BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 75 OF 2023

In the matter of billing of previous utility of change-over consumer

| Shri Sanjay Dinkar Gaychor | Appellant |
|----------------------------------|------------------|
| V/s. | |
| Tata Power Company Ltd. (TPCL | .) |
| Adani Electricity Mumbai Ltd. (A | EML)Respondent 2 |
| Appearances: | |

Appellant : Shri Sanjay Dinkar Gaychor

Respondent 1 : 1. B. Karunakaran, Head-Commercial Services

2. R.M.Ranade, G.M.

3. Tushar Shelke, Sr. Manager2. Hawwa Inamdar, Sr. Manager

3. Harsha Chougale, GET

4. Narendra Rane, Asstt. Manager

Respondent 2 : 1. Mritunjay Jha, General Manager / Nodal Officer

Sameer Doshi, Assistant VP,
 Santanu Dutta, Sr. Manager

Coram: Vandana Krishna (IAS Retd.)

Date of hearing : 16th October 2023 &

06th February 2024

Date of Order : 15th February 2024

ORDER

This Representation was filed on 27th July 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

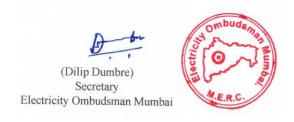
Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 29th May 2023 passed by the Forum of Tata Power Co. Ltd. (TPCL). The Forum had disposed of the grievance application in Case No. 01/2023 with the following observations.

"The charges are levied as per the MERC Order Case No. 326 of 2019 dated 30th March 2020. Forum comes to conclusion that the November 2022 Bill inclusive of "Net Other Charges" from previous R-Infra bill is generated as per the consumption recorded by the meter.

The complainant is supposed to make the payment of the bills for the actual consumption as raised by the Tata Power Co. Ltd.

The Tata Power to waive of DPC and interest charged on arrears and credit the same to consumer as consumer has already paid the entire amount inclusive of actual consumption, interest and delayed payment charges."

- 2. The Appellant has filed this representation against the order of the Forum of TPCL. The physical hearings were held on 16.10.2023 and 06.02.2024. The Respondents No. 1 and 2 were heard at length whereas the Appellant was not present on 16.10.2023 due to a medical emergency. The Respondents No.1 & 2 filed their written replies on 14.08.2023 and 21.08.2023 respectively. For easy understanding, first the Respondent No.2 (AEML) & then the Respondent No.1 (TPCL)'s submissions and arguments are stated as below:
- 3. The Respondent No.2 (AEML)'s submissions and arguments are as below: -
 - (i) The Appellant was a residential consumer of AEML from Aug.2011 till 20.06.2015 (the actual date of changeover) at his address of Radhabai S.D. Chawl, S.T. Road, Chunabhatti, Kurla, Mumbai 400 022. The Appellant had applied to change his electricity provider from AEML to TPCL. On 20.06.2015 TPCL installed its meter and removed



the AEML Meter. The statistical details of consumer no., address, date of application, change over date etc., are tabulated as below:

Table 1:

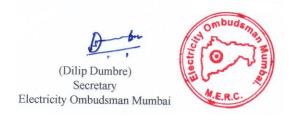
| Name | AEM L Consumer No. | Address | Date of Application for Change Over | Subsequent | AEML Meter Removed & TPCL Meter Installed | | Bill Date & Due Date |
|-----------------------------|--------------------------|--|--|---|---|---|-------------------------------|
| Sanjay Dinkar Gaychor | 100131614 | Radhabai S D Chawl, S. T. Road, Chunabhatti, Kurla, Mumbai | 09.06.2015 | 03.06.2015 for Billing Period of 18.04.2015 to 18.05.2015 | 20.06.2015 (Actual Change Over Date) | Rs. 767.35 & 18.05.2015 to 20.06.2015 (32 days) | 29.07.2015 & 19.08.2015 |

Preliminary Submissions:

- (ii) It is an admitted position that the Appellant had not paid the final bill of AEML of 32 days at the time of change-over to TPCL in the year 2015. Therefore, it cannot be said that the Appellant has acted in a bona fide manner, and any harassment has been caused to him. A person who comes to Court/ Forum for equity must come with clean hands; the court will not assist a claimant who is himself in the wrong or acting for improper motives.
- (iii) The Respondent No. 2 AEML was neither a party before the Forum nor was its reply invited on the grievance submitted by the Appellant before the Forum.

