BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 150 OF 2019

In the matter of application of tariff and retrospective recovery

M/s. Akash Cleaners Pvt. Ltd.……Appellant
(Now known as M/s. Jyothy Fabricare Services Ltd.)

V/s

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

Appearances

For the Appellant : 1. Sagar Sodha,
2. Ashok Patil, Representative

For the Respondent : 1. R.P Naik, Superintending Engineer, Vashi
2. A. N. Chafale, Executive Engineer

Coram: Mr. Deepak Lad

Date of Order: 15th October 2019

ORDER

This Representation is filed on 9th August 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 *(CGRF Regulations)* against the order dated 11th June 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone *(the Forum)*.

2. The Forum, by its order dated 11th June 2019 has partly allowed the grievance application in Case No. 183/2018 and the operative part of the order is as below: -

> *"2.The respondent is entitled to tariff difference from industrial to commercial in six installment without interest and Delayed Payment Charges along with current bill.*
>
> *3. Respondent Utility may take action on all concerned officers responsible for not taken corrective measures within time and not issuing correct tariff monthly bill for such long period."*

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

(i) The Appellant is HT consumer (No. 000119020301) from 25.03.1996 (as per Sanction Order 20.02.1996) at Plot No.145/7, TTC MIDC, Khairane, Navi Mumbai and having sanctioned load of 240 KW and Contract Demand of 160 kVA in the name of Akash Cleaners Pvt Ltd. The name of company is changed to Jyothy Fabricare Services Ltd. as a part of merger in the year 2013.

(ii) The Maharashtra Industrial Development Corporation (MIDC) has allotted this plot for industrial purpose in MIDC area. The power supply was sanctioned by the Respondent on 20.02.1996 for industrial purpose i.e. dry-cleaning and laundry of garments. The industrial activity of dry-cleaning and laundry of garments is carried on very large basis since the date of release of the supply i.e. 25.03.1996.

(iii) The New Mumbai Municipal Corporation (NMMC) is charging them the property tax as per industrial rate. The MIDC is levying water charges as per industrial rate. The various certificates issued by competent Government authorities for industrial purpose like factory license, Maharashtra Pollution Control Board (MPCB) certificate, boiler license, and labour license etc. The erstwhile MSEB / present MSEDCL is levying industrial tariff from the date of connection and there

has been no billing dispute other than the amount mentioned in this appeal. The activity of the Appellant is a process industry and the commercial activity is never involved in the factory premises.

(iv) The Respondent has not only carried out spot inspections on routine basis, as and when they wished to do so, but also carried out the annual inspection every year as part of their procedure. It is pertinent to mention that the Respondent has never ever handed over the copy of either such spot inspection reports or the annual inspection reports.

(v) However, suddenly in the month of April 2018, the Appellant has received a supplementary bill with retrospective recovery of Rs.65,88,032/- on 27.03.2018 towards tariff difference from industrial to commercial category for the period from December 2015 to November 2017. The said retrospective recovery is wrong, illegal and not permissible as per law.

(vi) The Appellant does not fall under the activities enumerated under the Commercial category as listed under the Order of Tariff Determination of the Maharashtra Electricity Regulatory Commission (the Commission) which is reproduced for your ready reference:

> *"Applicability*
>
> *Applicable for use of electricity/power supply at high tension on express feeders in all non-residential, non-industrial premises and/or commercial premises for commercial consumption meant for operating various appliances used for purpose such as lighting, heating, cooling, washing/cleaning, entertainment / leisure, pumping in following (but not limited to) places……"*

(vii) Therefore, to bring the Appellant within the category of commercial tariff, the Respondent ought to have ascertained:

a. Whether the Appellant is operating in a non-residential or non-industrial premises or commercial premises;
b. Whether the Appellant is using the electricity for the commercial consumption;

The Appellant placed it on record that the answer to both the conditions is negative as the said premises is located under MIDC area and it possesses licenses under the Factories Act, 1948, MPCB and various other local industrial authorities/laws. The Appellant operates treatment plant to treat the waste- water which is only permissible under the industrial limits and not under commercial limits.

(viii) The Appellant referred various judgments / orders of the Appellate Tribunal for Electricity (the ATE), the Maharashtra Electricity Regulatory Commission (the Commission), the Electricity Ombudsman (Mumbai) and the Bhandup Forum regarding not to levy the retrospective recovery for change of tariff category. The Commission in its order dated 11.02.2003 in Case No. 24 of 2001, has held as under: -

> *"No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict senses of the term to be recovered retrospectively."*

(ix) The Appellant has referred the orders passed by the Electricity Ombudsman in Representation Nos. 126 of 2014, 91 of 2015, 41 of 2016 and 116 of 2016 where the retrospective recovery is withdrawn.

(x) The Appellant has referred the order dated 07.08.2014 in Appeal No.131 of 2013 passed by ATE in Case of Vianney Enterprises V/s. Kerala Electricity

Regulatory Commission that any recovery for any reason should be charged for prospective period only from the date of detection, the recovery for retrospective period is not allowed as per law. Hence, the Appellant is not liable to pay for the illegal demands from the Respondent for the retrospective period from the date of detection.

(xi) The Forum has also ruled out retrospective recovery in such cases like 123/2017, 134/2017, 143/2017, 41/2018, 45/2018, 50/2018, 63/2018, 81/2018, 88/2018, etc. However, in the Appellant's case, the Forum has decided that the retrospective recovery is permissible.

(xii) In para. "O", on Page No.8 of the impugned order of the Forum, it has mentioned about the interim order of Hon'ble Bombay High Court dated 15.07.2015 in W.P.No.6552 of 2015 (MSEDCL V/S Ram Kanojiya). The said interim order has been wrongly interpreted by the Forum, the relevant paragraph of the said order is as below:-

> *"The issue that arise for consideration in the above Petitions is as to whether the Petitioners are entitled to make recovery of the electricity charges, from an anterior date that is when the change in the tariff category was effected by the MERC or from the date when the error in categorization was detected. By the impugned order, the ombudsmen by relying upon the order passed by the APTEL, New Delhi, has held that the Petitioners would be entitled to recover only from the date of discovery of error relating to categorisation. In view of the fact that the entitlement of the Petitioner is in question, the statuesquo in respect of the recovery is directed to be maintained. The Learned Counsel for the Respondent No. 1 submits that the Respondent No. 1 should be shown as being in arrears of the amounts claimed by the Petitioner. Upon this, the Learned Counsel for the Petitioner assures the Court that the Respondent No. 1 would not be shown as arrears in terms of the impugned order."*

The above-mentioned Writ Petition has been filed by MSEDCL and Hon'ble High Court vide above mentioned interim order directed to maintain the statusquo in respect of the recovery and the Hon'ble Court further directed the said consumer shall not be shown in arrears.

However, the Forum has wrongly interpreted the interim order of Hon'ble High Court and wrongly mentioned in its order that, the High Court has directed to maintain the statusquo against the Ombudsman Order in said case.

This interpretation of the Forum is very wrong and illogical, the Hon'ble High Court only directed to maintain the statusquo in respect of the recovery, the Ombudsman orders in said cases have not been quashed and set aside.

The said interim order in W.P.No.6552 of 2015 issued on 15.07.2015 by the Bombay High Court. The Forum is well aware of this order, because in every case, the Respondent has mentioned this order in its reply. However, even after knowing this order, the Forum has issued many orders in the year 2017 and 2018 after the High Court Order dated 15.07.2015 ruling out that the retrospective recovery of tariff difference is not allowed.

(xiii) The Respondent has issued the supplementary bill of retrospective recovery amounting Rs.65,88,032/- for the period of December 2015 to November 2017 for tariff difference between industrial to commercial category in illegal way. Further, our tariff is changed from Industrial to Commercial from December 2017 without any basis.

(xiv) The Commission vide its tariff order dated 12.09.2018 in Case No.195 of 2017 (applicable from 01.09.2018) ordered that Industrial Tariff shall be applicable to Laundries. This clearly indicates that Laundry is an industrial activity and should be classified under industrial tariff. The above-mentioned retrospective recovery is wrong, illegal and not permissible as per law.

(xv) The Appellant has operations across various cities in India where the laundry has been classified as industrial activity and accordingly levied industrial tariff by various Electricity Boards.

(xvi) The Appellant reiterates that the Appellant is a Process Industry. There is no Commercial activity in its premises. Hence, only Industrial tariff is applicable to them.

(xvii) The Appellant has prayed to direct the Respondent as under:-

(a) to withdraw retrospective recovery of Rs.65,88,032/- along with interest and DPC.
(b) to change the tariff from Commercial to Industrial from December 2017 which is wrongly converted as Commercial and to refund the amounts paid by them against the wrong tariff bills along with 9% interest rate as per Section 62 (6) of the Electricity Act 2003 (the Act).
(c) not to disconnect the electricity supply of the Appellant.

