

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 99 OF 2023

In the matter of recovery of tariff difference due to utilisation of excess load

Dhingra Hotels Pvt. Ltd.....Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd., Kalyan (R) Dn.Respondent
(MSEDCL)

Appearances:

Appellant : 1. Toshkumar Patil
2. Vasant Vaze, Representative

Respondent: 1. Vinay Kale, Executive Engineer, Kalyan (R) Dn.
2. Prakash Malkhade, Dy. Ex. Engineer, Shahapur Sub-Dn


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 1st November 2023

Date of Order : 21st November 2023

ORDER

This Representation was filed on 3rd October 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 19th July 2023 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum). The Forum, by its Order rejected the grievance application in Case No.003



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of 2022-23. The Forum observed that as per the MRI Report, the connected load was found more than 25.02 KW against the sanctioned load of 14.5 KW, and Maximum Demand recorded was in the range of 27.20 to 27.34 KVA. The supplementary bill which was given towards tariff difference between LT II (A) and LT II (B) tariff category was found in order.


2. The Appellant filed this representation against the order of the Forum. The e-hearing was held on 1st November 2023 through Video Conference. The Appellant's written submissions and arguments are stated as below: -

- (i) The Appellant is a LT Consumer (No. 016790002010) from 14.01.2017 having SL of 14.50 KW at H. No. 483, Khativali, Tal. Shahapur, Thane. The Appellant is using power supply for running a hotel business. The Appellant was earlier billed under LT II (A) Tariff Category up to June 2022; however the Appellant is now billed under LT II (B) Tariff Category under KVA MD penalty billing till date.
- (ii) The Flying Squad, Kalyan, of the Respondent carried out a spot inspection on 14.06.2022 of the premises of the Appellant, and recommended to change the tariff category from LT II (A) to LT II (B) tariff as per the connected load of 28 KW against the sanctioned load of 14.5 KW. The meter display showed Maximum Demand (MD) of 30.98 kVA. However, the Respondent did not take the signature of the Appellant on its inspection report, and a copy of the said report was not given to the Appellant.
- (iii) Initially, the Sub-Dn. office of the Respondent seemed to be confused whether the past recovery should be made or otherwise; hence they have written a letter (No.2155 dtd.25/07/2022) directly to CE (B&R) Corporate Office Mumbai seeking advice about the retrospective recovery, with a copy to CE (KLNZ), SE (Kalyan II Circle), EE (Kalyan R Dn) and F.S. Unit Kalyan. This letter went unanswered by the Competent Authority. This means that there is no legal base for such a recovery.
- (iv) **After that, the Respondent issued a supplementary bill of Rs. 8,19,430/- on 04.08.2022 towards Tariff Difference from LT II (A) (0 to 20 KW Slab) to LT II (B) (20 KW to 50 KW) Commercial Tariff Category for the period from Jan-17 to Jun-22.**


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- (v) The Appellant applied for load extension from 14.5 to 35 KW in Nov-22 as per the suggestion of the Respondent. However, the Respondent did not release the load till date.
- (vi) The supplementary bill was added in the bill of Jan-23. The Respondent threatened disconnection under Section 56(1) of the Electricity Act, 2003 (the Act). The amount being so huge, naturally the Appellant could not afford to pay the entire amount up to the last date of bill i.e. 27.01.2023. Under the fear of disconnection, the Appellant paid Rs. 2,00,000/- on 27.01.2023 **under protest**.
- (vii) The Appellant filed the grievance application with the Forum on 03.02.2023 with a prayer for interim order to refrain the licensee from disconnecting its power supply till finalization of the matter by the Forum, to allow the consumer to pay monthly /current bills, to direct the licensee to produce the documents related with the recovery of bill amount, and cancellation of retrospective recovery thereof. The Forum, by its Order dated 19.07.2023 rejected the grievance application.
- (viii) The excess load allegedly used has to be established through TOD meter or through MRI. This was not done. A mere physical assessment of the load is not a scientific base for recovery, as this being a commercial connection, the entire load was not used at one time as is used in an industrial connection.
- (ix) From the CPL (Consumer Personal Ledger) of the Appellant, it is seen that the consumption rose only from the billing month of Jan-21. Prior to that it was negligible and not at all commensurate with the assumed load of 28 KW. This aspect is very important to deal with this case. The Forum failed to take any effort even to go through the CPL. This is nothing but blind following of Flying Squad suggestions by all the functionaries including the Forum, which led to a wrong decision in the present case.
- (x) The licensee is not entitled to recover the supplementary bill of Rs.8,19,430/- as no technical data is available with the Respondent.
- (xi) The Appellant rented his premises to the present occupier in the month of Jan.2021. The previous consumption pattern was 500 to 1000 units, which increased from Jan.2021 onwards to 5000 to 8000 units per month, which can be seen from the CPL.
- (xii) In view of the above, the Appellant prays that the Respondent be directed



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- a) to cancel the supplementary bill of retrospective recovery of Rs. 8,19,430/- along with interest and delayed payment charges levied and refund the amount paid under protest.
- b) to release the extension of load.

