

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 11 OF 2021

In the matter of refund of RLC of previous consumer

C.M. Trading Co. Ltd..... Appellant
(Consumer No. 010519025820, Name - Shivam Casting Pvt. Ltd.)

V/s.

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

Appearances:

For Appellant : Harshad Sheth, Representative

For Respondent : Rajiv Vaman, Asst. Law Officer

Coram: Deepak Lad

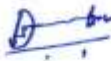
Date of hearing: 18th March 2021

Date of Order : 1st April 2021

ORDER

This Representation is filed on 16th February 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 29th December 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).

2. The Forum, by its order dated 29.12.2020 has rejected the Grievance Application No. 2048 of 2019 -20. In addition, the Forum has given direction as below:-


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“M/s Shivam Casting directed to obtain appropriate order from competent civil court. Utility is directed to keep RLC refund amount in Fdr (Fix deposit receipt) in nationalized Bank.”

3. Aggrieved by the order of the Forum, the Appellant has filed this representation stating as under: -

- (i) M/s. Shivam Casting Pvt. Ltd. was HT Industrial Consumer (No.010519025820) having Contract Demand (CD) of 2451 KVA from 05.11.2004 Gut No. 298, Apaikali, Nehroli Village, Taluka Wada, Dist Thane and was permanently disconnected (PD) from 12.01.2007 for want of outstanding electric bill. Shivam Casting Pvt. Ltd. has taken loan from Bank of India, Maston Road, Kanpur. The loan amount was not paid by them. Recovery proceeding under SARFAEST ACT 2002 was in process against Shivam Casting Pvt. Ltd.
- (ii) The existing Owner, C.M. Trading Co. Ltd. (Appellant) has taken over the said property vide sale certificate dated 17.12.2008 under decree from Bank of India as per certificate of sale of immovable property and by paying stamp duty at Collector of Stamps, Thane Rural.
- (iii) Earlier consumer, Shivam Casting Pvt. Ltd. had paid Regulatory Liability Charges (RLC) to the Respondent, MSEDCL from December 2003 to September 2006. The Maharashtra Electricity Regulatory Commission (the Commission) through its tariff order has directed to refund the excess amount paid in RLC in instalments from July 2008 onwards. During this period, supply was made PD on 12.01.2007.
- (iv) The Respondent vide its letter No.30586 dated 31.10.2012 has issued guidelines to refund RLC to PD consumers as per tariff order dated 16.08.2012 of the Commission. The Appellant has referred the following important point of the said letter which is reproduced as below:-

“Framework to refund RLC to PD consumer:


1.
2. *For the consumers who have contributed to RLC in part or full for the period from Dec. 2003 to Sept. 2006 and are PD currently **due to non-***


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payment of arrears, the RLC refund should be given on one to one basis by way of adjustment of in the outstanding arrears by default, and without waiting for the application from such consumers for refund and as per the MERC directives issued from time to time. The consumer should be intimated about such adjustment. Further, the action as per MSEDCL rules should be taken for recovery of balance arrears, if any after such adjustments."..... (Emphasis added)

- (v) As per above guidelines, when the Appellant demanded new supply in said premises after purchase from bank, it was illegally demanded arrears of earlier consumer. When the earlier consumer was made PD in 2007, then why Respondent did not adjust? This is suppression of fact and offence committed by the Respondent.
- (vi) First mistake made by the Respondent in year 2008. Second mistake by Respondent that such 3 settlement guidelines for PD refund were issued by H.O. since 2010 to 2012, but intentionally and prejudicially Vasai circle did not adjust the RLC against the arrears. Third mistake is done by Respondent that when entire arrears are paid by the Appellant, why earlier consumer is brought in picture and was given opportunity to participate in e-hearing by Respondent?
- (vii) Refer to One Time Settlement proposal in the name of Shivam Casting Pvt. Ltd. since year 2010. It is clear that such settlement cannot be made in the name of Appellant due to simple reason that arrears pertain to Shivam Casting Pvt. Ltd., so application has to be in the name of earlier consumer, Shivam Casting Pvt. Ltd. only.
- (viii) Entire RLC refund was available as credit with the Respondent by end of 2003, but by suppression of facts, the Respondent had put precondition to the Appellant for giving supply under amnesty scheme and accordingly arrears of earlier consumer, Shivam Casting Pvt. Ltd. are forcibly paid by new owner, C. M. Trading Co. Ltd. (Appellant).
- (ix) The Respondent are fully aware that arrears of earlier consumer, Shivam Casting Pvt. Ltd. are paid by the Appellant. The Appellant has received property from Bank and not from Shivam Casting Pvt. Ltd. All documents are presented and signed by the Appellant only.

