

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO.77, 78, 79, 80, 81 & 82 OF 2022

In the matter of Refund of Infrastructure Cost

Sr. No.	Name of Appellant	Consumer No.	Rep. No.
I	Sangram Textile	250380119729	77/2022
II	Smt.Suvarna Sunil Swami	250380119737	78/2022
III	Shri Sunil Mallaya Swami	250380119711	79/2022
IV	Alaka Textiles	250380119700	80/2022
V	Shri Akash Ashok Swami	250380119702	81/2022
VI	Smt. Amruta Sangram Swami	250382555933	82/2022

..... Appellants

V/s.

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

Appearances:

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

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

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

Date of hearing: 10th August 2022

Date of Order: 21st October 2022

ORDER

These 6 Representations were filed on 6th May 2022 by common Schedule B under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance


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Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Common Order dated 10th March 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum). Further, these Representations are filed individually under separate Schedule B on 2nd June, 2022.

2. The Forum, by its Common Order dated 10.03.2022 has rejected these 6 grievance applications.

3. Aggrieved by the common order dated 10.03.2022 of the Forum, the Appellants filed these representations. The physical hearing was held on 10.08.2022. Both the parties were heard. Their written submissions, arguments and counter arguments are stated in brief as below:

- (i) The Appellants are LT power loom consumers at the address of C.S.No.22040A, Ward No. 23, House No. 305/4/1, Gat No.829, Shahapur, Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur.
- (ii) The Appellants in Rep. 77,78,79,80 & 81 of 2022 applied for enhancement of Sanctioned Load from 65 to 105 HP and Contract Demand from 54 to 87 kVA, whereas the Appellant in Rep. 82 of 2022 applied for a fresh connection for Sanctioned Load of 105 HP and Contract Demand of 87 kVA vide applications dated 04.07.2017 under LT Multi-Party Power loom Group. The S.E., MSEDCL, Kolhapur Circle approved the applications and issued Sanction Letters on 07.07.2017 for supply at 11 KV level.
- (iii) The Executive Engineer, Ichalkaranji Division of the Respondent issued an estimate under Dedicated Distribution Facility (DDF) on 14.06.2017 with an estimate amount of Rs.10,09,660/- for HT Cubicle, 630 KVA Distribution Transformer Centre (DTC) and LT Metering work.
- (iv) The Appellants paid 1.3% Supervision Charges of Rs.2,910/- each to MSEDCL on 30.08.2017 and completed all the infrastructure works as per estimate. Thereafter, the additional load and new connection were released on 05.01.2018. The copy of the Single Line Diagram of the concerned 11 KV New Amit feeder is on record.


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- (v) The issue of refund of Infrastructure Cost was pending due to Stay given by the Hon'ble Supreme Court in a Civil Appeal filed by MSEDCL. The Hon'ble Supreme Court dismissed the Civil Appeal and thereafter, the Appellants can claim for the refund of all the expenses done for Non DDF Infrastructure Works and/or Metering Works.

After the Final Decision of the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 dated 10.11.2016 regarding Refund of such charges, MSEDCL issued its first Refund Circular on 12.10.2017 and the Amendment Circular on 29.12.2017. Thereafter, the Appellants applied to the EE, MSEDCL, Ichalkaranji Division for the Refund of the estimate amount Rs.10,09,660/- along with the interest thereon.

- (vi) But till today, the Appellants did not receive any response or refund from the Respondent. The Appellants filed grievance applications in Internal Grievance Redressal Cell (IGRC) on 19.08.2019. The IGRC, by its order dated 04.11.2019 rejected the complaints. Thereafter, the Appellants submitted grievances to the Forum on 01.01.2020. However, the Forum, by its common order dated 10.03.2022 also rejected the grievances. Hence, the Appellants have filed these Representations for Refund of DDF (actually Non DDF) estimate amount along with interest.
- (vii) This denial of refund is totally wrong, illegal and against the orders of the Hon'ble Commission and Hon'ble Supreme Court and MSEDCL's own refund circulars. The detailed submissions in this regard are given in the following paragraphs.

- Work Done - The work done by the Appellants as per estimate of MSEDCL is the HT & LT Metering and 630 KVA DTC in their premises. The scope of the work was HT Cubicle, 630 KVA Transformer, and all the concerned infrastructure work and LT Metering work. The copy of the Single line diagram is kept on record for easy understanding of the concerned 11 KV feeder and extension work.
- In case of LT Meters and HT Metering Cubicle, the Appellants wish to state that, as per the Commission's Order regarding "Schedule of Charges" dt. 08.09.2006 in Case No. 70/2005 and corresponding MSEDCL Circular No. 43 dt. 27.09.2006, meters are to be installed by


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the licensees. Also, if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars. Copies of concerned Circulars No. 21560 dt.09.05.2017 and No. 34307 dt. 03.09.2007 are kept on record.