Brief Facts of the Case and Submissions:

(iv) On 09.06.2015, the Appellant applied for changeover to TPCL. The consumer paid the last bill on 03.06.2015 for the billing month of May 2015. Then, the Appellant changed over to TPCL on 20.06.2015. Accordingly, on 29.07.2015 the Respondent No. 2 AEML raised the final bill for an amount of Rs. 767.35 for the period from 18.05.2015 to 20.06.2015, with due date 19.08.2015. As per the records maintained by the Respondent,



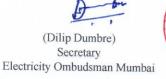
- this final bill was generated, printed, and dispatched to the Appellant; however, he failed and neglected to pay the same. A copy of the bill is kept on record.
- (v) The Respondent No. 2 referred to the Regulation 7.1 and 16.5.10 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021). The Regulations 7.1 and 16.5.10 are reproduced as below:

"7.1 The application form submitted by the Applicant shall constitute an agreement between the Consumer and the Distribution Licensee."

"16.5.10. The Consumer who neglects to pay his bill is liable for levy of delayed payment charges and interest on arrears in accordance with relevant orders of the Commission and/or appropriation of security deposit. A notice of disconnection to a Consumer under Section 56 of the Act shall be served in the manner provided for in Section 171 of the Act: "..... (Emphasis added)

It is observed that consumers who migrate to another utility as change-over consumers often do not pay the arrears payable to the previous utility after the change-over process. As a part of the change-over process, the consumption recorded by the meter on the date of change-over is read before allowing for change-over, and based on the final meter reading on the date of changeover, a final bill is issued to the change-over consumers by the utility. As generation of a bill happens with a lag of about one and half months, the bill for the interim period during the change over process remains unbilled and unpaid. Its bill is generated only after the change-over has already taken place. Hence this bill often remains unpaid.

(vi) Therefore, in its Annual Revenue Requirement (ARR) proposal in Case No. 325 of 2019, the utility prayed to the Commission to make a provision for recovery of arrears from change-over consumers, and a mechanism for remittance of the same. The Commission recognized that there is a serious issue of recovery from the date of change-over



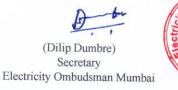


- application and the actual change over. It found that there is a need to alleviate the genuine concerns of the Distribution Licensees on this matter.
- (vii) The Commission in its Tariff Order dated <u>30.03.2020</u> in Case of 325 of 2019 observed that –

"Commission's Analysis and Ruling

The Commission rules that, the change-over consumers shall have to pay such balance amount to the new Licensee, who shall remit the same to the original Licensee."

- (viii) It is notable that for many years this issue had remained unresolved, and it was resolved only recently. Till then, the new licensee was not clearly authorised to recover the unpaid bill of the previous licensee. Once this clearcut policy was pronounced, the two licensees could start coordinating to recover the unpaid bills. After the said Commission's Order dated 09.06.2022, the Respondent No. 2 AEML informed the Respondent No. 1 TPCL about the overdue amount of Rs.1661/- (along with interest on arrears and delay payment charges) pending against the Appellant's previous consumer account number. Accordingly, the Respondent No. 1 included the said amount in the next monthly electricity bill (month of Nov.2022) of the Appellant. The bill was supposed to be paid by the Appellant in TPCL Bill Collection Centre, and not at the centre of AEML.
- (ix) The Appellant (wrongfully) visited "Tilak Nagar Office" of Respondent No.2, AEML. The Respondent No. 2 received payments of Rs. 770/- & Rs. 900/- on 13.12.2022 & 06.02.2023 respectively from the Appellant in 2 instalments. The Appellant has thus paid the total overdue amount of Rs.1670/- (=900+770) to the Respondent No.2. The Respondent No.2 has informed the same to Respondent No.1. In other words, instead of making the payment through TPCL, the Appellant directly paid AEML.
- (x) On 17.03.2023, AEML received an email from Respondent No. 1 seeking an update on the list of 80 consumers about amounts received directly from the consumers. In the said list, the consumer account number of the Appellant was also mentioned. On 21.03.2023, the Respondent No. 2 replied and mentioned that the Appellant has directly paid



Rs.1670/- to AEML. Pursuant thereto, on 27.05.2023 and 03.07.2023 Respondent No. 2 addressed an email to Respondent No. 1 to reverse the amount of Rs.1660/- from the TPC bill, since the consumer had directly paid the entire amount to AEML. On 04.07.2023, the Respondent No. 1 replied that the amount had been reversed.