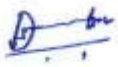

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- (x) The act of RLC credit of Rs.61.15 Lakhs of Shivam Casting Pvt. Ltd. was not known to the Appellant, but the Respondent was fully aware about it which is illegal use of its powers and harassed the Appellant by asking to pay the arrears.
- (xi) The Appellant demanded electricity supply but was intimated about the earlier consumer's arrears and was demanded from the Appellant. Accordingly, the Appellant has paid total arrears Rs.56,66,370/- of Shivam Casting Pvt. Ltd. Available receipts are kept on record and tabulated as below:

Sr.No.	Date of Receipts	Amount (Rs.)	Sr.No.	Date of Receipts	Amount (Rs.)
1	17.02.2010	2,50,000	4	20.06.2013	7,73,087
2	29.04.2013	12,00,000	5	30.01.2017	24,16,370
3	06.06.2013	13,26,913			
Total of Sr. No. 1 to 5 of available receipts					59,66,370

- (xii) The Appellant has taken grievance with the Respondent on 02.12.2019, however the Respondent rejected the grievance vide its letter dated 29.01.2020. The Appellant filed its grievance to the Internal Grievance Redressal Cell (IGRC) on 07.02.2020, however, the IGRC did not give any decision on stipulated period of 60 days.
- (xiii) The Appellant approached the Forum on 19.08.2020. The Forum sent letter dated 10.09.2020 on the Wada address, the land which is now in possession of the Appellant, then how the earlier consumer's representative came in direct picture on 22.09.2020? This is possible only due to active support and undue involvement of the Respondent's Wada Subdivision and Vasai Circle.
- (xiv) When the Appellant purchased the said property from Bank in year 2008, then how Shivam Casting Pvt. Ltd. can be entertained by the Respondent and the Forum in the year 2020? The Appellant has already submitted copy of letter dated 25.11.2014 of the Respondent, Vasai Circle to CE (Commercial) with reference and mention as the Appellant has produced the certificate of sale of immovable property from Bank of India Kanpur. This clearly shows that Respondent was fully aware of the Appellant as the rightful owner.


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- (xv) Shivam Castings Pvt. Ltd. never attempted to make payment of its arrear since the year 2007 to year 2018. It never approached Bank of India from year 2007 till date. But now it come forward to cheat the Appellant and the Respondent both, by demanding RLC claim.
- (xvi) The Appellant has protested and strongly objected on role wrongly played by Respondent, Vasai Circle. The Appellant has already taken objection during the e-hearing on the attendance of the representative of Shivam Casting Pvt. Ltd. and requested this Forum to restrict him for all further hearings or any communication to him. It is wrong to call any explanation by the Forum from earlier consumer, because earlier owner is Bank of India and not Shivam Casting Pvt. Ltd.
- (xvii) The Appellant has also referred the following important point of the letter No. 30586 dated 31.10.2012 of the Respondent of guidelines to refund RLC to PD consumers which is reproduced as below:-

“Framework to refund RLC to PD consumer:


1.

2.

8. Name change cases / business take over cases are being observed in field offices, in such cases, the refund of RLC of previous owner / consumer should be adjusted in the bills of current owner / name changed consumer.”..... (Emphasis Added)

The Respondent H.O.'s mention of meaning of Name Change is as per Regulation 10 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations). Question is not whether the Appellant applied for change of name to MSEDCL or not. (Since issue of earlier consumer's arrears was wrongly raised by MSEDCL till 2017)

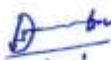
- (xviii) The Appellant referred Regulation 10.3 of Supply Code Regulations. As per interpretation, newcomer C. M. Trading Co. Ltd. has to give either consent letter from earlier owner (In present case it is Bank of India and not Shivam) or submit proof of ownership or deed of registration is to be submitted. The Respondent is misguiding this issue because earlier owner is Bank of India. This property was


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acquired by Bank and under public auction, when Bank of India transferred the property to the Appellant, where comes the question of consent of earlier consumer?