3. The Respondent filed a reply by its letter dated 23.10.2023. The Respondent's submissions and arguments are as below: -

- (i) The Appellant is a LT Consumer as detailed in para 2(i). The Appellant is using power supply for hotel purpose. The System has allowed 18 KVA Contract Demand though the billing was not based on KVA MD Basis. The Appellant was billed under LT II (A) Tariff Category till June 2022. The Appellant is now being billed under LT II (B) Tariff Category from July 2022 onwards.
- (ii) The Flying Squad, Kalyan carried out a detailed inspection of the Appellant's premises on 14.06.2022 in the presence of the Appellant. During the inspection, it was observed that
 - a. The connected load of the Appellant was 28 KW, which was more than the sanctioned load of 19.5 KW (< 0 to 20 KW).
 - b. The Appellant was being under billed under LT II (A): 0 to 20 KW Slab of Tariff Category as per Sanctioned Load of 19.5 KW. The Appellant unilaterally enhanced the connected load into the billing slab of 20 to 50 KW without any sanction. Hence, it became necessary to issue assessment towards change of tariff category from LT II (A) to LT II (B) retrospectively from the date of connection, i.e., 14.01.2017.
- (iii) As per the observation of the inspection report, the Respondent issued a supplementary bill of Rs. 8,19,430/- on 04.08.2022 towards Tariff Difference from LT II (A) (0 to 20 KW Slab) to LT II (B) (20 to 50 KW Slab) of Commercial Tariff Category for the period from Jan-17 to Jun-22. The Appellant did not pay the same, hence the said supplementary bill was added in the regular bill of Jan-23.
- (iv) The Appellant approached the Forum on 03.02.2023. The Forum by its Order dated 19.07.2023 rejected the grievance application.



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- (v) The Respondent cited the Judgment of the Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. in support for recovery of escaped billing.
- (vi) The Respondent argued that for a long period, the Appellant has enjoyed the benefit of lower tariff under LT II (A) tariff category, which is comparatively lower than the LT II (B) tariff category. Apart from this, there was recorded KW load and recorded KVA Maximum Demand which varies from more than 20 KW to 31.96 KW and 21.96 KVA to 34.20 KVA respectively, as per Data extracted from the system which was based on MRI Report for the period from 1st Mar-22 to Sep-23. The same is kept on record.
- (vii) The Respondent further argued that the connected load is much more than the recorded KW load. The Tariff category is based on sanctioned load as follows:-
- a. LT II (A): 0 to 20 KW sanctioned load, on fixed charges basis
 - b. LT II (B): > 20 to 50 KW, on Demand Charges and TOD Tariff basis
 - c. LT II (C): > 50 KW, on Demand Charges basis and TOD Tariff basis
- (viii) The Appellant did not file the online application for load enhancement in November 2022 with all the required details. The Appellant has not paid the statutory charges of processing fee, which resulted into an incomplete application. Hence, the Respondent did not take any action for sanction of additional load. The Respondent assured that as soon as the application for load extension is received along with payment of processing fee, the same will be sanctioned and will be released on priority basis.
- (ix) The Respondent prays that the Representation of the Appellant be rejected.

4. During the course of the hearing, the Respondent was directed to submit the calculations of demand charges levied and CPL of the Appellant. The Respondent vide its letter dated 6th November 2023 has submitted the required information.

Analysis and Ruling


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5. Heard the parties. Perused the documents on record. The Appellant is a LT Consumer (No. 016790002010) from 14.01.2017 having SL of 14.50 KW at H.No. 483, Khativali, Tal. Shahapur, Thane. The Appellant is using power supply for running a hotel. The Appellant was billed under LT II (A) Tariff Category from the date of connection up to June 2022,

6. The Flying Squad, Kalyan carried out a detailed inspection of the Appellant's premises on 14.06.2022 in the presence of the Appellant. During the inspection, it was observed that the connected load of the Appellant was 28 KW, which was more than the sanctioned load of 19.5 KW. The Appellant was being wrongly billed under LT II (A): 0 to 20 KW Slab of Tariff Category as per Sanctioned Load of 19.5 KW. The Appellant unilaterally extended the connected load into the higher billing slab of 20 to 50 KW without any sanction. Thus the Flying Squad recommended to issue a supplementary assessment towards change of tariff category from LT II (A) to LT II (B) retrospectively from the date of connection, i.e., 14.01.2017 to June 2022.

7. Accordingly, the Respondent issued a supplementary bill of Rs. 8,19,430/- on 04.08.2022 towards Tariff Difference from LT II (A) (0 to 20 KW Slab) to LT II (B) (20 to 50 KW Slab) of Commercial Tariff Category for the period from Jan-17 to Jun-22(66 months). The Appellant is being billed under the higher LT II (B) Tariff Category from July 2022 onwards, with recorded MD against the sanctioned load of 19.5 KW. The said supplementary bill was added in the bill of Jan-23.

8. The Data of maximum connected load recorded in KW, and maximum contract demand recorded in KVA, extracted from the meter reading system which was based on MRI Report for the period from 1st Mar-22 to Sep-23 was analysed and is tabulated below:

Table 1


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Meter Information : Reading Counters							
Date	Status with Reset mechnism	KW	KVA	Date	Status with Reset mechnism	KW	KVA
1/3/2022	Auto Reset	23.82	25.14	1/1/2023	Auto Reset	26.74	28.18
1/4/2022	Auto Reset	27.14	28.98	1/2/2023	Auto Reset	23.10	24.70
1/5/2022	Auto Reset	27.30	29.12	1/3/2023	Auto Reset	26.24	27.50
1/6/2022	Auto Reset	31.96	34.20	1/4/2023	Auto Reset	25.68	27.38
1/7/2022	Auto Reset	29.86	31.64	1/5/2023	Auto Reset	29.52	30.82
1/8/2022	Auto Reset	28.64	30.66	1/6/2023	Auto Reset	29.28	31.02
1/9/2022	Auto Reset	27.66	29.98	1/7/2023	Auto Reset	28.80	30.46
1/10/2022	Auto Reset	25.52	27.34	1/8/2023	Auto Reset	23.20	25.12
1/11/2022	Auto Reset	25.66	27.60	1/9/2023	Auto Reset	23.06	24.52
1/12/2022	Auto Reset	25.12	27.34	1/10/2023	Auto Reset	20.84	21.96

From the table, it is seen that the recorded KW load and Recorded KVA Maximum Demand goes upto 31.96 KW and upto 34.20 KVA respectively for the period from 01.3.2022 to 01.10.2023. Thus, it is clear that the Appellant has used load more than 20 KW.

9. The consumption pattern of the Appellant for the period from 2018-19 onwards is tabulated as below:

Table 2:

Year	2018-19	2019-20	2020-21	2021-22	2022-2023	2023-24
Month	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)
April	1104	837	72	7193	Data not avilable	8570
May	1804	758	55	2977		9926
June	1343	823	1708	3433		8296
July	968	859	418	7162	10848	6565
Aug.	860	734	260	7947	7203	7004
Sept.	882	745	245	7500	7124	6322
Oct.	795	733	378	7353	8318	
Nov.	943	816	688	8225	7813	
Dec.	814	778	1533	7976	7925	
Jan.	570	713	7140	7775	7635	
Feb.	586	424	9002	6561	7162	
March	670	513	8105	7277	8453	
Note : Consunption was increased from Jan-21 onwards						


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10. From Table 2, while analysing the consumption pattern of the Appellant, it is clearly established that the consumption substantially increased only from Jan. 2021 onwards. This period also coincides with the period when the premises were rented out to run a hotel.

11. The Respondent cited the Judgment of the Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. in support for recovery of escaped billing. However, the ratio of this judgement is not applicable in this case, as this is not a matter of escaped billing.

12. The Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:


“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.*

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.”

In view of the above Judgment of the Hon'ble Supreme Court, we hold that the Respondent can recover the tariff difference only for maximum 24 months retrospectively. In the instant Representation, as per the consumption pattern, the recovery period towards tariff difference will be from Jan-21 to Jun-22. i.e., for 18 months only, which is based on the increased consumption in this period. The Electricity Ombudsman (Mumbai) in several similar representations has allowed recovery of 24 months towards tariff difference.

13. The Commission, by its various Tariff Orders, has determined the tariff for categories of consumers. The Tariff Categories for Commercial Consumers are nearly the same as the


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concerned load slabs specified in the Commission's Mid-Term Review order in Case No. 195 of 2017. The relevant portion of the tariff order is quoted below:

“LT II: LT – Non-Residential or Commercial

LT II (A): 0 - 20 kW

.....

.....

d) Marriage Halls, Hotels / Restaurants, Ice-cream parlours, Coffee Shops, Guest Houses,

Internet / Cyber Cafes, Telephone Booths not covered under the LT I category, and Fax / Photocopy shops;

LT II (A)

<i>Consumption Slab (kWh)</i>	<i>Fixed/ Demand Charge (Rs. per month)</i>	<i>Wheeling Charge (Rs/kWh)</i>	<i>Energy Charge (Rs/kWh)</i>
<i>LT II (A)</i>			
<i>(i) 0 to 200 units per month</i>	391	1.28	6.10
<i>(ii) Above 200 units per month (only balance consumption)</i>	391	1.28	9.25


LT II (B): > 20 kW and ≤ 50 kW and (C) > 50 kW

Applicability:

As per the applicability described in LT II (A) and for the Sanctioned Load in the range applicable in this sub-category, i.e. LT II (B) and LT II (C).

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<i>Consumption Slab (kWh)</i>	<i>Fixed/ Demand Charge (Rs. per month)</i>	<i>Wheeling Charge (Rs/kWh)</i>	<i>Energy Charge (Rs/kWh)</i>
<i>LT II (B) > 20 kW and ≤ 50 kW</i>	<i>391</i>	<i>1.28</i>	<i>9.30</i>
<i>LT II (C) > 50 kW</i>		<i>1.28</i>	<i>11.60</i>
<i>TOD Tariffs (in addition to above base Tariffs)</i>			
<i>2200 Hrs-0600 Hrs</i>			<i>-1.50</i>
<i>0600 Hrs-0900 Hrs & 1200 Hrs-1800 Hrs</i>			<i>0.00</i>
<i>0900 Hrs-1200 Hrs</i>			<i>0.80</i>
<i>1800 Hrs-2200 Hrs</i>			<i>1.10</i>


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consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.

Monthly Billing Demand will be the higher of the following:

- a) 65% of the actual Maximum Demand recorded in the month during 0600 hours to 2200 hours;
- b) 40% of the Contract Demand.

Note:

- Only the Demand registered during the period 0600 to 2200 Hrs. will be considered for determination of the Billing Demand.
- In case of a change in Contract Demand, the above period will be reckoned from the month following the month in which the change in Contract Demand is effected.

Penalty for exceeding Contract Demand


In case a consumer (availing Demand-based Tariff) exceeds his Contract Demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable Demand Charge (only for the Demand in excess of the Contract Demand).

Under these circumstances, the consumer shall not be liable for any other action under Section 126 of the EA, 2003, since the penal additional Demand Charge provides for the penalty that the consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.”

The tariff policy remained the same in the **Commission’s Multi Year Tariff order in Case No. 322 of 2019 dated 30.03.2020** which is effective from 01.04.2020, except for a change in the tariff rate.

14. As per the Tariff Order of the Commission in force, there is no KVA Contract Demand for the tariff category slab of “0 to 20 KW”. However, Contract Demand tariff is applicable in LT II (B) and LT II (C) tariff category.

15. The Appellant has applied for load extension from 14.5 to 35 KW in Nov-22. The Respondent contended that the online application was incomplete and the Appellant did not pay the required statutory charges online. Both the parties failed to submit the exact status of


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the load extension application. The Appellant is advised to follow up with the Respondent for processing the load extension application.


16. In view of the above, the Respondent is directed as under: -

- a) to revise the supplementary bill of Rs. 8,19,430/- for only 18 months for the period from Jan-21 to Jun-22 towards tariff difference from LT II (A) (0 to 20 KW Slab) to LT II (B) (20 to 50 KW Slab) of Commercial Tariff Category. The interest and DPC levied be withdrawn till the date of this order while revising the bill.
- b) To allow the Appellant to pay the revised supplementary bill in four equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will accrue, and the Respondent has the liberty to take action as per law.
- c) To release the applied load of 35 KW after the application is filed with the required processing fee and all other necessary requirement.
- d) Compliance to be submitted within two months from the date of issue of this order.
- e) Other prayers of the Appellant are rejected.

17. The Representation is disposed of accordingly.

18. The Secretariat of this office is directed to refund Rs. 25000/- paid by the Appellant to the Respondent for adjusting in the ensuing bill.

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


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