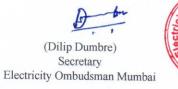
(xi) The Respondent No. 2 refers to the Judgement passed by Hon'ble Supreme Court in Civil Appeal No 2109-2110 of 2004 K C Ninan versus Kerala State Electricity Board & Ors. Where in the Hon'ble Apex Court has held:

.....

Paragraph 121. The first issue pertains to the simultaneous exercise of statutory and civil remedies by the licensing authority to recover electricity arrears. The liability to pay electricity charges is a statutory liability and Section 56 provides the consequences when a consumer neglects to pay any charge for electricity or any sum other than a charge for electricity due from him. Section 56(1) provides that the power of the licensee to disconnect electrical supply when a consumer is in default of payment is "without prejudice to his rights to recover such charge or other sum by suit". This means that the licensee can exercise both its statutory remedy to disconnect as well as a civil remedy to institute a suit for recovery against the consumer since the licensee will not necessarily obtain the amount due from the consumer by disconnecting the supply.

(Emphasis Supplied)

(xii) The Respondent No. 2 has acted in accordance with the provisions of the law and there is no infirmity. The Appellant's prayer seeking exemplary compensation for alleged mental agony and monetary loss suffered by him are unfounded. The Appellant has not submitted any proof of loss suffered by him which is accredited to the Respondent No.2. It is submitted that the claim of the Appellant for compensation does not sustain in the eyes of law, and the same be denied. Under the circumstances, the present Representation is untenable in law and on facts and hence deserves to be dismissed.





- 4. The Respondent No. 2 AEML filed its additional reply on the day of hearing, i.e. 06.02.2024 which is as below: -
 - (i) In order dated 29.05.2023 passed by the Forum (TPCL), it was observed that the bill generated by TPCL is as per the consumption recorded by the meter. The Forum directed the TPCL to waive off DPC and interest charged on arrears, as the Appellant had already paid the entire amount inclusive of actual consumption, interest, and delayed payment charges. The operative part of the Order is already referred in First Para. On careful perusal of the said order, there are no clear directions for Respondent No.2. However, the Respondent No.2, considering the medical condition of the Appellant, has decided to extend its support to the Appellant on humanitarian grounds by withdrawing the entire amount of interest on arrears and delayed payment charges of Rs. 893.59. The Respondent No. 2 will pass necessary communication to Respondent No.1 to give appropriate credit to the Appellant in future bills. This withdrawal of DPC and interest is solely on humanitarian grounds, and therefore it should not be set as a precedence.
- 5. The Respondent No. 1 (TPCL) filed its reply on 21.08.2023. Its submissions and arguments are as below: -
 - (i) The Appellant is a residential consumer. The details of his new connection are tabulated as below:

Table 2:

| Name | TPCL Consumer No. | Address | Date of Application for Change Over from AEML to TPCL | Date of Supply |
|---------|----------------------|---------------------------|---|-------------------|
| Sanjay | | Radhabai S D Chawl, S. T. | | |
| Dinkar | 900000758493 | Road, Chunabhatti, Kurla, | 09.06.2015 | 20.06.2015 |
| Gaychor | | Mumbai | | |

(ii) On 20.06.2015, the Appellant changed over his supply from the erstwhile Reliance Energy (now AEML) to TPCL. From the date of changeover, the Appellant is regularly paying bills raised by TPCL based on his actual consumption.



(iii) On 30.03.2020 in Case No. 326 of 2019, the Commission recognized that there was an issue of recovery of amounts against consumption recorded on the meter from the date of change-over application till disconnection. Hence, the Commission deemed it appropriate to alleviate the genuine concerns of the Distribution Licensees on this matter and directed as follows:

"The Commission rules that change-over consumers shall have to pay such balance amount to the new Licensee, who shall remit the same to the original Licensee. The new Licensee is thus, authorised to bill such amount to the reverse change-over consumer and remit the amount to the earlier Licensee against collection."