- (xix) Handing over the property by Bank of India through auction to the Appellant itself is the connection between two entities. Bank himself is the owner who handed over the property after full consideration of all assets and liabilities.
- (xx) MSEDCL's demand of document of R.O.C. is hypothetical and wrong because the Appellant is a proprietary concern.
- (xxi) Regarding Rightful Owner, Guidelines of MSEDCL HO clearly says that name change (as per Supply Code Regulations) and business take over cases are to be decided by field offices. Regulation 10 clearly indicates meaning that when new owner C.M. Trading Co. is occupying the premises, it is to be treated as name change case. In present case, C. M. Trading Co. Ltd. has occupied the premises by purchase from Bank. So, it is the rightful owner of this property and Head Office guidelines clearly say that *“in such cases RLC of earlier consumer should be adjusted in bill of new incoming consumer”*. There is no doubt in the guidelines, but the Respondent is posing the imaginary and hypothetical questions and have twisted the applicability in present case.
- (xxii) As per the Commission directives, MSEDCL H.O. Bandra credited the said RLC refund amount in erstwhile PD consumer account in February 2017.
- (xxiii) As per directives of the Commission, MSEDCL has reserved amount every year for such PD consumers. Accordingly, the Appellant request to refund amount as displayed on their bill for Rs. 61,15,227.60 along with interest @ 6 % for 10 years from April 2009 to March 2019 of Rs. 36,69,136/- as per the tariff order in Case No. 72 of 2007.
- (xxiv) The Appellant received email letter from Vasai circle about non consideration of its refund application No.00527 dated 29.01.2020.
- (xxv) The Appellant submitted its reply in this regard to the Superintending Engineer, Vasai circle.


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- (xxvi) After payment of entire arrears of earlier consumer i.e. Shivam Casting Pvt. Ltd, single phase LT supply was given to consumer in the name of Elegant Curtain pipes on the said plot.
- (xxvii) The Appellant refers the order dated 07.07.2009 of CGRF Nagpur Urban Zone in Case No. 23 of 2009 in the similar matter of RLC refund of earlier consumer to current consumer. But regret to say that the Forum has rejected its grievance by wrongly involving earlier consumer, giving him opportunity in e-hearing, sharing entire papers with him, calling explanation at this stage after 13 years.
- (xxviii) The Forum, by its order dated 29.12.2020 has rejected the Grievance Application No. 2048 of 2019 -20. In addition, the Forum has given direction that *“M/s Shivam Casting directed to obtain appropriate order from competent civil court. Utility is directed to keep RLC refund amount in Fdr(Fix deposit receipt) in nationalized Bank.”*
- (xxix) The Forum has tried to hide the mistakes of MSEDCL from year 2007 to 2015. If arrears would have been adjusted against arrears in year 2008 itself, then such harassment would not have been faced by C. M. Trading Co. Ltd. Entire RLC amount was sufficient to clear its arrears.
- (xxx) It is wrong to call any explanation by the Forum from earlier consumer, because earlier owner is Bank of India. In the Forum’s order also, it has directed earlier consumer to get clear order from Civil court. Why? It is undue favour to earlier consumer. Earlier consumer Shivam Castings Pvt. Ltd. did not pay arrears. It is paid by new consumer i.e. the Appellant and now when new consumer is demanding its rightful amount in the name of RLC of earlier consumer or arrears of earlier consumer paid by new consumer due to sole mistake of MSEDCL. Hence, the Forum’s order is bad in law and request the Ombudsman to give natural justice to the Appellant. The Forum’s order may be totally quashed and the Respondent be directed to give refund to new consumer i.e. the Appellant.
- (xxxii) The Appellant prays that the case be scrutinize on humanitarian ground by giving natural justice to the Appellant. Amount paid by Appellant is due to


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mistake of MSEDCL in the name of RLC or arrears which may be refunded by RTGS to it.

4. The Respondent MSEDCL filed its reply dated 09.03.2021 by email stating in brief as below:

- (i) The Respondent denied all contentions raised in Representation except those admitted herein below.
- (ii) Review petition against impugned order dated 29.12.2020 in Grievance No.2048 of 2020 of the Forum has been filed by Original Consumer Shivam Casting Pvt. Ltd. before the Forum which was registered on 07.01.2021 as Review Case No.6 of 2021 and in which notice dated 01.02.2021 was issued to MSEDCL and present Appellant. The present Representation has been filed by Appellant after the receipt of notice of review. The hearing in the present matter in pendency of review before the Forum will give rise to multiplicity of proceeding. The Regulation 19.22 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) states as below:


“19.22 The Electricity Ombudsman shall entertain a representation only if all the following conditions are satisfied:

(a).....(f).....

(g) The representation by the Complainant, in respect of the same Grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has not already been passed by any such court, tribunal, arbitrator or authority;”

The present Representation is not maintainable during the pendency of review therefore disposed of the present grievance being not maintainable.

- (iii) M/s. Shivam Casting Pvt. Ltd. was HT Industrial Consumer (No. 010519025820) having CD of 2451 KVA from 05.11.2004 Gut No. 298, Apaikali, Nehroli Village, Taluka Wada, Dist Thane. The above connection was PD on 12.01.2007. The final bill of Rs.74,70,719/- were given by MSEDCL on 23.07.2007 after adjustment of Security Deposit. Till the date of issuing Final bill there was no direction of HO in respect of RLC refund to PD consumers.


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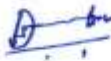


- (iv) The Respondent has filed recovery suit before CJSD, Vasai Vide Sp.C.S.No.718 of 2007 against Shivam Casting Pvt. Ltd for recovery of arrears of Rs.74,70,719/-.
- (v) On 17.12.2008, the Appellant has purchased the above plot bearing Gat No.298 through auction but it never intimated to MSEDCL or submitted any application for new power supply till date.
- (vi) On 05.02.2010, Shivam Casting Pvt. Ltd. had applied for One Time Settlement by depositing the 2% arrears. On 28.01.2013 Shivam Casting Pvt. Ltd. has again applied for relief under Abhay Yojana Scheme-2012. On 13.02.2013 bill of Rs.71,26,913 was issued to consumer under Abhay Yojana-2012 which was further revised to Rs.64,47,354.86. The payment of Rs.12,00,000/- and Rs.13,26,913/- was received on 27.04.2013 and on 05.06.2013 against said bill. On 09.03.2015 consumer again applied for relief under Special Amnesty Scheme-2014. On 26.03.2015 bill of Rs.23,97,605/- was issued which was paid by consumer on 30.01.2017 and thereafter 'No Dues Certificate' was issued to consumer.
- (vii) The Commission in its order dated 16.08.2012 has given direction in respect of RLC refund to PD consumers and accordingly Respondent has issued circular on 31.12.2012. That, as per the Commission's directive, the RLC amount of Rs.61,15,230/- is payable to Shivam Casting Pvt. Ltd which has been already credited in energy bill of Consumer No.010519025820. The Commission had directed to refund RLC charges collected from consumer during the period of December 2003 to September 2006. The RLC contribution is like a loan to Respondent by particular consumer and hence its refund shall also be paid to particular consumer only. Only, in cases of same consumer changed his name on his own or shifted to LT side then submitting proof of change of name or submitting certificate of incorporation with new name or in case of business takeover agreement took place mutually wherein particular clause in r/o assignment of right to receive dues, balance, refund etc.-then only new consumer may have right to apply for RLC refund of such old consumer.
- (viii) At present, the electric supply at Gat No.298 is taken by M/s. Elegant Gurtain Pipes (tenant of M/s. C.M.Trading Co. Ltd.) having date of supply as 14.02.2019. That,


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- there is neither application of C.M.Trading Co. Ltd. regarding intimation that, he were paying the arrears of Shivam Casting Pvt. Ltd. nor payment has been made under protest hence all payment receipts are in name of Shivam Castings Pvt. Ltd.
- (ix) After payment of arrears, the Respondent has withdrawn the Sp.C.No.718 of 2007 filed against Shivam Casting Pvt. Ltd.
- (x) M/s. C. M. Trading Co. Ltd. the Auction purchaser has filed grievance before IGRC for grant of RLC refund of M/s. Shivam Casting Pvt. Ltd. alleging that he takes over the business of M/s. Shivam Castings Pvt.Ltd. The IGRC rejected grievance on ground that M/s. C.M. Trading Co. Ltd. has no locus standi to file grievance on behalf of Shivam Castings Pvt. Ltd. and there was no NOC of old consumer and agreement of business take over submitted.
- (xi) Being aggrieved with order of IGRC, the Appellant has filed Grievance before the Forum vide Grievance No. 2048 of 2020. The Forum has issued notice to the original consumer Shivam Casting Pvt. Ltd, who has then appeared and objected the claim of the Appellant. The Forum, by its order dated 29.12.2020 has rejected the claim of the Appellant, however, directed the Original consumer,.Shivam Casting Pvt. Ltd. to approach Civil Court to obtain appropriate order. The said part of order has been challenged by the petitioner in present review.
- (xii) Till the payment under 'Amnesty Scheme' by Shivam Casting Pvt. Ltd. there is neither any application for HT power supply by Complainant nor Respondent made any correspondence with the Appellant insisting it to pay arrears of Shivam Casting Pvt. Ltd. Moreover, the alleged payment was not made under protest by the Appellant. The all correspondence with the Respondent in respect of OTS and Special Amnesty Scheme is on letter head of M/s. Shivam Casting Pvt. Ltd.
- (xiii) The alleged payment of arrears of Shivam Casting Pvt.Ltd. by the Appellant is matter inter say between them and the Respondent never insist to present complainant for same. Hence, it will not bind Respondent any way in absence of any agreement to that effect.
- (xiv) The present case is not case of change of name case and hence Regulation 10 of the Supply Code Regulations doesn't apply to present case. The electric supply of


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Consumer No.010519025820 was disconnected long back in year 2007 and remain disconnected till date.

- (xv) The impugned Grievance has been filed by the Appellant who is not consumer of the Respondent. The Appellant did not filed authority letter, power of attorney, any other legal document which authorizes them to file grievance in respect of Shivam Casting Pvt. Ltd. as such the Appellant is not legal successor or has any locus standi to file grievance in respect of Shivam Casting Pvt. Ltd. Therefore, being the Grievance is not filed by consumer it is liable to be dismissed.
- (xvi) Shivam Casting Pvt. Ltd., the Appellant and Elegant Curtain pipes are three different legal entities. The business takeover agreement between these entities with specific clause in respect of assignment of right to get RLC refund or certificate of incorporation with the name showing connection between these entities issued by Registrar of Company was not provided by the Appellant.
- (xvii) The certificate of sale issued by Bank under SARFAESI ACT, 2002 is only document of title of land .It is not business transfer agreement. Shivam Casting Pvt. Ltd.is company registered with Registrar of Company having Separate legal entity and hence sale certificate of land issued by bank cannot grant any right to receive any refund from Respondent. The Appellant cannot be said to be legal successor of Shivam Casting Pvt. Ltd. The RLC refund is only refundable to Shivam Casting Pvt. Ltd. and only in case there is deed of assignment of right to receive RLC refund then only other third party will get right to apply to Respondent for refund and not otherwise.
- (xviii) Respondent desirous to refund said RLC contribution in compliance of the Commission's order to the rightful consumer.

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

5. The hearing was held on 18.03.2021 on e-platform through video conferencing due to Covid-19 Epidemic. Both the parties argued in line with their respective written submissions with no substantial addition to the points in their written submissions.


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6. On hearing both the parties and perusal of record, it is observed that Shivam Casting Pvt. Ltd. who is not a party in this representation has filed Review Application on 07.01.2021 and registered as Review Case No. 6 of 2021 with the Forum against the order dated 29.12.2020 passed in Case No. 2048 of 2019-20 which has not yet been decided. The case initially has been filed by the present Appellant with the Forum on 19.08.2020 under the CGRF Regulations 2006 and therefore, in view of Regulation 17.9 (e) of the CGRF Regulations 2006, the Representation cannot be entertained by the Electricity Ombudsman. It is a different matter that the review has been filed before the Forum by another entity and not by the present Appellant. The said Regulation is reproduced below:

*“17.9 The Electricity Ombudsman shall not entertain a representation:
(e) where the representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;”*

7. In view of above, the Representation is rejected as not being maintainable, however, the present Appellant is at liberty to approach the Electricity Ombudsman after the Review Application has been decided by the Forum.

8. The opinion expressed by the undersigned with respect to the applicability of a particular Regulation will not have any bearing on the case before the learned Forum.

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


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Secretary
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