4. The Respondent MSEDCL has filed its reply dated 21.09.2019 stating as under :-

(i) The Appellant is the HT consumer bearing Consumer No. 000119020301 of the Respondent located at Plot No. A-145/6, TTC MIDC, Industrial area, Pawane, Navi Mumbai having date of connection 25.03.1996. The consumer was categorized under HT Industrial Tariff.
(ii) As per the instruction from the Vashi Circle Office, the Executive Engineer, Vashi Division has inspected the Appellant's premises on 17.11.2017, and vide letter No. EE/Vashi/T/HT spot inspection/ 6341dated 13.12.17 has submitted inspection report to the Circle Office. The observations recorded on inspection dated 17.11.17 is "consumer found carrying out activity of Laundry".
(iii) As per the Tariff order of the Commission dated 16.08.12 in Case No. 19 of 2012 and the revised Tariff Orders of the Commission thereafter, the activity of Laundry is categorized under the Commercial Tariff. Therefore, after the above said inspection report dated 17.11.2017, the Tariff category of this Appellant is revised from HT Industrial to HT Commercial from December 2017 and issued the supplementary bill of Rs. 65,88,032/- dated 27.03.2018 for the recovery of tariff difference from Industrial to Commercial Tariff for the period from December

2015 to November 2017 i.e. only for preceding two years from the date of inspection i.e. 17.11.2017.

(iv) Being aggrieved with the supplementary bill dated 27.03.2018, the Appellant filed the grievance before the IGRC who dismissed the grievance by order dated 25.07.2018.

(v) The Appellant then filed the grievance before the Forum vide Case No. 183/2018. The Forum passed the order dated 11.06.19 by partly allowing the grievance and ordered that the Respondent is entitled to recover tariff difference from industrial to commercial in six instalments without interest & delayed payment charges along with current bill.

(vi) Subsequently, the Appellant filed this present Representation against the order dated 11.06.2019 passed by the Forum before the Electricity Ombudsman (M).

(vii) The Respondent states that the following issues to be considered by the Electricity Ombudsman (M):

(a) Whether the Appellant consumer is engaged in any "Manufacturing Activity" and whether category of billing has to be fixed on the basis of "Intent" and "Purpose of use of Electricity"?

(b) Who creates tariff categories and who classifies categories of billing?

(c) Whether the Respondent is entitled for recovery of arrears of tariff difference from the Appellant for period December 2015 to November 2017 i.e. of preceding two years, from the date of inspection i.e. 17.11.2017?

Issues discussed in detail: -

(a) It is an admitted position that the Appellant is not engaged in any manufacturing activity. It is submitted that the classification of consumers under the Act is strictly done on the basis of activity and purpose of use. It is an admitted position that the activity of the Appellant is 'Laundry'. There is no industrial production duly supported by an industrial license issued by the District Industries Centre. The Appellant has failed to show as to how this activity comes under the activity of "Industrial Activity".

It is clarified on behalf that the whole activity of the Appellant is of laundry i.e. the activity like washing/cleaning, which squarely falls under Commercial category of billing.

The ATE vide various orders as well as the Commission vide its order dated 16.08.2012 passed in Case No. 19 of 2012 have clearly laid down that the categorization/classification of consumers have to be categorically done on "*Intent" and "Purpose of use of Electricity"* and not merely on the basis of certificates provided by different authorities which have nothing to do with categorization of consumers for the purposes of billing. In the present case being the activity is of laundry, the intent and purpose is completely commercial in nature and not at all industrial as is being allegedly contended by the Appellant. The answer of the issue is negative.

(b) Categorizing tariff categories and classifying consumers under different tariff is completely a different aspect which is under the purview of two different authorities. While the former comes under the absolute jurisdiction of the Commission, the latter is the jurisdiction of the Distribution Licensee. A bare perusal of Regulation 13 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 would make it abundantly clear the contents of which is reproduced as under:

"13. Classification and Reclassification of Consumers into Tariff Categories:

The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer:

Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission."

Perusal of the above provision clearly gives a right to the Respondent being a Distribution Licensee to classify or reclassify a consumer based on the "usage of supply". Hence, the Respondent herein has rightly reclassified the Appellant into

commercial category based on the usage of supply. The only two Proviso to the above provision is as under:

(i) Such classification or reclassification should be as per the Commission approved tariff categories; and

(ii) Distribution Licensee shall not create any tariff category other than those approved by the Commission.

The issue is addressed accordingly,

(c) During interpretation of the Section 56 (2) of the Act, the Learned Single Judge of Bombay High Court while deciding the Civil W.P. No. 10764/2011 has passed an order dated 24.01.2012 and thereby opined that there are conflicting views of this court in the Judgment delivered by the two Division Benches and deemed it necessary to request the Hon'ble Chief Justice to refer the following issue to the Larger Bench consisting of at least three Judges. The issue to be referred are as under-:

(i) Whether irrespective of the provisions of Section 56(2) of the Electricity Act, 2003, Distribution Licensee can demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges;

(ii) Whether the charges for electricity consumed become due only after a demand bill issued by the Distribution Licensee and whether the Distribution Licensee can issue a demand bill even for the period preceding more than two years from the date of issuance of demand bill notwithstanding the provision of Sub-Section 2 of Section 56 of the Electricity Act, 2003;

(iii) Which of the Judgments of the Division Bench namely Awadesh S. Pandey v/s. Tata Power Co. Ltd., reported in AIR 2007 Bombay 52 or Judgment of the Division Bench in the case of Rototex Polyester & Another, reported in 2010(4) have correctly interpreted the provisions of Section 56 (2) of the Electricity Act.

Accordingly, the Larger Bench was constituted, and reference had been made. This Hon'ble Larger Bench has delivered its Judgment on 12.03.2019 in W.P. No. 10764 of 2011 & Others. In this Judgment, the Hon'ble Larger Bench has answered all issues referred to their opinion as under-:

"(A) The issue No. (i) is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

(B) As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in sub-section (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

(C) The issue No. (iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment."

As per this Hon'ble Larger Bench Judgment, the Distribution Licensee can demand charges for consumption of electricity for a period of preceding two years. In this case, the supplementary bill is only for the preceding two years and therefore the Forum has rightly passed the order by taking into consideration the provision of Section 56 (2) of the Act.

(viii) The Respondent stated on merit as below: -

a) The activity that is carried out by the Appellant consumer is of 'Laundry' i.e. washing/cleaning of clothes, which squarely comes under the Commercial category.

b) The categorization/classification of consumers have to be categorically done on "*Intent" and "Purpose of use of Electricity"* and not merely on the basis of certificates provided by different authorities which have nothing to do with categorization of consumers for the purposes of billing them accordingly.

c) The Distribution Licensee has right to classify or reclassify a consumer based on the "usage of supply". Hence, the Respondent herein has rightly reclassified the Appellant into Commercial category based on the usage of supply.

d) As per Hon'ble Larger Bench Judgment, the Distribution Licensee can demand charges for consumption of electricity for a period of preceding two years. In this case, the supplementary bill is only for the preceding two years and the Forum has rightly passed the order by taking into consideration the provision of Section 56 (2) of Electricity Act, 2003. Hence, this Representation is liable to be rejected.

e) The Appellant has unjustly benefited by the application of Industrial tariff and therefore is liable to pay entire bill of tariff difference recovery.

f) The Forum has rightly decided the matter by considering the usage of supply by the Appellant for commercial activity.

ix) In view of the above, it is therefore most respectfully prayed to:

a. Dismiss the present Representation filed by the Appellant.

b. Upheld the order dated 11.06.2019 of the Forum passed in Case No. 183/18.

c. Direct the Appellant for payment of entire arrears–amount of tariff difference as per the Forum's order.

d. Pass any such further orders as this Hon'ble Authority deems fit and proper in the interest of justice and good conscience.

Analysis and Ruling

5. The case was heard on 24.09.2019. Both the parties argued in line with the written submissions. The Appellant pointed out that power supply was sanctioned by the Respondent on 20.02.1996 for industrial purpose i.e. dry-cleaning and laundry of garments. The industrial activity of dry-cleaning and laundry of garments is carried on very large basis since the date of release of the supply i.e. 25.03.1996. It has all necessary certificates such as factory licence, MPCB certificate, boiler license, and labour license etc. issued by various competent Government authorities that are required for running an industry. The NMMC is charging

them the property tax as per industrial rate. The MIDC is levying water charges as per industrial rate. From the date of connection, industrial tariff has been applied by the Respondent. Since the activity is industrial in nature, Respondent cannot apply commercial tariff and least of all, cannot demand retrospective recovery towards it. It has also cited various orders / judgments in this regard which are mentioned above.