(iv) In view of the above directions in June 2022, the AEML informed TPCL regarding the outstanding amount of Rs. 1660.94/- against the Appellant. Accordingly, the said amount was included in TPCL's bill in the month of Nov. 2022 as "Net Other Charges". A message was printed in the said bill as below:

"As per order (Case No. 326 of 2019), of Hon. MERC, arrears of other utility (i.e. M/s AEML, formerly M/s REL) are levied as "Net Other Charges" of Rs. 1660.94/-in the bill. These arrears are towards pending final settlement of your connection with M/s AEML (Contract A/c No. 100131614) before actual change over to Tata Power."

- (v) Aggrieved by the said bill, the Appellant approached the TPCL- Customer Care Centre at Chembur, where on enquiry, he was informed that the above net other charges were the arrears which were due since 2015 for the pending last electricity bill (for a period of 32 days during the changeover process) of then Reliance Energy (now AEML).
- (vi) According to the Appellant, the Appellant visited AEML Customer Centre in Tilak Nagar, where he was handed over the bill of July 2015 for Rs. 1660.94/-. The Appellant then visited AEML Bill Collection Centre to pay this bill, but in the payment scanner machine, he was shown a pending amount of only Rs. 770/-, The Appellant paid the same on 13.12.2022. Since there was still an outstanding amount, he again went to

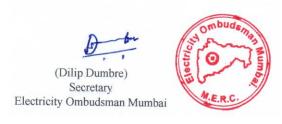


AEML Tilak Nagar Customer Care, where he was given a separate bill of Rs. 883.94/for July 2015. The Appellant paid the said bill amount rounded to Rs. 900/- on
06.02.2023. [Note: Thus, both these amounts (Rs.770/- and Rs.900/-) were paid
directly to AEML, and TPCL apparently did not get timely information of this payment,
due to imperfect communication between the two licensees. This was the reason why
TPCL issued a disconnection notice.]

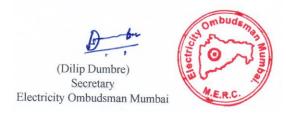
- (vii) The Appellant did not directly pay TPCL the outstanding dues of Rs.1661/- of January 2023 hence the Respondent No. 1 issued a notice to the Appellant under Section 56 (1) of the Electricity Act, 2003 for disconnection of power supply on 02.02.2023. The Notice expiry date was 19.02.2023. After receipt of this disconnection notice, the Appellant again went to TPCL Chembur office and submitted the payment receipts showing that the Appellant had made full payment at AEML Bill Collection Centre, and requested not to disconnect the power supply. However, the TPCL informed the Appellant on 27.03.2023 that the "Net Other Charges" in the bill of November 2022 were the valid arrears amount levied as per the directions of the Commission in Case No. 326 of 2019. [Note:- Clearly there was total miscommunication between the two licensees. The net other charges should have been withdrawn at this stage, once the Appellant showed the receipts to TPCL.] ****
- (viii) The Appellant filed a grievance application in the Forum (TPCL) on 31.03.2023. The Forum (TPCL) by its order dated 29.05.2023 has directed to waive interest and delayed payment charges. The operative part of the order is already captured in First Para.
- (ix) The supply of the Appellant was never disconnected. The notice of disconnection was automatic, and system generated. The Appellant has paid the outstanding amount of Rs.1670 (=900 + 770) /- to AEML. Hence, the outstanding amount shown in the bill of AEML will be removed at the earliest. In view of the above commitment, TPCL submits that the relief sought by the Appellant challenging the Impugned Order is



