BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 43 OF 2021

In the matter of waival of demand penalty

Siyesha Industries ……. Appellant

V/s.

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

Appearances:

Appellant : Harshad Sheth, Representative

Respondent : 1. A. H. Holmukhe Executive Engineer (Adm), Vasai
2. Rajiv Vaman, Asstt. Law Officer

Coram: Deepak Lad

Date of hearing: 9th July 2021

Date of Order: 27th July 2021

ORDER

This Representation is filed on 31st May 2021 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 April 2021 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).

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2. The Forum, by its Order dated 30.04.2021, has rejected the grievance application in Case No. 2058 of 2020-21 with following directions:

"2) Utility is directed to recover the dispute bill without DPC, interest.

3) Refund the meter excess amount paid if any by way of adjustment in future bill."

3. Aggrieved by the order dated 30.04.2021 of the Forum, the Appellant has filed this representation stating in brief as follows: -

(i) The Appellant is an industrial consumer (No.001849032270) from 08.05.2008 having at present sanctioned load (SL) of 654 KW and Contract Demand (CD) of 484 KVA at Plot No. 2, MLK Industrial Estate No. 2, Range Office, Gokhiware, Vasai.

(ii) The Appellant applied for reduction of CD from 484 KVA to 50 KVA on 09.04.2020. However, the Appellant received email dated 28.04.2020 from the Respondent which reads as under:

"*Subject: Regarding your application of reduction in contract demand*

It is found that while feeding the online application of CD reduction you have 'opted for as per SOP '
Hence these requests are not auto approved hence kindly review your application for 'opted as per auto approval 'through online MSEDCL portal-WSS".

(iii) Above email is considered as a proof that Appellant`s reduction of CD proposal was not approved by the Respondent, MSEDCL. Thereafter the Appellant did not try to reduce the CD due to above email and continued to operate with CD as 484 KVA as thereto before.

(iv) The Appellant is not an expert of MSEDCL software App and is only user. All WSS portal language is not necessary to be understood by the Appellant. Hence the Appellant did not read every word of the set format. Moreover, during lockdown period from April 2020 to June 2020, bills did not show demand charges or demand penalty amount. Therefore, it was not able to

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understand the factual position vis-à-vis these charges. Therefore, the Appellant is of the opinion that the Respondent has not reduced the CD.

(v) The Respondent tried to justify its wrong action vide its reply to decide the grievance, by putting all irrelevant matters to justify their action of wrong email and divert the attention of this Authority. The Respondent did not issue any email or letter to the Appellant on 28.04.2020 that its CD is 97 KVA and not 50 KVA as requested by the Appellant in light of the Respondent's so-called circulars, guidelines, etc.

(vi) The Appellant explained its grievance that its CD is 484 KVA and it applied for reduction to 50 KVA on 09.04.2020 through online portal. It was rejected by email dated 28.04.2020 on the ground that its application is for reduction as per SOP and therefore cannot be auto approved and advised to review its application for auto approval through online WSS portal of MSEDCL.

(vii) However, for auto approval mode, the Appellant was directed to re-apply online, but Appellant dropped the reapplication process considering continuation of its approved CD of 484 KVA.

(viii) The Respondent penalized the Appellant for Rs.4.75 lakhs towards demand penalty/ charges. This amounts to undue enrichment of MSEDCL.

(ix) The Appellant filed grievance in Internal Grievance Redressal Cell (IGRC) on 14.08.2020. However, the IGRC did not conduct hearing. Therefore, the Appellant approached the Forum on 15.10.2020.

(x) The Appellant put up on record with the Forum that in a similar matter in a case of Keyur Kitchenware, Palghar Circle of MSEDCL of reduction of CD applied for refund of wrong CD penalty and after getting reply from CE (Commercial) of the Respondent, the Palghar Circle refunded the amount in bill. However, this is not considered by the Forum and rejected the grievance application in Case No. 2058 of 2020-21.

(xi) The Forum erred in not considering the email dated 28.04.2020 from the Respondent about reduction of CD and other factual position such as non-

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reflection of demand charges, penalty, etc in the bill. Therefore, the order of the Forum is bad in law.

(xii) The Appellant received bill of July 2020 on 08.08.2020 with excess demand charges of Rs.1,29,465/-. Hence, the Appellant immediately re-instated CD to 484 KVA on online portal.

(xiii) In view of the above, the Appellant prays that

a. The order of the Forum be quashed.

b. The Respondent be directed to revise the bills from April 2020 to July 2020 by considering Appellant's original CD of 484 KVA and excess charged demand penalty of Rs. 4,22,154.14 be refunded in next billing cycle.

c. Interest and Delayed Payment Charges (DPC) be waived of as per order of the Forum, but it is not yet implemented by Respondent.

4. The Respondent MSEDCL, by its letter dated 23.06.2021 submitted its reply stating in brief as under: -

(i) The Appellant is an industrial consumer (No. 001849032270) from 08.05.2008 having SL of 654 KW and CD of 484 KVA at Plot No. 2, MLK Industrial Estate No. 2, Range Office, Gokhiware, Vasai.

(ii) The Respondent denies all contention of Appellant except those herein admitted below.

(iii) The Maharashtra Electricity Regulatory Commission (the Commission) has issued practice direction and allowed online revision of CD by LT/HT industrial Consumers due to Covid-19 epidemic. The online facility was made available by the Respondent for revision of CD up to 20% of existing CD with auto approval system. The Respondent has issued email to all consumers by default for choosing auto approval mode for the awareness of consumers.

(iv) The Appellant has online applied on 09.04.2020 for CD reduction from 484 KVA to 50 KVA with auto approval mode and hence the load of the Appellant was auto reduced to 97 KVA i.e. 20 % of existing CD of 484 KVA.

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(v) The Respondent implements SMS facility for every service that is being rendered to consumers at large. This SMS is sent on the mobile number of the consumer registered with the Respondent. When the Appellant on 09.04.2020 applied online for load reduction to 50 KVA with auto approval mode, the SMS of its acknowledgement has been sent on registered mobile No. 9168633235 on the same day. Further, the SMS of load reduction to 97 KVA i.e. 20 % of existing CD of 484 KVA has also been sent on the same mobile number.

(vi) The Appellant on one side applied for CD reduction on 09.04.2020 however on the very next day, it recorded the demand of more than 97 KVA and till then the Appellant was not in receipt of alleged MSEDCL email dated 28.04.2020. The reduced CD of 97 KVA has been reflected in energy bill for the period of April 2020 to July 2020. However, during above period there is no application or email was received from the Appellant for cancelling the CD reduction.

(vii) The Appellant on his own reduced its CD from 484 KVA to 97 KVA from April 2020 and did not submit any application till 10.08.2020 for enhancement of load. However, it was consuming the load more than reduced load which is appearing in the energy bill from April 2020 to August 2020.The Respondent has already replied to complainant on 26.08.2020 and on 22.09.2020 on this issue.

(viii) On 10.08.2020, the Appellant has applied for load enhancement from 97 KVA to 484 KVA and accordingly, the load has been enhanced from 97 KVA to 484 KVA with effect from 13.08.2020. The penalty for exceeding CD was levied for the period from April 2020 to August 2020 as per tariff order of the Commission. Hence, it is legal and correct. The statement of exceeding CD and penalty levied is as below:

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Month	Sanctioned CD(KVA)	Actual recorded CD(KVA)	Exceeded CD(KVA)	Penalty for Excess CD (Rs.)
Apr-20	97	125	28	12, 083
May-20	97	260	163	1,00,490
Jun-20	97	294	197	1,21,450
Jul-20	97	307	210	1,29,465
Aug-20	97	341	244 (Up to 13.08.2020)	58,666
	484	365	Nil (From 14.08.2020)	Nil
			Total	4,22,154

(ix) The Appellant approached the Forum on 15.10.2020 and the Forum, by its order dated 30.04.2021, has rightly addressed all issues and rejected the grievance application in Case No. 2058 of 2020-21.

(x) In view of the above it is requested to reject the Representation.

5. The hearing was held on 09.07.2021 on e-platform through video conferencing due to the Covid-19 epidemic and the conditions arising out of it.

6. The Appellant argued in line with its written submission. The Appellant further argued that there is no dispute that the Appellant online applied on 09.04.2020 for reduction of CD from 484 KVA to 50 KVA due to Covid-19 epidemic. However, in response, it received email on 28.04.2020 from the Respondent stating that the application for reduction of load is cancelled as there is basic error in submission of the application for choosing the option for reduction of load. This email is crucial email which is considered as a proof for rejection of reduction of load application. The Appellant further did not try for reduction of CD. Hence, the Appellant started using its sanctioned CD of 484 KVA. The Appellant further argued that excess demand penalty was not shown in the bills of April, May, and June 2020. The consolidated bill with excess demand charges penalty was received in July 2020 which was protested by the Appellant vide its letter dated 11.08.2020. All these events happened in Covid-19 epidemic lockdown period. In view of the above, the Appellant prays for revision of bills from April 2020 to July 2020 by considering CD of 484 KVA and excess charged demand

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penalty of Rs. 4,22,154.14 paid by the Appellant under protest be refunded. In addition, the Respondent has levied interest and DPC which needs to be totally waived of.

7. The Respondent, in its arguments reiterated its written submission. It further argued that the Appellant has applied for the reduction of CD from 484 KVA to 50 KVA on 09.04.2020. It further stated that due to Covid-19 epidemic, the Respondent has created an Auto Approval Portal in its Computerised Billing System for reduction of CD up to 20% of sanctioned CD. Accordingly, the bills of May, June and July were generated/ processed with CD of 97 KVA and as per actual consumption by MDAS Automatic Meter Reading (AMR) system itself. The bills with 97 KVA CD were sent to the Appellant through email which is registered with the Respondent. The Appellant further applied for enhancement of load from existing CD of 50 KVA to 484 KVA vide its application dated 10.08.2020. Accordingly, its load was revised to 484 KVA from 14.08.2020. The Respondent argued that the email dated 28.04.2020 is indicative as guidelines to the consumers who approached for reduction of load through Auto Reduction CD Portal. It was common message to such consumers as proactive guidelines. The Respondent neither rejected nor informed the Appellant that its application has been rejected. Since the Appellant has already chosen the Auto Approved Option in the system, the system has accepted the load reduction of 20% of the sanctioned CD and clearly mentioned that the CD changed from 09.04.2020. All the bills were auto generated with the reduced CD.

8. The Respondent further argued that the Commission has issued Practice Direction pursuant to which auto approval for reduction in CD through online portal was made available which was used by the Appellant.

9. During the hearing, the undersigned posed a question to the Respondent as to how the entire set of action on its part either through online portal or otherwise is dealt with in April 2020 when the Commission issued Practice Direction on 21.05.2020. The Respondent did not reply.

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10. The Respondent submitted its additional say post hearing by email on 13.07.2021which has also been endorsed to the Appellant. Therefore, the Appellant also submitted its counter on the same.

11. The Respondent in its additional reply submitted as follows:

(i) Prior to the Commission's Practice Direction dated 21.05.2020, the Respondent in due consideration of the peculiar situation of nationwide lockdown in India from 22.03.2020 due to outbreak of Covid -19 epidemic and difficulties faced by HT Industrial Consumers across the Maharashtra, proactively made available the online facilities of load reduction up to 20% of their Sanctioned CD to all HT consumers. In the reply to the Petition No.82 of 2020 MSEDCL put up all these efforts before the Commission in its reply dated 12.05.2020 and additional submission dated 16.05.2020. The Commission, in its order dated 21.05.2020 at para-No. 5.17, 8.7, 19 and 20 recorded the same and passed the final order. The paras No. 5.17, 8.7,19 and 20 of the Commission's order is reproduced as below: -

> *"5.17 MSEDCL has initiated New Functionalities for HT Consumers in Web Self Service (WSS) Portal regarding Load/ Contract Demand (CD) Change and Consent for BG Encashment. Date of payment is extended for March up to 31 May 2020. The Respondent has provided immediate Auto reduction facility for CD reduction and enhancement. This facility has been availed by 1993 consumers (out of which 66 for CD enhancement & 1927 for CD reduction). MSEDCL has processed these applications without insisting on processing fee & any advance payment of charges applicable as per Schedule of Charges.*
>
> *8.7 MSEDCL has already provided immediate auto reduction facility for CD reduction and enhancement once in a billing cycle considering the unprecedented situation of COVID19. MSEDCL has sent out email communications to all industrial consumer allowing "Change of Contract Demand once in a billing cycle" keeping in view the difficult times caused by the Pandemic.*
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> 19. *MSEDCL has stated that on account COVID-19 circumstance various relief measures have already been extended to Industrial and the Commercial consumers which have in turn adversely affected MSEDCL"s revenue. Any further relaxation may result in further decrease in revenue of MSEDCL and worsen its financial position. Revision of Contract Demand at multiple occasions will reduce its revenue. In reply, Petitioners have stated that allowing revision in Contract Demand would*

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enable consumers to start Industries at the earliest without waiting for new billing cycle to start and this will in fact, increase the revenue of MSEDCL.

20. In this regard, the Commission notes that as per details submitted by MSEDCL, during COVID-19 lockdown, 1927 consumers requested for reduction in Contract Demand from 4016 MVA to 1552 MVA i.e. 61% reduction in Contract Demand. Thus, consumers have reduced their Contract Demand to maintain critical/minimum operations of Industries."

(ii) As such it may be observed that, considering the peculiar situation of nation –wide lockdown and difficulties faced by the industrial consumers, this was special facilities, which was made available by MSEDCL contra to the provision of Supply Code Regulations, 2005. As per existing Regulations, consumers can request revision in Contract Demand and Distribution Licensee has to give effect to such application, if it is complete in all respect, within second billing cycle and consumer were not allowed to reduce his load below SOP level. However, after lockdown the MSEDCL considered the online application of all HT consumer including the complainant herein for reduction of contract demand without insisting for the formalities of payment of processing fee, execution of agreement and SOP level etc.

(iii) The heavy reliance of complainant on the alleged email dtd.28.04.2020 does not hold any merit at all. The email dated 28.04.2020 was not specifically addressed to the complainant having mentioned the Application No. and date etc. It was sent to numerous consumers to facilitate in processing their applications. Normally as per SOP, the consumer having Sanctioned load of 188 KVA is defined as HT consumer hence naturally load reduction below 188 KVA is exception therefore to facilitate the speedy process of applications and for consumer awareness, the emails were sent. In the said email, it was nowhere mentioned that applications are rejected being "Auto Approval Mode" was not selected. The MSEDCL in due consideration of peculiar situation and avoid further delay had considered all applications of HT consumers and allowed load reduction up to 20 % of existing Sanctioned load with auto approval mode. The complainant was claiming the receipt of so called email

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dated .28.04.2020 however the said email Id was not registered with MSEDCL in the month of April-2020. Therefore, it cannot be termed as an official reply particularly to the application dated 09.04.2020 of complainant.

(iv) It is brought to the notice of the Hon'ble Electricity Ombudsman that, complainant applied for load reduction on 09.04.2020 but on the other hand, on very next day, it reached the demand more than 97 KVA and till then consumer was not in receipt of said alleged email dtd.28.04.2020. The reduced demand of 97 KVA has been reflected in the energy bill for period of April-2020 to July-2020. The consumer has made payment in July 2020. However, during above period there is no application or email which is received by MSEDCL for cancellation of the CD reduction application.

(v) In view of above it is requested to reject the Representation of Appellant.

12. Appellant' reply dated 14.07.2021 by email in response to the Respondent's additional reply is as below: -

(i) Reply is projecting the work done by the Respondent and what they did for consumers during Covid-19 period.

(ii) Load reduction up to 20% was within knowledge of MSEDCL but consumer is not supposed to master & aware of their all-technical matter. Consumer did not receive bills from MSEDCL but was downloaded from web portal as & when uploaded by MSEDCL, not within the specific period.

(iii) If consumer demanded 50 KVA & if MSEDCL made 97 KVA, it was MSEDCL's responsibility to give letter to this effect which they have failed to issue.

(iv) Respondent's email dated 28.04.2020 was sent to the Appellant, may be along with other consumers. Consumers understand the language of email that online application is rejected & email has directed us to resubmit online application. But consumer did not apply due to threat of any mistake again. Utter mistake of MSEDCL is now twisted to show as their correct work & consumer is portrayed as wrong doer and has been penalized.

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(v) April, May and June 2020 bills did not show any demand charges nor any demand penalty. So, it was prolonged for 4 months & consumer was hit by penalty of 4.23 Lakhs. Consumer has paid entire amount considering 484 KVA with penalty.

(vi) Despite the Forum's order, the Respondent has not refunded its excess collected amount of approximately Rs. 45000/- towards interest and DPC.

(vii) The Respondent has not lost any amount, but the Appellant is penalized for heavy amount of Rs. 4.23 lakhs only on the clerical and administrative ground. Similar mistake of Palghar consumer is made let go by MSEDCL and refunded Rs. 10 Lakhs to him. Entire details are submitted with this application.

(viii) It is therefore requested to consider the matter sympathetically and give natural justice.

Analysis and Ruling

13. Heard the parties and perused the documents on record. The Appellant argued that it has online applied for reduction of CD from 484 to 50 KVA on 09.04.2020. However, it received an email from the Respondent on 28.04.2020 saying that the said online application is falling under the category of reduction of CD as per 'SOP' and not under 'Auto Approval' mode which is a special provision made available by it in Covid-19 conditions. It also submitted that the Respondent did not issue energy bill for the month of April, May and June 2020. The Respondent served the bill in the month of July 2020 which contained demand charges, charges towards penalty for exceeding CD for April, May and June 2020 and the current bill for the month of July 2020 which was also with demand charges and penalty for exceeding CD. The Appellant presumed that its CD has not been reduced and continued to run its business considering CD as 484 KVA. It is also not understood as to how the Respondent has reduced its CD to 97 KVA. All these issues came to the Appellant's knowledge when the bill for the month of July 2020 is received. Therefore, levy of penalty for exceeding CD in the month of April, May, June and July 2020 be ordered to be withdrawn. After knowing that the Respondent has reduced its CD to 97 KVA, it applied for restoration to 484 KVA on 12.08.2020.

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The Respondent argued that the Appellant is unnecessarily heavily relying on the Respondent's email dated 28.04.2020 which is not exclusively addressed to the Appellant. The said email is addressed to many such consumers and it is a sort of guideline and general instructions to all such consumers. It does not convey approval or disapproval of reduction of CD. It simply informs that if the CD is to be reduced as per the scheme specifically floated in Covid-19 condition then the consumer need to apply under 'Auto Approval' mode made available on the web portal. This web portal also envisages the complete scheme of operation for reduction of CD under 'Auto Approval' for Covid-19 conditions. Though the Appellant applied for reduction of CD to 50 KVA as per the scheme, it has been reduced to 97 KVA being 20% of 484 KVA. The Appellant has exceeded the CD and therefore, the penalty has been levied on excess CD which needs to be paid by the Appellant.

From the IT data submitted by the Respondent, it is seen that the SMS for reduction of CD has been sent to the Appellant and its CD has been reduced to 20% which is 97 KVA as against 50 KVA applied by the Appellant. I am of the opinion that email dated 28.04.2020 of the Respondent is a general email in the form of guidelines. It does not imply either approval or disapproval of the reduction of CD. Since the Auto Approval of reduction of CD is meant for reduction of CD due to peculiar financial conditions of consumers at large in Covid-19 situation, it has automatically assumed a minimum value of 20% of sanctioned CD of 484 KVA of the Appellant and reduced it to 97 KVA. This entire exercise is Covid-19 related and a special dispensation offered by the Respondent in the larger interest of the consumers, it is hard to believe that the Appellant is not in the knowledge of scheme of things. Therefore, it was obligatory on its part to have operated its machine to the extent of 97 KVA CD. The fact that the Appellant has approached this 'Auto Approval' portal for reduction of CD substantiates the fact that it was in the know-how of the scheme and the conditions set therein. Therefore, pleading ignorance on the part of the Appellant does not go down well and not in the fitness of things and does not invoke confidence.

There is no need to consider the Palghar case cited by the Appellant as it does not have any parallel with the instant representation.

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I am, therefore, of the opinion that allowing the request of the Appellant will not only amount to undue enrichment of the Appellant but will defy the entire spirit of the scheme which was introduced for the benefit of consumers at large, including the Appellant.

14. I do not find it necessary to interfere with the order of the Forum. The other prayers of the Appellant are rejected. The Representation is therefore rejected and disposed of accordingly.

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

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