On the contrary, the Respondent argued that when its officer inspected the premises, it was observed that the Appellant is not running any industry but engaging itself in washing and cleaning clothes, etc. i.e. laundry activity. This activity does not change the form of the product from its input status which necessarily happens in any industry. There is no industrial production duly supported by an industrial license issued by the District Industries Centre. The activity like washing/cleaning squarely falls under Commercial category of billing. It further argued that MSEDCL H.O. Commercial Department issued a Circular on the Commission's order in Case No. 195 of 2017 wherein dhobi / laundry is categorized under Industry category in respect of LT connected consumers only and on the contrary, the Appellant is connected on HT and not on LT. It also cited Larger Bench Judgment of Bombay High Court regarding retrospective recovery mentioned above.

I perused the documents on record and also perused the tariff orders of the Commission from 2009 issued in respect of MSEDCL. My observation with respect to Commission's various tariff orders as per washing / cleaning (laundry) activities is concerned is as below: -

a) Order in Case No. 19 of 2012 dated 16.08.2012 (Effective from 01.08.2012)

LT II: LT– Non-Residential or Commercial

Applicability

(A) 0-20 kW

Electricity used at Low/Medium Voltage in all non-residential, non-industrial premises and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in following (but not limited to) places:

……

f) Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, ***Laundries,*** *Beauty Parlour & Saloons;*

HT II: HT- Commercial

Applicability

HT II (A): EXPRESS FEEDERS

Applicable for use of electricity / power supply at High Tension on Express Feeders in all non-residential, non-industrial premises and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in following (but not limited to) places:

f) Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, ***Laundries****;*

HT II (B): NON- EXPRESS FEEDERS
Applicability as per HT II (A)

b) Order in Case No. 121 of 2014 dated 26.06.2015 (Effective from 01.06.2015)

LT II: LT– Non-Residential or Commercial ---------- As in Case 19/2012

HT II: HT- Commercial ---------- As in Case 19/2012

c) Order in Case No. 48 of 2016 dated 03.11.2016 (Effective from 01.11.2016)

LT II: LT– Non-Residential or Commercial ---------- As in Case 121/2014

HT II: HT- Commercial ---------- As in Case 121/2014

In the following order in Case No. 195 of 2017, there is slight change in applicability compared to above three orders.

d) Order in Case No. 195 of 2017 dated 12.09.2018 (Effective from 01.09.2018)

LT II: LT – Non-Residential or Commercial

LT II (A): 0 - 20 kW

Applicability:

This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating,

cooling, cooking, washing/cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:

f) Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, ***Laundries,*** *Beauty Parlours and Saloons;*

LT-V (B): LT - Industry – General

Applicability:

This tariff category is applicable for electricity for Industrial use, at Low/Medium Voltage, for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.
It is also applicable for use of electricity / power supply for Administrative Offices / Canteens, Recreation Hall / Sports Club or facilities / Health Club or facilities/ Gymnasium / Swimming Pool exclusively meant for employees of the industry; lifts, water pumps, fire-fighting pumps and equipment, street and common area lighting; Research and Development units, ***dhobi/laundry*** *etc.*

e) Corrigendum Order in Case No. 195 of 2017 dated 01.11.2018

2. ***The Applicability of tariff for LT II – Non-Residential or Commercial Category*** *for FY 2018-19 in Tariff Schedule for FY 2018-19 and for FY 2019-20 in Tariff Schedule for FY 2019-20 reads as under:*

   Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, ***Laundries****, Beauty Parlours and Saloons;*

   This should be read as follows:

f. Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Beauty Parlours and Saloons;

3. ***The Applicability of tariff for HT II - Commercial Category*** *for FY 2018-19 in Tariff Schedule for FY 2018-19 and for FY 2019-20 in Tariff Schedule for FY 2019-20 reads as under:*

   e. Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, ***Laundries****, Beauty Parlours and Saloons;*

   This should be read as follows: *e. Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Beauty Parlours and Saloons;*

4. ***In the tariff applicability of LT V (B) – Industry-General Category*** *for FY 2018-19 in Tariff Schedule for FY 2018-19 and for FY 2019-20 in Tariff Schedule for FY 2019-20, following should be added:*

   p. dhobi/laundry

5. In the tariff applicability of HT I (A)- Industry-General Category *for FY 2018-19 in Tariff Schedule for FY 2018-19 and for FY 2019-20 in Tariff Schedule for FY 2019-20, following should be added:*

p. dhobi/laundry

(Emphasis added)