- unnecessary and without any basis, and the instant representation is liable to be dismissed.
- In view of the directions of the Forum, TPCL has been regularly approaching and following up with the officials of AEML seeking credit of the said amount. However, the same is yet to be formally received from AEML. Therefore, TPCL has not been able to remit the same to the Appellant till date. Copies of the correspondence between TPCL and AEML are kept on record. On 23.06.2023, TPCL had also informed the Appellant that efforts are being made by TPCL seeking credit from AEML regarding the waiver of DPC and interest on DPC. In compliance to the directions passed in the impugned order, on 10.08.2023, TPCL provided waiver of DPC and interest on arrears of Rs.32/- (DPC- Rs.24/- and interest on arrears- Rs.8/-) to the Appellant.
- (xi) In view of the above, the Respondent No. 1 prays that the instant Representation be dismissed.
- 6. The Appellant's written submissions and arguments are as below: -
 - (i) The Appellant is a residential consumer. The Appellant was the consumer of erstwhile Reliance Energy (Now AEML) as presented in Table 1. The Appellant applied for changeover of power supply from the Respondent No. 2 (AEML) to the Respondent No. 1 (TPCL) on 09.06.2015 after payment of then current bill of the Respondent No.2. The new meter of TPCL was installed on 20.06.2015. The TPCL allotted a different consumer number which is shown in Table 2.
 - (ii) The Appellant is regular in payment of electricity bills. The Appellant paid all bills received from TPCL from Nov. 2015 to Oct. 2022. Suddenly, the Appellant received a bill of Rs.2224/- in Nov. 2022, wherein the current bill was of Rs. 565/- and arrears of Rs. 1660.94/- were shown as "Net Other Charges".



- (iii) The Appellant rushed to TPCL- Chembur "Consumer Facility Centre" for enquiry, where it was informed that these arrears are of AEML of June 2015 onwards. The Appellant hastily ran to AEML Tilak Nagar Consumer Facility Centre where the Respondent No. 2 handed over a bill of Rs. 1660.94 in December 2022.
- (iv) The Appellant argued that the TPCL & AEML have never intimated this outstanding bill during June 2015 to Dec. 2022. Suddenly this amount of Rs.1660.94 appeared in the bill of Nov. 2022 for the first time. The Appellant raised various issues related to this bill in AEML as well as TPCL Consumer Facility Centre. However, nobody explained properly regarding these outstanding dues.
- (v) The Appellant paid Rs. 770/- of the said bill as principal amount on 12.12.2023. He has also paid the balance interest amount of Rs. 900/- on 06.02.2023.
- (vi) Meanwhile, Respondent No. 1 issued a disconnection notice to the Appellant on 02.02.2023. The TPCL posted this notice in the meter cabin which damaged the Appellant's reputation in his society. The Appellant is a rickshaw driver.
- (vii) The Appellant was running from pillar to post; however, he was badly humiliated by both the licenses. The Appellant requested Respondent No.1 TPCL on 10.02.2023 not to disconnect the supply. However, no proper treatment was given to him. The supply was not disconnected physically, but the threat remained for disconnection.
- (viii) The Appellant filed a grievance in the Forum (TPCL) on 31.03.2023. The Forum (TPCL) by its order dated 29.05.2023 principally rejected the grievance application but tried to show that some relief has been passed on. The operative part of the order is captured in First Para.
- (ix) The Appellant raised a basic question that the Respondent No. 1 & No. 2 never raised this bill to the Appellant till Nov.2022. All documentations are an afterthought. Whether the Licensees can charge such huge interest, that too for the period of about last 8 years? The Appellant had to face severe medical issues and suffering paralysis due to this pressure. The Appellant asked whether the licenses are taking such



- huge interest from other Consumers who implemented Licensee change over process of power supply.
- (x) The Appellant prays that the Respondent No.1 & 2 be directed to pay suitable compensation for mental agony and physical hardship to the Appellant.