- Feeder Details - The name of the feeder is 11 KV New Amit Feeder which emanates from 33/11 KV Shahapur Substation. The feeder from MSEDCL Substation was existing and the Appellants have done only LT/HT Metering & 630 KVA DTC Work. This can be clearly understood from the single line diagram kept on record.
- Other Consumers - There are many other consumers getting power supply from the same 11 KV New Amit Feeder. These consumers are clearly shown in the Single Line Diagram.

(viii) **The Commission Order dated 16.02.2008 in Case No. 56 of 2007** - Only the extension work was done by the Appellants and many other consumers are getting supply from the same feeder. *"Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)"* is the Clarification given by the Commission, on the demand of MSEDCL itself.

(ix) **Work Non DDF** - It is clear from the definition of DDF in the regulations & clarifications given by the Commission in the above-mentioned order, the feeder and the work done is clearly Non DDF. Hence, the Appellants are fully eligible for the refund of the said amount i.e. Rs.10,09,660/- as per MSEDCL's own office estimate.

(x) **The Commission Order dated 17.05.2007 in Case No. 82 of 2006** – The Commission has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts alongwith the interest thereon, that have been collected towards ORC, ORC-P or such other head-based charges which are not allowed in Electricity Supply Code Regulations 2005 and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dated 08.09.2006.

Para 4 end – "MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head-based


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charges, including cost of meter, at variance from the order dated September 8, 2006.”

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

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

- (xi) **The Commission Order dated 21.08.2007 in Case No. 82 of 2006-** The Commission has issued further Order dated 21.08.2007 in the same Case No. 82 of 2006, imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL for compliance as per Order dated 17.05.2017.

A few important extracts of this order are as below,

Para 7 - *"Public Utilities such as MSEDCL are those industries who are affected with public interest and as such are subjected to regulatory Control and cannot be permitted to claim charges beyond what the legislature regards as legal."*

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

- (xii) **DDF Clarifications** - Again Case No. 56 of 2007 was filed by the same petitioner before the Commission for the compliance of the directions issued on 17.05.2007 in Case No. 82 of 2006. In this case, issues of ORC, DDF and Non DDF were fully discussed by the Hon'ble Commission. In this order, the Commission has clarified the concept and issued detailed clarification on "DDF".

A few important extracts of this order are as below,


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

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

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

- (xiii) **Provisions of Section 62 (6) of the Electricity Act, 2003** - It is clear from the directions of the Commission quoted above that "*directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally*". Also that "*consumers should not be burdened with infrastructure costs which are the liability of MSEDCL*".

Also Section 62 (6) of the Act reads as below,

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

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


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- (xiv) **MSEDCL Circular 20.05.2008** - After this order dated 16.02.2008, MSEDCL has issued circular on 20.05.2008 as Guidelines for release of new connections on the basis of above-mentioned Commission orders. The circular clarifies that all Non DDF connections are refundable. MSEDCL has issued circular only for LT connections. Actually, the Commission's order is for both LT & HT connections.
- (xv) **MSEDCL Circular 21.12.2009** - MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of infrastructure cost, which is applicable to both LT & HT Connections. It is clearly stated in the circular that the work may get executed under DDF & the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.
- (xvi) **MSEDCL Civil Appeal in Supreme Court** - Meanwhile MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007), in which Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31.08.2007. Hence all the Refunds were stopped.
- (xvii) **Supreme Court Order 10.11.2016** - Finally the Civil Appeal filed by MSEDCL before the Hon'ble Supreme Court came for final hearing in the year 2016. Hon'ble Supreme Court heard the matter, issued final order on 10.11.2016 and dismissed the Civil Appeal in toto. The copy of the Order is on record.
- (xviii) **MSEDCL Circular 12.10.2017** - After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement concerned orders of the Commission in letter & spirit. MSEDCL issued circular for refund of SLC, ORC & meter cost after 11 months vide its circular No. CE/Dist/D-IV/MERC No. 25079 on 12.10.2017.
- (xix) **MSEDCL Refund Period Circular dated 29.12.2017** - In its 1st refund circular dated 12.10.2017 MSEDCL stated the refund period from 20.01.2005 to 30.04.2007. Thereafter MSEDCL issued Amendment Circular on 29.12.2017. The refund period was revised from 20.01.2005 to 20.05.2008.

In this circular dated 12.10.2017, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by the Commission in its order


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dated 16.02.2008. But if the connection is actually Non DDF and it is merely named DDF by MSEDCL for its own convenience or in order to avoid any refund, then it is nothing but ORC. Then in such Non DDF cases, Consumer is eligible to get the refund along with the interest thereon.