6. The Appellant's date of connection is 25.03.1996 and it is connected at HT. It was billed under industrial tariff till the date of inspection, subsequent to which the Respondent issued supplementary bill by way of change of category from industrial to commercial for a period of two years i.e. from December 2015 to November 2017. Since the Respondent billed the Appellant at Commercial tariff for the period from December 2015 to November 2017, I perused few tariff orders of the Commission prior to December 2015 and post December 2015 which are quoted at para 5 above. From the bare perusal of the orders in Case No. 19/2012, 121/2014 and 48/2016, it is noticed that LT Non-Residential / Commercial and also HT Commercial tariff category is applicable to Laundry activity depending upon the voltage at which it is connected i.e. LT or HT. Thus, Laundry activity was categorised under Commercial tariff category under these three tariff orders.

7. The Commission in its tariff order dated 12.09.2018 in Case No. 195 of 2017 has put Laundry activity under Industrial as well as Commercial category for both LT and HT. However, this Laundry activity was removed from LT Commercial and HT Commercial through its Corrigendum Order dated 01.11.2018 in Case No. 195 of 2017. In nutshell, under this order Dhobi/Laundry activity is categorised under Industrial tariff both for LT and HT. This order was effective from 01.09.2018. It was therefore obvious for the Respondent to have billed the Appellant under HT I (A)- Industry-General Category from 01.09.2018. However, after inspection on17.11.2017, the Appellant was levied HT Commercial tariff from December 2017 and issued supplementary bill with retrospective recovery from December 2015 till November 2017.

8. Notwithstanding the argument / claim of the Appellant that its Laundry activity is of industrial nature and it has various permissions / certificates from various Government authorities for industry as such, the Commission had put the laundry activity under

Commercial tariff category till the issue of order dated 12.09.2018 in Case No. 195 of 2017 which is effective from 01.09.2018.

9. The argument of the Respondent that activity of Dhobi/Laundry is under only LT Industrial tariff category is not tenable as seen from the Corrigendum Order of the Commission in Case No. 195 of 2017. It therefore indicates that the Respondent has not studied and implemented the order of the Commission properly in this case.

Therefore, the Appellant has legitimate claim for Industrial tariff from 01.09.2018. The Respondent has issued supplementary bill towards tariff difference from Industrial to Commercial tariff category for the period from December 2015 to November 2017 and continued to be billed beyond November 2017 under Commercial category. The Appellant has objected to the issue of retrospective recovery by citing Commission's order dated 11.02. 2003 in Case No. 24 of 2001.The Respondent changed the tariff category of the Appellant from industrial to commercial from December 2017 and issued supplementary bill of retrospective recovery for preceding 24 months as per Section 56 (2) of the Act which is reproduced as below: -

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

The Respondent has cited the judgment dated 12.03.2019 of Larger Bench of Bombay High Court in Writ Petition No.10764 of 2011 and Others which has clarified the issues involved with Section 56 (2) of the Act. The relevant portion of the judgment is reproduced below: -

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

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was re-worked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the

period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by sub-section (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

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

arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.

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

A) The issue No.(i) is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

(B) As regards issue No.(ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

(C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment."

In view of the above, the Larger Bench Judgment being recently issued in 12.03.2019, the Commission's order in Case No. 24 of 2001 may not be relevant. Therefore, I pass the following order: -

(i) The Respondent is directed to apply HT Industrial tariff category to the Appellant with immediate effect after receipt of the order.

(ii) The Respondent is directed to refund tariff difference from commercial to industrial for the period from 01.09.2018 till the date of application of industrial tariff in pursuance of the Commission's order in Case No. 195 of 2017 and Corrigendum issued on 01.11.2018 along with interest at the bank rate on the amount of refund due from 01.09.2018.

(iii) Interest and DPC levied, if any on the amount of retrospective recovery is waived of.

(iv) The revised supplementary bill be issued to the Appellant after adjusting the refunds indicated in point (ii) and (iii) in retrospective recovery bill which have already been issued towards tariff difference from Industrial to Commercial.

(v) The Appellant to pay revised supplementary bill in six instalments as directed by the Forum.

(vi) Compliance to be reported by the Respondent within the period of two months from the date of the order.

(vii) No order as to cost.

(viii) The secretariat of this office is directed to refund the amount of Rs.25000/- deposited by the Appellant immediately.

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

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai