 12.25 MVA.

h) The Respondent again billed the Appellant for the month of September 2017 considering the CD as 16.50 MVA instead of 12.25 MVA and load factor incentive was calculated accordingly.

i) The Appellant vide its letters dated 14.08.2017 and 21.08.2017 addressed to CE (Dist./Testing) requested for allowing to reduce CD from 16.50 to 12.50 MVA without replacement of CTs and application of CTECF. The same was first rejected on 26.09.2017 and then approved on 30.10.2017 with reduction of CD from 16.50 to 12.25 MVA instead of 12.50 MVA without replacement of CTs.

j) The Respondent implemented this approval in letter and spirit and billed the Appellant from October 2017 with CD of 12.25 MVA and application of CTECF.

9. From the above sequence of events, it clearly emerges out that there were two separate streams to the matter which were parallelly run by the Appellant.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(i) First being application by the Appellant for reduction of CD from 16.50 MVA to 12.50 MVA vide its letter dated 04.02.2017 and its subsequent processing till final approval is received on 25.07.2017 with certain conditions. This entire issue was again opened, reprocessed, and finally approved in view of submission of the application by the Appellant for reduction of CD without replacement of the existing CTs. However, this approval dated 30.10.2017 is with application of CTECF. This has been appropriately captured in Part A of this order.

(ii) Second being, issues arising out of STOA availed till 12.05.2017 after which the Appellant surrendered the OA. The Appellant, in this representation for the best reason known to it, did not initially mention about its application dated 04.02.2017 for reduction of CD. It also shows that the approval of the competent authority of the Respondent is subject to fulfilment of certain conditions, without which, reduction would not happen. The Appellant is taking support of CE (Comm.)'s email dated 11.08.2017 which in its concluding paragraph says that *"kindly correct the total CD from 16.50 MVA to 12.25 MVA in the billing system and revise the bills from the month of June-17 and report the compliance of the same to this office."*

10. **Provision of Distribution OA Regulations 2016:**

The Appellant in its representation has submitted that the Respondent is supposed to calculate load factor incentives for the month of June, July and September 2017 considering CD after surrendering of OA in the month of May 2017. The Appellant availed STOA in May 2017 till 12.05.2017, therefore, provision of DOA Regulations 2016 with respect to CD vis-à-vis the OA needs to be referred. The Appellant has referred the Regulation 4.2 of DOA Regulations 2016 and the procedure issued by the Respondent with respect to these Regulations. As per the Appellant, procedure of the Respondent in DOA Regulations 2016, at Point No. 4 states that :-

Procedure laid down by the Respondent licensee in respect of OA:-

"4. REVISION IN CONTRACT DEMAND.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

4.1 *The Consumer seeking LTOA or MTOA may revise his Contract Demand as per the provisions the Electricity Supply Code & MERC (Standard of performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 as amended from time to time:*

4.2 ***A consumer availing STOA shall not be eligible to revise his Contract Demand during the tenure of the STOA, but may do so at the time of applying for Open Access.***

4.3 *As per the Supply code provisions the consumer should execute fresh agreement with MSEDCL for such revised load before the second billing cycle.*

4.4 ***Revision in Contract Demand shall be applicable to existing Open Access Agreements or contracts."*** ***(Emphasis added)***

Regulations 4.2 of DOA Regulations 2016 states as below:-

4.2. Revision of Contract Demand

The Contract Demand of a Consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulations of the Commission governing Standards of Performance:

Provided that a Consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access. ***(Emphasis added)***

11. The Appellant while quoting the provision of DOA Regulations 2016 and the Respondent's procedure thereto did not say much on it and what it intends to derive from it for its instant claim. However, it submitted that the Respondent issued separate procedure for revision of CD vide Circular No. CE/COMM/OA/23459 dated 26.07.2016, according to which separate application has to be filed for reinstating CD after exit from OA. It further said that the Appellant had never filed any application for reinstating CD to 16.50 MVA inter alia meaning thereby that once it had reduced CD by surrendering the OA quantum, its reduced CD ought to have been considered by the Respondent. However, the second Circular cum letter of the Respondent addressed to all field officers bearing No. 25481 dated 12.08.2016 explicitly states that:

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

"If the consumer again desires to restore / enhance its contract demand to its original contract demand with MSEDCL before commencement of Open Access, it will be governed by the provisions of the Electricity Supply Code and Standards of Performance Regulations of MERC.

It is clarified herewith that, in such cases, while enhancing the CD up to the extent of its original CD with MSEDCL, it shall be done on the basis of submission of A-1 application to the respective Circle Office, payment of necessary processing fees and execution of new agreement only. There is no need of again observing technical feasibility, submission of test reports, etc. up to the original contract demand with MSEDCL before commencement of open access. While reductions in the original contract demand with MSEDCL before commencement of open access, the ***CT ratio and all other technical formalities as per rules shall be observed****.*

Further, if a consumer opts to cancel its open access permission and desires to utilize MSEDCL supply, its CD shall be restored immediately, after issuance of the letter of cancellation of Open Access permission from this office and billing of such a consumer shall be done as a normal HT consumer at respective circle level." ***(emphasis added)***

On plain reading of the proviso of Regulation 4.2 of the DOA Regulations 2016, it expressly meant that a consumer who intends to reduce the CD at the time of OA is necessarily required to do so before availing of OA and this reduction is done in accordance with the provisions of Supply Code Regulations 2005. It does not mean that mere surrender of OA quantum, its CD gets automatically reduced because during the currency of OA in May 2017, the Appellant informed that its CD be reduced. The entire process of reduction of CD as per Supply Code Regulations 2005 ought to have been completed before seeking OA for May 2017.

12. I also noted that CE (Comm.) vide its email dated 11.08.2017 which is addressed to SE (Vashi) informed that the Appellant vide its email dated 12.05.2017 has requested it to cancel its STOA permission from 10.05.2017 and to continue its retained MSEDCL CD as 12.25 MVA. It further says that CD be corrected from 16.50 MVA to 12.25 MVA in the billing system and revise the bill from month of June 2017. Taking these instructions to its logical end, the CD of the Appellant is supposed to have been taken as 12.25 MVA but SE (Vashi) appears to have not implemented this decision for the month of June, July and September 2017 and it referred the matter back to CE (Comm.) for suitable guidance in view of conditions set out for reduction of CD approval letter dated 25.07.2017.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

13. While the CE (Comm.) issued letter cum circular dated 26.07.2016 and 12.08.2016 which says that the technical feasibilities are necessarily to be examined before the reduction and enhancement of CD. It is also important to note that CE (Dist./Testing) vide its Letter No. 23579 dated 26.09.2017 has initially rejected reduction of CD without replacement of CTs though it subsequently approved the same on 30.10.2017 by applying CTECF without replacement of CTs.

14. Therefore, putting all above issues in proper perspective, homogenously reading provision of DOA Regulations 2016, conditions set out by the Respondent for its various sanctions, its circulars, and Undertakings by the Appellant and further in order to give fruitful meaning to the issue, it is clear that reduction of CD with application of CTECF and without replacement of CTs is prospective in nature and cannot be treated as having retrospective effect because the Appellant itself applied for special permission initially on 14.08.2017 and 21.08.2017 which is subsequent to availing OA for May 2017, to retain existing CTs and reduce CD while agreeing to bear the charges by virtue of application of CTECF which is approved on 30.10.2017.

15. I am also very much surprised to note that the Appellant at one instance, says that it will replace CTs in 3/4 months while in the same letter, it says that it may be allowed to keep existing CTs in the circuit for maximum period of 12 months. The Appellant being a HT consumer having CD of 16.50 MVA was well aware of the fact that ratio of the existing CTs need to be examined / checked for its capacity so as to take care of prospective reduction of CD. It had already declared its intention in February 2017 itself, then it is a mystery why it did not proceed ahead with procurement of CTs from February 2017 itself.

16. Reduction or enhancement of CD by any consumer is not mere a numerical matter but it is compulsorily accompanied with examination of technical parameters of the metering equipment, infrastructure, etc. and more specifically CTs. This is basic electrical engineering. It has also been rightly incorporated in the Practice Directions dated 19.10.2016 issued by the

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Commission in respect of DOA Regulations 2016. The relevant portion of which is reproduced below: -

> "*Practice Directions*
> *1…… ……..*
> *2…… ……..*
> *3. Under Regulation 4.2 of the DOA Regulations, the matter of Contract Demand is to be governed by the provisions of the Electricity Supply Code and the Standards of Performance Regulations, and does not provide for any revision in Contract Demand by the consumer as a condition for grant of Open Access. Hence, an Application for Open Access shall not be rejected on the ground that the consumer has not increased or otherwise revised his Contract Demand, which is entirely at his option. However, the Regulations also provide that the Distribution Licensee verify the availability of necessary infrastructure and capacity of the distribution system, and grant Medium or Short-Term Open Access only if the resultant power flow can be accommodated in the existing distribution system. If the existing distribution and metering system requires any augmentation or upgradation before Open Access to the extent applied for can be provided, it shall intimate the Applicant accordingly, in writing and in the stipulated time, and follow the procedure specified in the Electricity Supply Code and Standards of Performance Regulations.*
> *4…… ……"*

Therefore, mere direction of CE (Comm.) to SE (Vashi) through its email dated 11.08.2017 saying that he should correct CD from 16.50 MVA to 12.25 MVA in the billing system has to be necessarily read with the above Practice Directions and the conditions set out in the approval for reduction of CD. The email of CE (Comm.) cannot be read in isolation. This statement is very much vindicated by the fact that the application of CTECF came to be applied.

17. In view of the above discussion, I am of the opinion that approval for application of CT Error Compensation Factor in the event of not replacing CTs being prospective in nature, it will take effect from October 2017 onwards till CTs are replaced by the Appellant and therefore, cannot be applied retrospectively for June 2017, July 2017 and September 2017.

18. I am unable to comprehend whether the Respondent would have adopted application of CT error compensation factor if the Appellant (for example) had requested to reduce the CD from 16.50 MVA to 5 MVA by surrendering OA of 11.50 MVA and for further similar simulations.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

19. Therefore, the merit of the case does not go in favour of the Appellant. Besides this, the grievance of the Appellant is for the month of June, July and September 2017. The Appellant has filed the grievance with the Forum on 24.12.2019 which dismissed the case. The Forum has examined the case on other grounds but not on limitation. The Appellant ought to have filed the grievance before the Forum on or before June 2019 (for June 2017 bill), before July 2019 (for July 2017 bill) and before September 2019 (for September 2017 bill) as in the instant representation, the Appellant has prayed for recalculation of LF incentive for the month of June 2017, July 2017 and September 2017. Therefore, the Appellant has delayed the filing of grievance for June 2017 bill by six months, for July 2017 bill by five months and for September 2017 bill by three months.

20. The Regulation 6.6 of CGRF Regulations 2006 is quoted below: -

> *"The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen."*

21. It is expected that the consumer should approach the IGRC in a reasonable period though there is no such limit provided under the Regulations. This needs to be harmoniously read with Regulation 6.6 of CGRF Regulations which ultimately puts two years limitation period for CGRF to admit the case. This principle and logic are upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon'ble Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the Judgment is quoted below: -

> *"37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation*

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai
M.E.R.C.

second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period."

22. The Judgment dated 09.03.2015 of Madras High Court in Second Appeal No. 1182 of 2014 in Ranganathan V/s. Narayanan filed under Section 100 of Code of Civil Procedure is applicable in the instant Representation, as far as applicability of limitation is concerned. The relevant quote is as below: -

"8. The first and foremost contention of the learned Counsel for the appellant is in respect of the first substantial question of law. According to him, in the absence of the plea of limitation raised either in the written statement before the trial court or in the appeal memorandum before the lower appellate court, the lower appellate court ought not to have raised the question of limitation itself to answer the same.
9. In my considered opinion, this argument overlooks the statutory provision contained in Section 3 of the Limitation Act (hereinafter referred to as, 'the Act'). Section 3(1) of the Act reads as follows:

∴Bar of limitation-(1) Subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Thus, a plain reading of the above would make it undoubtedly clear that it is the duty of the court to verify as to whether the suit has been filed within the period of limitation irrespective of the fact as to whether the limitation has been set up as a defence or not and if it is found that the suit has not been filed within the period of limitation, the only option left open for the court is to simply dismiss the suit on the sole ground that the suit is barred by limitation.

10. Order VII Rule 11 of C.P.C. also says that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Here, the suit is barred by the Limitation Act. Therefore, in this case, de hors the fact that no plea of limitation was taken by the defendant, the trial court ought to have rejected the plaint as

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

barred by limitation or to have dismissed the suit as barred by limitation. The trial court failed to do so. But the lower appellate court rightly went into the question and held that the suit is barred by limitation. In this finding, I do not find any illegallity. Thus, the first substantial question of law is answered in favour of the defendant."

23. In view of the above discussions, I am of the considered view that, the Appellant's case neither stands on merit nor fits into the regulatory framework of Regulation 6.6 of the CGRF Regulations 2006 and therefore, the representation is rejected and disposed of accordingly.

24. While parting with this order, I would like to suggest that the Respondent may set out cohesive process to look after particular issues such as in the instant representation because CE (Comm.) and CE (Dist/Testing) has parallelly dealt this case leading to confusion of the field officers who went on writing many letters to CE (Comm.) but nothing concrete came out from it. The secretariat of this office is therefore directed to send copy of this order to the Chairman and Managing Director of the Respondent.

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

(Dilip Dumbre)
Secretary
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Electricity Ombudsman Mumbai M.E.R.C.