Analysis & Ruling

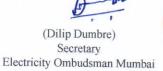
- 7. Heard the parties and perused the documents on record. This is a changeover consumer from one licensee to another. In the instant representation, the Appellant was the consumer of AEML till 20.06.2015. The Appellant applied for changeover to TPCL on 09.06.2015. The consumer paid the last bill on 03.06.2015 for the billing month of May 2015. The billing cycle of the Appellant was 18.04.2015 to 18.05.2015. Then, the Appellant changed over to TPCL on 20.06.2015. AEML claims that on 29.07.2015 it raised the final bill for an amount of Rs. 767.35 for the period from 18.05.2015 to 20.06.2015 (32 days) with due date 19.08.2015. However, there is no clear evidence on record showing that the bill was issued on 29.07.2015 as claimed by AEML. In fact, the Appellant contends that it was only in Nov.2022 that he received the bill for the first time.
- 8. The Respondent No. 2 AEML contended that the final bill of the Appellant was generated, printed, and dispatched to the Appellant in 2015; however, he failed and neglected to pay the same. At that time, there was no proper mechanism for reconciliation of the changeover consumers from one licensee to another licensee and vice-versa. Since the changeover had happened, there was no longer any 'disconnection' tool available with AEML to force the consumer to pay the arrears.
- 9. The Respondent No. 1 TPCL submitted that from the date of changeover, the Appellant is regularly paying bills raised by it based on his actual consumption. On 30.03.2020 in Case No. 326 of 2019, the Commission recognized that there was an issue of recovery of pending bills from the date of change-over application till disconnection. Hence, the Commission deemed it



appropriate to alleviate the genuine concerns of the Distribution Licensees on this matter and directed that such balance amount should be recovered by the new licensee and be remitted to the original Licensee. Thereby, the new Licensee is now authorised to bill such amount to the consumer and remit the amount to the earlier Licensee. In view of the above directions which came in June 2022, the AEML informed TPCL regarding the outstanding amount of Rs.1660.94/-(including interest) against the Appellant. Accordingly, the said amount was included in TPCL's bill in the month of Nov.2022 as "Net Other Charges". A message was printed in the said bill as below:

"As per order (Case No. 326 of 2019), of Hon. MERC, arrears of other utility (i.e. M/s AEML, formerly M/s REL) are levied as "Net Other Charges" of Rs. 1660.94/-in the bill. These arrears are towards pending final settlement of your connection with M/s AEML (Contract A/c No. 100131614) before actual change over to Tata Power."

- 10. The Appellant, after receipt of the above bill of July 2015 for Rs. 1660.94/- sincerely tried through payment scanner machine (kiosk) in AEML Bill Collection Centre to pay this bill, but he was shown a pending amount of Rs. 770/- only (the principal) which he paid on 13.12.2022. Since there was still an outstanding amount, he again went to AEML Tilak Nagar Customer Care, where he was given a separate bill of Rs. 883.94/- (for interest) for July 2015. The Appellant paid the said bill amount rounded to Rs. 900/- on 06.02.2023. Thus, the Appellant acted with full sincerity to clear his arrears. It was the fault of the two licensees that they did not communicate this payment with each other in time.
- 11. Since the Appellant had apparently not paid the outstanding dues of Rs.1661/- by January 2023, the Respondent No. 1 issued a notice to the Appellant under Section 56 (1) of the Electricity Act, 2003 for disconnection of power supply on 02.02.2023. We find the issue of this notice to be hasty, unnecessary, and solely the result of lack of timely communication between the two licensees, and for no fault of the Appellant. The Respondents 1 & 2 are directed to pay Rs.500/-



each towards compensation to the Appellant for the reasons recorded above in para 5 (vii) and 5 (x). This total amount of Rs.1000/- should be adjusted in the Appellant's ensuing bills.

12. The supply of the Appellant was not actually disconnected. The Respondent No. 2 has now waived of total interest and DPC of the Appellant. However, the interest amount, having already been paid, now remains to be credited in the Appellant's account. The Respondent No.1 TPCL is directed to act accordingly promptly.

13. In cases of changeover of consumers from one licensee to another, there is no bar to the Forum to make the second licensee as a party to the hearing in the interest of justice. Had the Forum TPCL called Respondent No. 2 AEML as a party, the issue would have been resolved at that stage itself. The same should be noted by both the licensees and the concerned Forums.

14. In view of the above, the Respondent No. 2 AEML is directed to credit the amount of Rs.1400/- (i.e. Rs.900/- interest refund + Rs.500/- compensation) through Respondent No.1 TPCL. The Respondent No. 1 TPCL should adjust Rs.1900/- (Rs.1400/- + Rs.500/- compensation) in the Appellant's bill.

- 15. Compliance to be reported by both Respondent No. 1 & 2 within a period of 2 months from the date of issue of this order.
- 16. The Representation is disposed of accordingly.

Sd/ (Vandana Krishna) Electricity Ombudsman (Mumbai)

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai