BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 10 OF 2023

In the matter of recovery of tariff difference

Mehta Extraction Pvt. Ltd. …… Appellant

V/s.

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

Appearances:

Appellants : 1. Ashwin Shah, Coordinator to M.D.
2. Suraj Chakraborty, Representative

Respondent : 1. Rajaram Mane, Superintending Engineer, Vashi
2. Pranay Chakravarthy, Executive Engineer (I/c), Vashi

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

Date of hearing: 11th April 2023

Date of Order : 9th May 2023

ORDER

This Representation was filed on 6th February, 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 5th December 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum).

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2. The Forum, by its Order dated 5th December 2022 has dismissed this grievance application in Case No. 111 of 2022, being sub judice before the Court of Civil Judge Sr. Division, Thane for recovery of arrears and is registered as Special Civil Suit No. 763/2022.

3. Aggrieved by the order dated 5th December 2022 of the Forum, the Appellant has filed this representation. An e-hearing was held on 11th April 2023. Both the parties were heard at length. The Appellant's submission and arguments are stated in brief as below:

(i) The Appellant is a HT Consumer (No. 000119027140) from 05.12.2003 having Sanctioned Load (SL) of 352 KW and Contract Demand (CD) of 188 KVA at Plot No. R 720, TTC MIDC Area, Rabale, Navi Mumbai.

(ii) The Appellant was a Garment /Textile manufacturing unit initially from 05.12.2003 and was billed under HT Industrial Tariff Category. The Appellant has nearly closed its manufacturing activities around 2011 due to financial and labourcrisis, and thereafter, the said unit was used only for keeping scrap material from earlier production.

(iii) The Flying Squad Vashi inspected the consumer's premises on 07.08.2013. During the inspection, it was observed that power supply was being used for the purpose of Godown for storing garments and fabric and not for industrial purpose. A provisional bill under Section 126 of the Electricity Act, 2003(the Act) was given for an amount of Rs. 19,60,966/- for the period from Aug. 2011 to Sep. 2013.

(iv) The supply was illegally disconnected in the year 2013. The Appellant filed a writ petition in Bombay High Court against the alleged assessment bill. However, the High Court disposed of the petition by giving direction to approach the Appellate Authority i.e. the Electrical Inspector. The Appellant paid the Final Assessment Bill on 24.08.2015 and filed an appeal with Appellate Authority under Section 127 of the Act on 27.08.2015. However, the Appellate Authority rejected the appeal. The Appellant Authority did not understand the basic issue that the case does not fall under Section 126 of the Act. Hence, this decision was challenged before the Hon'ble Bombay High

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Court which is registered as W.P. No. 9658 of 2017. The case is pending. Meanwhile, the supply of the Appellant was restored as the Final Assessment bill of Rs. 19,60,966/- was paid under protest.

(v) The Appellant's activity was that of running a garment factory, which was Industrial in nature. Since 2011, production was reduced to minimum due to financial crisis. However, the said machineries are still on site, being idle. The premises are used for storing scrap material from previous production. This is a store room and not a godown for storing other products from other agencies, and hence not intended for any Commercial activity. The electricity is used for factory lighting in the premises for security reasons. No tariff order says that if an Industrial activity has stopped due to financial crisis, the tariff should be charged as Commercial instead of Industrial.

(vi) The Respondent issued a wrong supplementary bill of Rs.25,60,333/- on 04.12.2020 towards tariff difference from Industrial to Commercial tariff category for the period from October 2013 to September 2020 which is not within the purview of Section 56 (2) of the Act. The Respondent has the liberty to recover tariff difference only for 24 months retrospectively from the date of the supplementary bill, if the tariff category is actually changed. In this case, the Appellant did not change its Industrial use. Hence, the said supplementary bill is a fictitious bill and deserves to be withdrawn in toto.

(vii) The Respondent illegally disconnected the power supply of the Appellant on 01.03.2021. There is no power supply in the premises from March 2021 onwards.

(viii) The Respondent filed a civil suit against the consumer in the court of Civil Judge Sr. Division for recovery of arrears on 07.11.2022, and it is registered as Special Civil Suit No. 763/2022. However, these arrears are fictitious in nature, and were challenged in the grievance redressal mechanism established under the Act. The Appellant complained that the Respondent deliberately filed a Civil Suit in the City Civil Court while the grievance was still pending before the Forum. The Appellant approached the Forum on 11.10.2022. The

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Forum, by its Order dated 05.12.2022, dismissed this grievance application wrongly for being pending before any court, tribunal, arbitrator, or any other authority as per Regulation 7.9 (a) of CGRF & EO Regulations 2020. The Forum did not understand the basic issue that the case which is filed before the City Civil Court is a recovery case of fictitious billing. The Forum has the authority to decide whether the actual billing is valid or not.

(ix) The Appellant prays that the Respondent be directed

a) to quash the supplementary bill of Rs.25,60,333/- along with withdrawal of DPC and interest levied.

b) to restore the supply of the Appellant.

4. The Respondent filed its reply dated 1st March 2023. Its written submissions and arguments are as under:

(i) The Appellant was an HT Consumer (No. 000119027140) having SL of 352 KW and CD of 188 KVA at Plot No. R 720, TTC MIDC Area, Rabale, Navi Mumbai. The connection was released on 05.12.2003 under HT Industrial tariff category for garment manufacturing. The supply of the Appellant was permanently disconnected on 01.05.2021 for non-payment of outstanding dues.

(ii) At the outset, the present Representation is not maintainable or admissible as the case is pending in the City Civil Court, Thane (Special Civil Suit No. 763/2022) for recovery of Supplementary bill amount of Rs. 25,60,333/- and current bills for the period from Jan. 2021 to April 2021.

(iii) The Flying Squad Vashi had inspected the premises of the Appellant on 07.08.2013. During inspection, it was observed that power supply was being used for the purpose of Godown of Garments and Fabric. Accordingly, the Respondent vide its letter No. 879 dated 25.02.2014 issued a provisional bill to the Appellant under Section 126 of the Act for 77803 units amounting to Rs. 19,60,966/- for the period from Aug. 2011 to Sep. 2013. It was informed by the Appellant vide its letter dated 28.03.2014 that currently there was labour unrest

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in the premises and that electricity was only used for the purpose of lighting and office use.

(iv) An opportunity of hearing was given before issuing the final assessment bill as per Section 126 of the Act. During the hearing, the Appellant pleaded that there was no motive power usage at the factory premises, and minimum electricity was used only for lighting purpose as well as storing materials. The Appellant never intimated about change of activity from industrial to commercial.

(v) Hence the Respondent issued a Final Assessment Bill of Rs.19,60,966/- vide letter No. 2871 dated 27.06.2014 to the Appellant for the same amount as that of Provisional Assessment bill. However, even after various reminders for payment, the Appellant ignored paying the same. Hence, the supply of the Appellant was disconnected.

(vi) Upon disconnection, the Appellant filed a Writ Petition before the Hon'ble High Court Bombay. The High Court, after hearing both sides, disposed the petition, and vide order dated 14.08.2015 directed the Appellant to file an application for condonation of delay with the Appellate Authority under Section 127 within 2 weeks, and let the Appellate Authority decide the matter on its own merit.

(vii) The Appellant made the full payment of the Final Assessment Bill on 24.08.2015 and filed an appeal with Appellate Authority i.e., Electrical Inspector, under Section 127 of the Act on 27.08.2015. The Appellate Authority rejected the appeal on the ground of not filing the matter within 30 days from the receipt of the Final Assessment Order. Meanwhile the supply of the Appellant was restored.

(viii) Aggrieved with this order, the Appellant again filed a W.P. No. 9658 of 2017 in the Hon'ble Bombay High Court requesting to quash and set aside the Final Assessment Bill. The decision in the said matter is still pending.

(ix) Subsequently the Testing Division of Respondent vide its letter no. EET/Vashi/Tech/C-913/3575 dated 15.10.2019 informed the Circle office that during a routine inspection it was observed that the activity found was that of a

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godown. The Superintending Engineer of the Respondent inspected the premises on 24.10.2020 and the following observations were drawn:

a. The factory comprises of Ground + 2 floors.
b. No production/industrial activity observed in the factory.
c. Ground floor utilized as a Godown where previously there was a Garment factory.
d. Rolling machine and folding machine is there to wind and roll up cloth.
e. The representative in the factory informed that manufacturing activity was stopped from July 2011.
f. The first floor comprises of an office, and on the second floor were garment stitching machines which were found in idle condition. Both the floors were locked/closed from outside.

(x) The Appellant was called upon for a hearing by the Respondent before any supplementary bill was issued. Mr. Bukhari (Admin Manager) attended the hearing at Vashi Circle office on 09.11.2020 at 13:35 hours. **In the said hearing the consumer representative expressed his inability to show any documentary evidence regarding stoppage of manufacturing activity.**

(xi) The Respondent served a supplementary bill of Rs. 25,60,333/- vide its letter No. 5252 dated 04.12.2020 to the Appellant towards tariff difference from Industrial to Commercial tariff category for the period from Oct. 2013 to Sep. 2020. Besides, the tariff of the Appellant was changed to Commercial with effect from Oct. 2020.

(xii) As no payment towards the above supplementary bill was received from the Appellant, a disconnection notice under Section 56 (1) of the Act was issued to the consumer on 11.02.2021. The Appellant ignored the payment of supplementary bill, hence supply was temporarily disconnected on 01.03.2021 and permanently disconnected on 01.05.2021.

(xiii) The Appellant approached the Forum on 11.10.2022. The hearing took place on 11.11.2022. The prayers of the Appellant were:

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a. To quash and set aside the tariff difference recovery for 84 months as the said recovery is violation a of provisions of Section 62 as well as Section 56 (2) of the Electricity Act 2003.

b. Reclassify the consumer under Industrial Tariff category.

c. Reconnect the permanently disconnected supply of the consumer.

(xiv) Meanwhile, the process of filing a recovery suit had been initiated by MSEDCL in the year 2021, and finally it was filed by MSEDCL on 07.11.2022 vide Special Civil Suit No. 763/2022 in Hon'ble Civil Court, Thane for recovery of Supplementary bill amount of Rs.25.6 lakhs and current bills for the period from Jan 2021 to April 2021 along with interest. This Suit is pending.

(xv) The Forum, by its Order dated 5th December 2022 dismissed this grievance application in Case No. 111 of 2022 being sub-judice before the City Civil Court.

(xvi) Thus, it is seen that MSEDCL filed the Civil Suit for recovery while the grievance was pending before the Forum.

(xvii) The Appellant has filed this present representation before this Hon'ble Authority with the same prayers as made before the Forum.

(xviii) The Respondent strongly condemns the statement made by the Appellant that the MSEDCL has taken undue advantage of the time granted by the Forum for filing of Civil Suit against the consumer. They initiated the process of filing the recovery suit in 2021 itself, and finally on 07.11.2022 filed the recovery suit with Special Civil Suit No. 763/2022 in Hon'ble Thane Civil Court. The Respondent vide letters dated 22.09.2021 & 27.10.2021 respectively had already informed their Advocate Mrs. Rupali Kamlapurkar to file the recovery suit against the Appellant even before he approached the Forum. Hence, it cannot be said that the Respondent has taken the undue advantage of the time given by the Forum for filing the recovery suit.

(xix) The Respondent has already filed Special Civil Suit no. 763/2022 in Thane Civil Court. The matter is sub judice. As per Regulation No. 19.22 (g) of CGRF & EO Regulations 2020 the Hon'ble Electricity Ombudsman cannot entertain a

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representation if the same grievance is pending in any proceedings before any Court. Hence, on this ground alone this representation is not maintainable and ought to be rejected.

(xx) The Appellant made an allegation of violation of Section 62 of the Act. The Respondent has not violated Section 62, but issued tariff difference bill due to change in purpose by the Appellant. As per section 56 (2) of the Act, the Respondent can recover charges retrospectively for two years from the date of first demand, and for recovery of charges beyond / before those two years, the Respondent can file a recovery suit in the Civil Court, as per the various judgements of Hon'ble Supreme Court. Hence, the Respondent is entitled to recover all these arrears of tariff difference from the Appellant, and for that the Respondent filed a civil suit bearing Special Civil Suit No. 763/2022 in Hon'ble Civil Court, Thane. The Forum has rightly considered this submission, and relying on Regulation No. 7.9 (a), has dismissed the grievance of the Appellant.

(xxi) It is prayed to:

a) Dismiss the present Representation.

b) Uphold the order of the Forum.

c) Direct the Appellant to pay the arrears immediately.

Analysis and Ruling

5. Heard the parties and perused the documents on record. It is seen that there are two different recoveries which have come up during the hearing.

The first recovery relates to Rs.19,60,966/- under Section 126 of the Electricity Act, 2003 and this is pending before Hon'ble High Court. Meanwhile, the Appellant has paid the full amount to get the electricity connection restored on 24.08.2015. As this recovery issue is pending before the Hon'ble High Court, it will not be considered under this representation, as further explained in Part A below.

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The second recovery of Rs. 25,60,333/- relates to the subsequent period of October 2013 to September 2020 which is currently under consideration in the instant Representation and is also pending before the City Civil Court, being a plain recovery.

6. For further analysis, this Representation is divided in three parts, Part A, Part B and Part C.

Part A: Assessment of Rs. 19,60,966/- **under Section 126 and Appeal under Section 127 of the Act:**

The Flying Squad Vashi had initially inspected the premises of the Appellant on 07.08.2013, when it was observed that power supply was being used for the purpose of Godown of Garments and Fabric. The Respondent issued a provisional bill on 25.02.2014 to the Appellant for 77803 units amounting to Rs. 19,60,966/- under Section 126 of the Act for the period from Aug. 2011 to Sep. 2013. The Respondent issued a Final Assessment Bill of the same amount of Rs. 19,60,966/- on 27.06.2014. The Appellant disregarded to pay the same. Hence, the supply of the Appellant was disconnected by the Respondent. Subsequently, the Appellant filed a W.P. before the Hon'ble Bombay High Court. The Hon'ble High Court after hearing both sides disposed the petition vide order dated 14.08.2015 with a direction to the Appellant to file an application for condonation of delay before the Appellate Authority within 2 weeks, and the matter be decided on its own merit. The Appellant made the full payment of Final Assessment Bill on 24.08.2015 and filed an appeal with the Appellate Authority under Section 127 of the Act on 27.08.2015. The Appellate Authority rejected the appeal, being time barred. The supply of the Appellant was restored after the payment of Final Assessment Bill. The Appellant again filed a W.P. (No. 9658 of 2017) in the Hon'ble Bombay High Court requesting to quash and set aside the Final Assessment bill. The decision in the said matter is pending.

Answer: Part A does not fall under the jurisdiction of this Authority as per Regulation 7.9 (b) of CGRF & EO Regulations 2020 and therefore this part of the representation will not be considered.

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Part B : Whether the Grievance Redressal Mechanism can entertain the instant case which is sub judice before the City Civil Court?

The Appellant approached the Forum on 11.10.2022 against the second supplementary bill of Rs. 25,60,333/- for tariff difference for the period from Oct. 2013 to Sep. 2020. The Respondent filed a Recovery Civil Suit (No. 763/2022) in Hon'ble Thane Civil Court on 07.11.2022. The Respondent has argued that they had already initiated the civil suit recovery proceedings in 2021. However, the fact is that at the point of time when the civil suit was filed, the case was already filed by the Appellant in the grievance redressal mechanism. The subject matter of the present representation has not been decided by any competent authority/court/ arbitrator. The Consumers have a right to have their grievances redressed in accordance with the regulations notified by the Commission under Electricity Consumer's - Rights Statement under the provisions of Section 42(5) and (7) of the Electricity Act, 2003. It is notable that at the point of time when the Appellant filed his grievance before the Forum on 11.10.2022, no civil suit was pending. Thus, the Forum had the powers to decide the case. After about a month, the Respondent filed the civil suit. Had the Forum decided the case within this one month, the question of a pending civil suit would not have arisen in the first place. Even after filing this suit, the Forum still had the powers to entertain the case for deciding the recovery up to two years. It is only for recovery beyond two years that the Respondent needed to approach the city civil court.

Answer: The Grievance Redressal Mechanism can entertain the grievance of the Appellant on merit as per Regulations of the Commission in force and provisions of the Act.

Part C : Determination of tariff category:

The following two issues are framed to decide the appropriate tariff category.

Issue A : Whether the Appellant is entitled to be billed under Commercial tariff category after closing of industrial production ?

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The Appellant has admitted that he stopped industrial activity in the said premises by its letter dated 06.08.2011 to the SE, Vashi, MSEDCL. He requested to raise the minimum bill, as only lights were in use till the management could restart production. This is because for the last one year, there was labour unrest in its factory due to some disgruntled workers. This led to reduction in daily production due to shortage of tailors. Many workers / tailors tendered their resignation to the management, compelled them to settle the legal dues, and close down the production activities. Only a few staff were left working.

Answer : The production activity in the industrial unit was admittedly stopped, making it non-industrial, since the premises was being used for office and storing scrap material of last production. **The Commission in its various tariff orders has already clarified that activities which are Non-Residential, Non-Industrial, and not covered under other tariff categories should be billed under Commercial tariff category.** It is a fact that the Appellant has been using power for its office work and storeroom. The question is whether, in these circumstances, the previously applicable industrial tariff will apply, even if the industrial activity is stopped, on humanitarian or sympathetic grounds. Or whether, in the absence of industrial activity, by default, Commercial tariff would apply. The relevant para of the tariff order dated 12.09.2018 in Case No. 195 of 2017 is reproduced below:

> *"LT II: LT – **Non-Residential or Commercial***
>
> *LT II (A): 0 - 20 kW Applicability:*
>
> *This tariff category is applicable for electricity used at Low/Medium voltage in **non-residential, non-industrial** and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:*
>
> *a) Non-Residential, Commercial and Business premises, including Shopping Malls and Showrooms……."*

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This category is continued in all the tariff orders till date.

7. There is no specific mention in the above tariff order of a closed down factory, or a situation where an industry has closed down. However, the use of the words "non-industrial" and "non-residential" indicates that unless the use is specifically for running an industry, any other purpose which is not covered under any other tariff category is to be billed under Commercial tariff category by default. In the instant case, industrial production was stopped around 2011, and electric supply was then used only for office / storeroom / basic lighting for many years till disconnection. Hence, the Appellant would no longer be eligible for Industrial tariff category. Even if the situation is viewed from a sympathetic angle, the following question arises. The Appellant contends that his industry shut down around 2011 due to labour unrest and financial problems. It is surprising why the Appellant did not get his load reduced for more than a decade from 2011 till the time of his disconnection, in order to get his monthly bills reduced. The electricity charges could easily have been reduced to around half, had the Appellant applied for load reduction, but he did not do so.

Issue B : Whether the Respondent can recover the tariff difference for 84 months retrospectively?

The Respondent has raised a supplementary bill of Rs. 25,60,333/- for the tariff difference from Industrial to Commercial tariff category for the period from Oct. 2013 to Sep. 2020.

The fact that the wrong tariff was being applied came to the notice of the Respondent much too late, i.e. around September 2020, which is a mistake by the Respondent and which they have accepted.

The case needs to be decided in view of the Larger Bench Judgment dated 12.03.2019 of Bombay High Court in W.P. No. 10764 of 2011 with other WPs. The relevant portion of the Section 56 (2) of the Act and the Larger Bench Judgment is quoted below.

Section 56 (2) of the Act

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

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

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

77. There, the Division Bench held and agreed with the Learned Single Judge of thisCourt that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month-to-month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection

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under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which wasunder challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable

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interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable."

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

A. *The issue No. (i) is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two Years preceding the date of the first demand of such charges.*
B. *As regards issue No. (ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.*
C. *The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.*

Secondly the Hon'ble Supreme Court in its Judgment dated 18.02.2020 in Civil Appeal No. 1672 of 2020, Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s Rahamatullah Khan alias Rahamjulla has ruled as under:

> *"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.*
>
> *The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.*

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Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. *……..”* ***(Emphasis added)***

In view of the above discussion, the Larger Bench Judgment and Hon'ble Supreme Court in its Judgment dated 18.02.2020 in Civil Appeal No. 1672 of 2020, **the Respondent can only recover charges for 24 months retrospectively i.e., from October 2018 to September 2020 considering the limitation period of two years under Section 56(2) of the Act.** Section 56(2) does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period in the case of a mistake or bona fide error, but it cannot disconnect the electricity supply under Section 56 (1) of the Act. In this case the Respondent raised a bill from October 2013 to September 2020 i.e. for a period of about 7 years, which is not justified. Further, the supply was permanently disconnected on 01.05.2021 for non-payment of these arrears, which again goes beyond the provisions. The Respondent can file a civil suit for recovery for the period beyond 2 years, however, it cannot disconnect supply to enforce this recovery.

8. In view of the above analysis, the Forum's order is partially set aside.

9. The application of Commercial tariff is upheld. The Respondent is directed:

a) to revise the supplementary bill for the period of only 24 months, i.e., only from October 2018 to September 2020, and to withdraw interest and DPC levied, if any.

b) to reconnect the power supply if the revised bill payment is made by the Appellant in toto, and as per statutory requirements of Supply Code & SOP Regulations 2021 as directed to the Appellant in Para 10 below.

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10. The Appellant has to pay this revised bill within one month, and thereafter approach the Respondent for reconnection of the supply as per statutory requirements of Supply Code & SOP Regulations 2021.

11. The Respondent is directed to submit the compliance report within two months from the date of this order.

12. The secretariat of this office is directed to refund the amount of Rs. 25000/- taken as deposit to the Respondent to adjust in its ensuing bill.

13. The Representation is accordingly disposed of.

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

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.