BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission

under Section 42(6) of the Electricity Act, 2003)

REVIEW APPLICATION NO. 05 OF 2019

IN

ORDER IN REPRESENTATION NO. 82 OF 2019

In the matter of application of proper tariff category

M/s Foundation Break Manufacturing Pvt. Ltd. ………………………. Applicant

(Original Appellant)

V/s.

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

Appearances

For Applicant : None

For Respondent : Md. Farook Shaikh, Supdt. Engineer, Jalgoan.

**Coram: Mr. Deepak Lad**

Date of Order: 14th August 2019

ORDER

This Review Application is filed on 11.07.2019 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) for review of the Order dated 17.06.2019 passed in Representation No. 82 of 2019.

1. Representation No. 82 of 2019 was rejected by order dated 17.06.2019. In the said order it was observed that the Appellant approached the Forum on 01.11.2018 whereas it has prayed for refund of tariff difference for continuous to non-continuous tariff category for the period starting from May 2014 to October 2016. The instant case does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations because the Appellant did not approach the Forum within two years from the cause of action.
2. The Applicant has filed this review application against the order in Representation No. 82 of 2019 dated 17.06.2019 stating as below:-
3. The Applicant made the application to the Respondent for the first time through its letter dated 18.06.2018 for refund of excess amount wrongly charged under continuous tariff category instead of non-continuous tariff category for the period from May 2014 to October 2016.
4. Hence this application may please be treated as their application to Internal Grievance Redressal Cell (IGRC) for Redressal of Grievance under Regulation 6.2 of CGRF Regulations and period of cause of action may please be decided accordingly.
5. As Such their bills for the month from June 2016 to October 2016 should have been considered for revision and refund should have been considered as these bills were within two years of limitations.
6. The Electricity Ombudsman (Mumbai) seems to have not taken this point into consideration. The Appellant is on non-express feeder. The said order dated 17.06.2019 accordingly be reviewed that the Respondent be directed to refund tariff difference towards express and non-express feeder for the period of June 2016 to October 2016 i.e. for the period of five months.
7. The Respondent has filed its reply by letter dated 07.08.2019 and stated that the points raised for review by the Applicant were already considered while deciding the Representation in order No. 82 of 2019 dated 17.06.2019. The Applicant has not pointed out any new discovery in the matter. The Applicant has failed to show any error on the face of record. As such the present review is not maintainable considering the provision of Regulation 19 of the CGRF Regulations.
8. The notice for the hearing was issued by the office of the Electricity Ombudsman on 19.07.2019. It was informed in the notice that the hearing could be taken through Video Conferencing. The Respondent agreed to the same however, the Applicant when contacted informed that it would not be possible for him to even join Video Conferencing. The Applicant further informed that its submission be taken on record and the case be decided on merit.
9. The hearing through Video Conferencing conducted on 08.08.2019. The Respondent MSEDCL, during the hearing, reiterated its written submission and informed that the Applicant has not brought out any new facts nor did he point out any mistake on face of record in the said order. Therefore, Review Application of the Applicant be rejected in view of Regulation 19 of CGRF Regulations.
10. Regulation 19 of the CGRF Regulations lays down as under: -

***19. Review of order***

*19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.*

*19.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.*

*19.3 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application.*

*Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.*

*19.4 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.*

1. The Applicant’s submission that its case for revision of tariff from continuous to non-continuous category was for the period May 2014 to October 2016. The Applicant submitted the application for revision of tariff and refund there to was submitted to the Respondent on 18.06.2018. Therefore, at least relief under tariff revision for the period June 2016 to October 2016 be granted considering its application dated 18.06.2018 to the licensee.
2. This was the argument of the Applicant in the original representation also which has been addressed at para 10 of the order dated 17.06.2019 in representation no. 82 of 2019 which is reproduced below:-

“*10. I noted that the Appellant approached the Forum on 01.11.2018 whereas it has prayed for refund of tariff difference for continuous to non-continuous tariff category for the period starting from May 2014 to October 2016. The instant case does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations as the period of relief is not within the limit of two years prior to date of filing the application with the Forum i.e. 01.11.2018. The said Regulation is quoted below:-*

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

*11. In view of the above discussions, I am of the considered view that the Forum has rightly decided the case in view of the provisions of Regulation 6.6 and therefore there is no need to interfere with the order of the Forum.”*

1. The Appellant requested that its application dated 18.06.2018 to the licensee may please be treated as an application to IGRC for Redressal of Grievance under Regulation 6.2 of CGRF Regulations. Period of two years may be counted back in time from 18.06.2018 for the purpose of cause of action. However, in view of Regulation 6.6 of CGRF Regulation this plea cannot be considered because Forum cannot admit the grievance after a period of two years from the cause of action. In the instant case the Applicant approached the Forum on 01.11.2018 and therefore its cause of action should have been 01.11.2016 whereas its cause of action has started from May 2014 to October 2016.
2. In view of the above as the Applicant did not raise any new issue which were not considered in the original representation nor did it point out any mistake on the face of record. I am of the considered view that Review Application is not maintainable and therefore rejected.

Sd/-

(Deepak Lad)

Electricity Ombudsman (Mumbai)