At many places, Consumers had asked for refund of Infrastructure Expenses. But MSEDCL always took a stand before various forums & courts that "the issue of refund of infrastructure Cost is pending before Hon'ble Supreme Court."

- (xx) **Supply Code Regulations** - After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually, using the term "DDF" and imposing cost on consumers is totally illegal & against the orders of the Commission. Such act & such conditions of MSEDCL are against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

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

- (xxi) **Interest** - As per provisions of Section 62 (6) of the Electricity Act 2003, it is binding on the licensee to refund the excess recovered amount to the concerned person/consumer along with interest equivalent to the bank rate. The copy of the bank rate for last 10 years, as declared by RBI is on record.
- (xxii) Actually, the expenditure on the concerned work is more than the estimate of MSEDCL. But logically and reasonably, we can claim only the estimate amount. Hence, on the basis of all above mentioned grounds, the Appellants are eligible to


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get the refund of estimate amount Rs. 10,09,660/- along with the interest thereon at bank rate from March 2008 up to the actual date of repayment.

(18) **Compensation** - This complaint is a complaint other than bills. Hence as per SOP regulations 2014, Regulation No. 7.6, "*In other cases the complaint shall be resolved during subsequent billing cycle.*" The Appellants filed complaint on 19.08.2019. It is necessary & binding on MSEDCL to resolve it in subsequent billing cycle, i.e., maximum up to the end of September 2019. Hence, the Appellants are eligible for SOP Compensation of Rs. 100/- per Week or part thereof from 01.10.2019.

(xxiii) **SLC, ORC & DDF all are Infrastructure Charges under Different Names** - All these 3 types of charges are charges towards infrastructure cost. ORC was allowed up to 20.01.2005 i.e., up to the date of Supply Code Regulations. SLC was allowed up to 08.09.2006 i.e., up to the date of Schedule of Charges. DDF is allowed from 20.01.2005, but in cases only where the connection is actually DDF as per Supply Code Regulations & as per MERC Clarificatory Order dated 16.02.2008. In this case the connection is totally Non DDF. And as per MERC regulations & orders, in case of all Non DDF connections, Infrastructure Costs cannot be recovered from the consumers. Hence, the Appellants are fully eligible for refund.

(xxiv) **Limitation** - IGRC and the Forum noted that the complaint is beyond the period of limitation of 2 years. This observation is totally wrong & illegal.

(xxv) This issue was before Hon'ble Supreme Court in Civil Appeal No. 4305/2007 filed by MSEDCL itself. Hon'ble Supreme Court has issued final order on 10.11.2016 and on that date the stay on refund is vacated. Thereafter MSEDCL HO itself has issued circulars for refund on 12.10.2017, and then on 07.11.2017 & on 29.12.2017. In the Circular dated 29.12.2017, MSEDCL had clarified refund period 20.01.2005 to 20.05.2008. The cause of action has arisen on 29.12.2017 after declaration of the refund period. The Appellants applied for refund to MSEDCL on 19.08.2019, to IGRC and with the Forum on 01.01.2020. Date of cause of action is 29.12.2017 and the Appellants approached Forum on 01.01.2020 means within 2 years & 3 days. Even if the 1st circular dated 12.10.2017 is considered as cause of action, the


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period will still be 2 years 2 months & 19 days. It is requested to Hon'ble Ombudsman to condone this minor delay. Hence there is no issue of any limitation.

Also it should be noted that MSEDCL has itself represented before various Courts that the judgement towards refund of ORC, SLC etc. is pending before Hon'ble Supreme Court, Delhi.

Any excess or illegal recovery is against the provisions of Section 62(6) of the Act and the licensee has no right to retain it with itself on any grounds. There is no limitation for Section 62(6) provisions. Hence this recovery must be refunded to the concerned person with interest. The licensee can recover these expenses through ARR as allowed by the Commission in its various orders.

(xxvi) **Limitation - Additional Submissions**

(1) Schedule of charges is a part of Tariff -

Determination of Tariff is an absolute responsibility and authority of the Regulatory Commission as per the provisions of Electricity Act 2003. Schedule of Charges is a part of Tariff to be determined by the Regulatory Commission as per the provisions of S.45, S.62, S.64 of the Electricity Act 2003 and as per provisions of Supply Code Regulation No. 18 framed by the Commission.

(2) Tariff is a Continuous Process -

Hon'ble Appellate Tribunal for Electricity (APTEL) in its order in Appeal no. 197 of 2009 dated 11.03.2011 has clearly stated as below,

" The tariff fixation is a continuous process and is to be adjusted from time to time. Any recovery or refund through ARR is not barred by Limitation."

It is important to note that the issue before APTEL was SLC refund. It means the refund of Infrastructure Cost recovery. All these SLC/ORC/ ORC-P/Non DDF etc. are the various names of Infrastructure Cost & nothing else.

Also there are many other instances of such adjusted and recovered or paid charges e.g. RLC refund, Mula Pravara refund, C/NC difference refund, SLC/RAC, Regulatory Assets refund/recovery etc.

(3) Illegal recovery must be refunded -


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Metering cost recovery is illegal, hence refundable. Refund of such illegal recovery cannot be barred by limitation.

Infrastructure cost recovery of Non DDF works in the name of ORC, ORC (P) or DDF is also illegal, hence refundable.

(4) Section 62 (6) - No limitation -

Section 62(6) quoted in Para 9 of these submissions relates to the refund of the excess money recovered by the licensee, with interest to the concerned person.

It should be noted that Section 62 or Section 62(6) has no limitations. Hence refund of excess money is not barred by limitation.

(xxvii) **Multi Party - Additional Submissions**

The first circular regarding multi party scheme bearing Com. Circular No. 6 was issued on 01.09.2005 and the power supply to multiple consumers in one premise for power looms was started. Further circulars issued are No. 151 dated 25.11.2011, No. 320 dated 19.07.2019 etc.

Till today MSEDCL has not taken any approval from MERC for this Multi-Party Scheme. As per Supply Code Regulations - Regulation No. 19.1, any terms & conditions, which are inconsistent with the regulations, or the Commission Orders are invalid.

MSEDCL wide the above-mentioned circulars has imposed the Infrastructure cost, Transformer Cost and Metering Cost on these Multiparty consumers, which is totally wrong, against the Supply Code Regulations, against the Schedule of Charges order and against various infrastructure cost (SLC/ORC/ORC-P/Non DDF etc.) refund orders. Hence these conditions are invalid.

Any infrastructure cost on 11 KV or above is totally disallowed as per Schedule of Charges order dated 08.09.2006. All the meters should be owned by the licensee as per Metering Regulations, above mentioned order dated 08.09.2006 and various MSEDCL refund circulars. Hence these costs cannot be recovered from or imposed on the consumer or group of consumers.

In Multiparty Scheme only DTC can be considered as DDF because the DTC is installed in the consumer's premises and no other connections are given from the


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DTC to other consumers. Hence DTC can be considered as DDF, provided that the ownership should be in the name of the consumer or group of consumers.

Also in this scheme, MSEDCL takes possession of all the assets after completion & books the infrastructure in its own assets register. It means that ownership goes to MSEDCL. In such cases, all these connections cannot be considered as DDF connections. All these connections become Non DDF and hence eligible for refund. Only DTC can be considered as DDF.

(xxviii)The Appellant has submitted additional documents during the hearing.

- (a) Judgment dated 18.01.2017 of Hon'ble Bombay High Court in W.P. No. 2798 of 2015 regarding illegal consent not being binding.
- (b) Order dated 11.03.2011 of ATE in Appeal No. 197 of 2009 regarding SLC refund, and limitation not being applicable to tariff related process.
- (c) Order dated 12.08.2008 of Hon'ble Patna High Court in CWJC No. 9309 of 2008 regarding illegal contract not valid.
- (d) Supreme Court Judgment dt. 20.11.2008 in C.A. No. 6731 of 2008
- (e) Supreme Court Judgment dt.12.02.2016 in C.A. No. 3699 of 2006 regarding cause of action.
- (f) Supreme Court Judgment dt.03.11.979 in C.A. Madras Port Trust V/s. Hymanshu regarding limitation.
- (g) Supreme Court Judgment dt.07.04.2017 in C.A. No.3883 of 2017 regarding limitation.
- (h) BHC, Nagpur Bench Orders in W.P. No. 468 of 2018 dt.20.03.2019
W.P. No. 6619 of 2019 dt.11.10.2019
W.P. No. 5681 of 2010 dt.17.01.2020
W.P. No. 3059 of 2010 dt.03.02.2020
- (i) Judgment dated 08.06.2021 of the Hon'ble Bombay High Court, Bench at Nagpur in W.P. No. 7900 of 2017 regarding limitation.


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(xxix) The Appellant argued that the Commission has amended Regulation 5.3 (a) (ii) of the Standards of Performance Regulations 2014 on 19.09.2017 which is as follows:

“5.3 Except where otherwise previously approved by the Authority, the classification of installations shall be as follows:—

(a) AC system

(i) Two wires, single phase, 230 / 240 volts- General supply not exceeding 40 amperes.

(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and contract demand not exceeding 80 kW/ 100 kVA in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187kVA :

Provided that in case of multiple consumers with contract demand more than 150 kW / 187 kVA, in the same building / premises as a single point supply in the Municipal Corporation areas where such limit would be 480 kW / 600 kVA :

Amended to

(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and contract demand not exceeding 80 kW/ 100 kVA in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187kVA :

Provided that in case of multiple consumers in the same building / premises with cumulative contract demand exceeding 150 kW / 187 kVA, such a limit would be 480 kW / 600 kVA.(Emphasis added)

Hence, the Appellants state that their cumulative contract demand in Rep. 77,78,79,80 & 81 of 2022, after enhancing the load from 54 to 87 KVA and one new sanction of 87 KVA in Rep. 82/2022 of 87 KVA, is within the limit of 600 kVA.

(xxx) Nature of Relief Sought From the Electricity Ombudsman -

- (1) The Appellants' connections should be declared as Non DDF connections.
- (2) The expenditure amount as per MSEDCL estimate Rs.10,09,660/- should be refunded to the Appellants along with the interest thereon at bank rate from dated 05.01.2018 till the date of repayment, or alternatively the total amount should be credited in the further bills.

Alternatively


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The expenditure amount excluding the cost of the DTC (as DTC can be considered as DDF) should be refunded along with interest.

- (3) SOP Compensation, for delay in Complaint Resolution, amount Rs. 100 per week from 01.10.2019 should be awarded.
- (4) Any other orders may be passed by the Hon'ble Ombudsman, in the interest of justice, as it may think fit & proper.

4. The Respondent, by its letter dated 01.07.2022 filed its reply and the hearing was held on 10.08.2022. Its written submission and arguments in brief are as below:

- (i) The Appellants aggrieved with the Forum's order dated 10.03.2022 have filed this Representation on 08.06.2022 i.e. beyond 60 days as per the Regulation 19.1 of the CGRF Regulations 2020. Hence the Case is time barred and liable for rejection.
- (ii) The case is also not maintainable as per Regulation 7.8, wherein the Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. In the instant case, the consumer filed the case on 01.01.2020 with the Forum and the cause of action was created on 20.12.2017. On the same ground of limitation, the Forum as well as the Electricity Ombudsman has dismissed various cases.
- (iii) The Hon'ble Bombay High Court, Aurangabad Bench has also passed Judgment dated 21.08.2018 in W.P no 6859, 6860, 6861 & 6862 of 2017) regarding limitation and has ruled that

"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 conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously"

- (iv) Further in Case No 5 of 2020 in M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others V/s MSEDCL, the Commission in its order para no.17 has cited the Judgment of


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the Hon'ble Supreme Court in the Case of A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. The ratio of the said judgment is applicable to the present case also. The observation of Commission in para 17 reads as under

“The Hon. Supreme in the case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. while disposing of the Civil Appeal No, 6036 ,6061, 6138 of 2012, 9304 of 2013, and 6835 of 2015 dated 16 October, 2015 (2016) 3SCC 468, (Para 30), has held that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.”

The relevant extract of the Order is reproduced below:

*“In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. **Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.**”*

From various citations, it is seen that the Appellants approached the Forum beyond the prescribed time frame. Hence the Case is not maintainable on limitation grounds also, hence liable for dismissal.

Detailed Submission:

- (v) The Multiparty Group consists of :


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- 1) M/s Sangram textile , Pro.Sangram Swami (Cons. No. 250380119729 , 105 HP, & 87 KVA Contract Demand)
- 2) M/s Sou Suvarna Sunil Swami.(Cons. No. 250380119737, 105 HP load, &87 KVA Contract Demand)
- 3) M/s Sunil Malayya Swami.(Cons. No. 250380119711, 105 HP load, & 87 KVA Contract Demand)
- 4) M/s Alaaka Textile Pro. Sou Alka A Swami.(Cons. No. 250380146700, 105 HP load, & 87 KVA Contract Demand)
- 5) M/s Akash Ashok Swami.(Cons. No. 250380119702, 105 HP load, & 87 KVA Contract Demand)
- 6) M/s Amruta Sangram Swami.(Cons. No. 250382555933, 105 HP load, & 87 KVA Contract Demand)

- (vi) The Appellants were initially having total load of 270 KVA and had 5 connections under one shed. On 04.07.2017 they applied for additional load for 6 LT consumers under one roof with a total load of 630 HP.
- (vii) These are in multi-party group agreement and, governed by Commercial Circular No. 151 dated 25.11.2011. **Further the initially installed 315 KVA Transformer also was not taken by MSEDCL, it remained the property of consumer as per DDF.**

It is pertinent to note that as per MERC SOP Regulations 2014 Clause 5.3 (ii) “LT connections 230V/440V is to be given for load up to 150KW/187 KVA i.e up to 201 HP” ,

However the load in the combined single premises is 630 HP, **hence the above said consumer is eligible for HT connection only.** It is only because of this multiparty agreement, that the consumer is enjoying the benefits of LT connection.

The work involved in this case is

- 1) 1 DP structure
- 2) 630 KVA Transformer
- 3) 1 HT cubicle


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4) 6 LT meters

All these infrastructure is dedicated to the consumer and MSEDCL cannot use this since it is in consumers' premises and as per multiparty agreement cannot be used by the Licensee for other consumers.

It is submitted that conditions of Supply based on MERC Supply Code Regulations 2005 Regulation 3.4.3 provides that

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

Therefore as per said provision, each consumer is required to take separate supply. However, sanction has been given for the said consumers based on circular No.151 dated 25.11.2011. Therefore, the demand of consumers to refund the cost of infrastructure is liable to be dismissed. In short, the consumer enjoyed the benefits under the multiparty scheme and afterwards they have opted for refund of infrastructure cost against the principle of equity.

- (viii) The consumers are governed by the then prevailing commercial circular no 151 dt 25.11.2011. The connection is sanctioned vide no SE/KPC/DYEE(I)/119/2017-18 vide no 9532 & 9538 dt 27.10.2017, & Nos EE/ICh/DDF/16/17-18. The consumer accepted the sanction and paid the charges for connection on 20.12.2017 abiding with the terms and conditions of sanction. The consumer had then paid the amount without any protest or grievance and done the work under DDF scheme, which is also in line with MERC Conditions of Supply Code Regulations 2005.
- (ix) The Appellants paid 1.3% supervision charges only and no other ORC /SLC or any amount is recovered. However, Hon'ble Supreme Court has directed in Appeal No. 4305/2005 to refund the collected amount of SLC, ORC, and Meter charges to Appellants collected from 18.09.2006 to 30.04.2007. As the amount under ORC, SLC or Appellants meter cost is not recovered, the question of refund does not arise in this particular case.


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- (x) The Appellants has even submitted the DDF bond, agreeing to create the infrastructure under DDF, and also executed multiparty agreement. The applicant is given 6 LT connections as per provision of Commercial circular no151 dated 25.11.2011, and breach of the multiparty agreement will attract billing of these Appellants as HT consumer as per **MERC SoP Regulations 2014 clause 5.3**, it says **“Three phase, 50 cycles, 11 kV – all installations with contract demand above the limits specified in the clause (ii) and up to 3000kVA.”**

Hence MSEDCL would have no option other than to recover the tariff difference between HT & LT billed to consumer, which may please be considered. The consumer wants to abide with only one aspect of the agreement which is beneficial to them; however is denying the other aspect of expenses which are actually dedicated and used by himself only. An agreement always has to be dissolved in to-to, along with its benefits and not just expenses.

- (xi) MERC in Conditions of Supply code Regulations, 2005, under clause 3.3.8 read as **“3.3.8 Where the Distribution Licensee permits an applicant to carry out works under this Regulation 3.3 through a Licensed Electrical Contractor, the Distribution Licensee shall not be entitled to recover expenses relating to such portion of works so carried out by the applicant: Provided however the Distribution Licensee shall be entitled to recover, from the applicant, charges for supervision undertaken by the Distribution Licensee, at such rate, as may be approved in the schedule of charges under Regulation 18, not exceeding 15 per cent of the cost of labour that would have been employed by the Distribution Licensee in carrying out such works.”**

Clause 3.3.3 read as

“3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from


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the applicant, based on the schedule of charges approved by the Commission under Regulation 18.”

Also further in clause 3.3.5

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

This clearly indicate that the Respondent can recover cost of infrastructure.

- (xii) Further in Case No 5 of 2020 in M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others V/s MSEDCL, the Commission in its order para no.17 has cited the Judgment of the Hon’ble Supreme Court in case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. The ratio of the said judgment is applicable to the present case also. The observation of Commission in para 17 reads as under *“The Hon. Supreme in the case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. while disposing of the Civil Appeal No, 6036 ,6061, 6138 of 2012, 9304 of 2013, and 6835 of 2015 dated 16 October 2015 (2016) 3SCC 468, (Para 30), has held that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.”*

The relevant extract of the Order is reproduced below `

:

“In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a


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vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence, we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.” (Emphasis added)

From various citations, it is seen that the consumer has approached this Authority above time framework than prescribed in regulations which was also withhold by various above said orders, and also by the Kolhapur Forum, in this case also. Hence the Case is not maintainable on limitation grounds also, hence liable for dismissal. Further, a review petition on the same issue in Case No. 201 of 2020 is also dismissed by Hon’ble Commission.

- (xiii) In view of the aforesaid facts, it is kindly requested that the present application may kindly be dismissed.

Analysis and Ruling

5. Heard the parties and perused the documents on record. Following are the details of load sanctioned of the six Appellants under “LT Multi Party Power Loom Group”, as tabulated below:


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Sr.No.	Name of Appellant	Consumer No.	Rep. No.	Sanctioned Load(HP)	Contract Demand(KVA)	Date of Enhancement / Connection	Activity
I	Sangram Textile	250380119729	77/2022	65 to 105	54 to 87	05.01.2018	Power loom
II	Smt. Suvarna Sunil Swami	250380119737	78/2022	65 to 105	54 to 87	05.01.2018	
III	Shri Sunil Mallaya Swami	250380119711	79/2022	65 to 105	54 to 87	05.01.2018	
IV	Alaka Textiles	250380119700	80/2022	65 to 105	54 to 87	05.01.2018	
V	Shri Akash Ashok Swami	250380119702	81/2022	65 to 105	54 to 87	05.01.2018	
VI	Smt. Amruta Sangram Swami	250382555933	82/2022	105	87	05.01.2018	

6. Considering the various submissions, arguments, judgments, orders referred by the Appellants and the Respondent, this Authority has framed the following issues to consider the maintainability as well as merit of these Representations.

Issue A: Whether grievances submitted before the Forum are maintainable as per Regulation 6.6 of CGRF Regulations 2006?

Issue B: Whether the Appellants are eligible for refund of infrastructure cost in view of work carried out under “LT Multi-Party Power Looms Group” Scheme?

Issue A:

7. The Appellants in Rep. 77,78,79,80 & 81 of 2022 applied for enhancement of Sanctioned Load from 65 to 105 HP and Contract Demand from 54 to 87 kVA whereas the Appellant in Rep. 82 of 2022 applied for a fresh connection for Sanctioned Load of 105 HP and Contract Demand of 87 kVA under LT Multi-Party Power loom Group vide applications dated 04.07.2017. The Respondent approved the applications and issued estimate under LT Multi Party Power Looms Group Scheme on 07.07.2017 with estimate amount of Rs. 10,09,660/- for HT Cubicle, 630 KVA DTC including LT Metering work. The Respondent issued Sanction Letters on 14.06.2017. The Appellants paid 1.3% Supervision Charges amount of Rs 2,190/- each to MSEDCL on 30.08.2017 and completed all the infrastructure work. The cause of action


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arose when the Appellant paid the supervision charges on 30.08.2017 and thereby committed for carrying out the work.

In exercise of the powers conferred on it by sub-sections (r) and (s) of Section 181 read with sub-sections (5) to (7) of Section 42 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, the Commission notified the CGRF & EO Regulations 2006. If the Respondent failed to take cognizance of the consumer's complaints / grievances, the consumer has the opportunity to approach the Grievance Redressal Mechanism framed under the Act, and the Regulations made thereunder.

The Regulation 6.6 of CGRF Regulation, 2006 states that,

“The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”

In the instant cases, the Appellants filed grievance applications in IGRC on 19.08.2019. The IGRC, by its order dated 04.11.2019 rejected the complaints. Thereafter, the Appellants approached the Forum on 01.01.2020, however, the Forum, by its common order dated 10.03.2022 also rejected the grievances. The Appellant got aggrieved on the supervision charges of Rs. 2190/- paid on 30.08.2017, which is the date of cause of action, while the Grievance is filed before the Forum on 01.01.2020. This is almost after 2 years and 4 months which exceeds the period of two years from the date of cause of action, and therefore, these cases do not fit into the regulatory matrix stipulated under Regulation 6.6 of the CGRF Regulations 2006. Therefore, the prayers of the Appellants do not stand scrutiny in the face of Regulations and Orders of the Commission.

The Appellants cited the order dated 08.06.2021 of the Hon'ble High Court Bombay, Bench Nagpur in Civil Writ Petition No. 7900 of 2017 on limitation. However, the Hon'ble Supreme Court vide order dated 08.09.2022 passed in SLP No. 13387/2021 has stayed the operation and future effect of judgment and order dated 08.06.2021 passed by the division bench of Nagpur High Court in WP No. 7900/2017.


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The Hon'ble Supreme Court in its judgment dated 13.03.2019 in Civil Appeal No. 2960 of 2019 has laid down that there is no necessity to go on merits and the plaint can be rejected, if it is clearly barred by limitation

Considering the above statutes, the case is time barred as per Regulation 6.6 of CGRF & EO Regulations 2006 and the present Regulation 7.8 of CGRF & EO Regulations 2020. Issue A is answered as NEGATIVE.

Issue B:

8. The Appellants have opted for Multi- Party Group connections where the Appellants have to incur the expenditure on their own, as they are the beneficiaries of the scheme, as all connections of power loom were given in one "premises" without any separation. The Respondent issued a Commercial Circular No. 06 of 2005 dated 01.09. 2005 in the subject matter of "Power supply to individual entrepreneurs coming under one premise to establish Power- Looms". The Respondent further issued a Commercial Circular No. 151 dated 25.11.2011 for re-delegation of power to field offices for sanctioning of load which were assigned in Head Office as per circular No. 06 of 2005.

The preamble of circular No. 151 is reproduced as below:

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

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


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

2. An individual entrepreneur having load requirement up to 107 HP/201 HP form a group of max. 10/5 entrepreneurs situated in the same industrial complex building shed having total load of a Group shall be less than 500 KVA.

3. All these entrepreneurs can install a common transformer of appropriate capacity equivalent or more than the aggregate load requirement of all the entrepreneurs in the respective group.

4. All the individual entrepreneurs in the respective groups having load requirement up to 107HP/201 HP shall be Low Tension consumers of the Board. They will have to opt for M.D. base tariff.

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

1. The main consumer shall install & maintain the transformer of requisite capacity.

2. All the expenditure as may be required for release of Multi-Partite Connection will be borne by the consumer/consumers.

3. All these consumers billed on LOT. side must opt for LT-MD tariff and LT-TOD meters to be installed for all these consumers in case of LT connections.

4. The multi — Partite consumers shall be billed energy charges as per the energy actually consumed & recorded by the respective energy meters and shall be billed Demand Charges as per Billing Demand of the individual consumer, to be determined in accordance with the prescribed guidelines, tri partite agreement. Main consumer shall be billed on HT side metering.

5. As compared to the above, the Main consumer shall be billed energy charges on the basis of energy actually & collectively consumed by all the consumers & recorded in the meter installed on High Tension side less energy billed to the multi — Partite consumers.


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6. Similarly, the Demand registered / consumed by the Main Consumer shall be equivalent to the Demand registered in the meter on High Tension side less aggregate of the 75% of the Demand recorded by the individual multi • — Partite consumer and based on derived Demand, the Billing Demand of the Main Consumer shall be determined. However, in case the derived Demand of the Main Consumer happens to be more than the Contract Demand, the Main Consumer shall be liable for penalty for exceeding Contract Demand.
7. All other NOCs, permissions, if any, will have to be obtained by the consumer, before release of supply.
8. It will be mandatory for the main consumer of the group to ensure that the transformer is installed in a closed room and is accessible only to MSEDCL'S authorized personnel. Further a cable will have to be laid through duct in the adjoining closed room for distributing the said connections. The cable and meter room will also be under the control of the company and only company's authorized personnel will have access to the same. All the meters will be placed in the distribution room. Further the secondary side of transformer will also be sealed and necessary arrangement will have to be made for the sealing by the consumer.
9. The MSEDCL shall not be responsible for any loss that may be caused to any of the individual consumer from a particular group due to failure of the said transformer or the company shall not be liable for any alternate arrangement of maintaining the power supply in such circumstances.
10. All the individual consumer from the respective groups shall have to execute tripartite/multipartite agreement with the company and in case there happens to be agencies sponsoring such group of consumers then such agency shall also be a party to tripartite/multipartite agreement,
11. All the consumers availing power supply by such arrangement shall be billed as per the provisions of the tariff prevailing from time to time and shall also be liable for all such incentives/disincentives as may be applicable.
12. In addition to the above mentioned multipartite agreement, all the consumers will also have to execute a separate agreement with the MSEDCL Ltd.


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

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

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

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

10. The Appellants were benefitted in the following ways:

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


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11. The Respondent was benefitted as below:

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

This scheme was initiated by the Respondent for the multiparty power loom consumers in particular premises through an agreement under certain terms and conditions as highlighted in para 8 of this order. This was an internal arrangement by the Respondent for the welfare of the power loom industries in the State of Maharashtra to avoid its migration to other states.

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

“28 I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter storeroom and then


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turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate.

29.....

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

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

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

14. The Appellants pointed out that the Multi Party Power Loom schemes is not approved by the Commission, though it is in existence from the year 2005. The Respondent will be advised to approach the Commission for appraisal of the Multi Party Scheme.

15. Considering the above facts, the Appellants’ Representations are time barred and also do not stand on merit. Hence, the Representations are rejected.

16. The Secretariat of this office is directed to send a copy of this order to the Director (Commercial) MSEDCL who is advised to take up the issue of “Multi-Party Power Loom


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Scheme” before the Commission in its Annual Revenue Requirement for the next tariff petition.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

