

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 86 OF 2020

In the matter of refund of infrastructure cost

D'Decor Exports Pvt. Ltd. (C. No. 003019024840) Appellant
(Weaving Unit)

V/s.

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

Appearances:

For Appellants: (i) Mr. Pratap Hogade, Representative
(ii) Mukund Mali, Representative

For Respondent: (i) Kiran H. Nagoankar, Superintending Engineer
(ii) Yuvraj J. Jarag, Executive Engineer
(iii) Rajiv B. Vaman, Asst. Law Officer
(iv) Tushar Bhagit, Assistant Engineer


Coram: Deepak Lad

Date of hearing: (i) 10th December 2020
(ii) 22nd January 2021

Date of Order : 26th February 2021

ORDER

This Representation is filed on 20th October 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 17th August 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).


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2. The Forum, by its order dated 17.08.2020 has partly allowed the grievance application No. 1997 of 2019-20 and its operative order as below:


“2) Respondent Utility to refund amount recovered from consumer in estimate no. 1 & 2 against SLC & ORC head with interest as directed in Supreme Court order after submission of relevant documents.

3) Claim of estimate no.3 sanctioned under DDF scheme is rejected in view of limitations.

4) No SOP as the grievance filed after 60 days from cause of action in view of sop regulation 12.2.”


3. Aggrieved by the order dated 17.08.2020 of the Forum, the Appellant have filed this representation. The details of which are as follows:

- (i) The Appellant is a HT Industrial consumer (No. 3019024840) connected on 33 kV voltage from 15.10.2003 on Plot No. G-7/1, MIDC Tarapur Boisar, Taluka & District Palghar with Contract Demand (CD) 3500 KVA and Connected Load of 3811 KW.
- (ii) The Appellant was having total two connections in the same plot and at the time of load sanction / enhancement, the Respondent had issued sanction letters along with estimates of work under Service line Charges (SLC) / Outright Contribution (ORC) /Dedicated Distribution Facility (DDF) Head. The SLC, and supervision charges as per ORC/DDF estimates were paid by the Appellant and completed all the concerned infrastructure works and / or metering works as per MSEDCL estimates and directions.
- (iii) The issue of refund of infrastructure cost was pending due to Civil Appeal No.4305 of 2007 filed by MSEDCL with the Hon’ble Supreme Court of India. There was a stay on refund. Finally, the Hon’ble Supreme Court of India dismissed the C.A No. 4305 of 2007 on 10.11.2016. Thereafter, the Respondent issued refund circular dated 12.10.2017 and amendment circular on 29.12.2017. Then it became clear that the Appellant is eligible and can claim for refund of all the expenses done under the infrastructure works and metering works.
- (iv) The details of the works done and refund claimed along with the concerned sanctions, estimates and scope of work are given as below:-


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- A) D' Decor Exports Pvt. Ltd. (erstwhile Dicitex Décor Exports Pvt. Ltd.):
Load enhancement from 1511 KVA to 2421 KVA for Consumer No. 003019024840 was sanctioned vide No. 1985 dated 05.04.2005 under SLC Head. This was revised vide Estimate No. 3475 dated 21.06.2005. Amount of Rs.5,91,500/- was paid on 22.06.2005 by the Appellant towards SLC.
- B) Load was further enhanced of this consumer from 2421 KVA to 3600 KVA vide sanction No. 1879 dated 27.04.2006. This was sanctioned under ORC. This was given Estimate No. as 1878 dated 27.04.2006. The amount of the estimate is Rs.11,16,740/- and the work involved is extension of 1.4 km of 33 kV feeder.
- C) Dicitex Décor Exports Pvt. Ltd. was totally another Consumer having Consumer No. 003019031300 and was a Dyeing and Printing Unit. It was having CD of 1250 KVA. The work of laying of 33 kV cable and metering works was sanctioned vide No. 6330 dated 16.10.2007. This was given Estimate No.6329 dated 16.10.2007. The estimate amount was Rs.12,33,520/-. This was for release of fresh supply to the consumer which was released on 20.12.2007.
- (v) Initially, the name of the company was Dicitex Décor Exports Pvt. Ltd., which was changed to D'Decor Exports Pvt. Ltd. Then this was permanently disconnected, and the load was merged with C. No. 003019024840 which ultimately retained the name D'Decor Exports Pvt. Ltd. with CD 3500 KVA after application in May 2016.
- (vi) Hence, the total refundable amount is :
- (a) Principal amount Rs.29,41,760/-.
- (b) Interest at bank rate from the date of payment till the date of repayment as per Section 62 (6) of the Electricity Act, 2003 (the Act).


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All the above payments / estimates and work done are from April 2005 to Dec.2007, hence eligible for refund as per the Respondent's Circulars dated 12.10.2017 and 29.12.2017 for refund of such charges.


- (vii) After the final decision of the Hon'ble Supreme Court in Civil Appeal No.4305 of 2007 dated 10.11.2016, MSEDCL issued its first Refund Circular on 12.10.2017 and the Amendment Circular on 29.12.2017.
- (viii) The Appellant has filed complaint for refund of all above-mentioned estimates on 19.08.2019. However, the Respondent did not refund the said amount. Then, the Appellant filed the grievance with the Internal Grievance Redressal Cell (IGRC) on 11.09.2019. The IGRC, by its order dated 05.11.2019 has directed to refund the amount of SLC. Not satisfied, the Appellant approached the Forum on 02.01.2020. The Forum vide its order dated 17.08.2020 has partly allowed the grievance and directed to refund the amount which was recovered under SLC and ORC head from consumer in estimate no. 1 & 2 with interest. However, the Forum has rejected the claim of estimate no.3 being time barred by limitation. The Appellant further states that the Respondent has refunded the amount of SLC, and amount towards supervision charges of work under ORC head. Allowing refund of payment towards supervision charge under ORC head only by the Respondent and denying the rest of the amount of the estimate of actual work done by the Appellant is not correct. This is not in consonance with the order of the Supreme Court and the circulars of the Respondent.
- (ix) Other detailed submissions in this regard are given in the following paragraphs: -
- (a) **Work Done:** - The works done as per the estimates are the extension or tapping or conversion of the existing HT 33 KV line up to their premises. The scope of the work was laying of 33 KV line and all the concerned infrastructure work along with Kiosk Metering Work. The Metering Work was done by the Appellant. As per the Commission's order dated 08.09.2006 of Schedule of Charges in Case No. 70 of 2005, meters are to be installed by the licensees. Also, if the cost is to be recovered, it is to be refunded to the consumer as per


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the Respondent's own circulars. (Circular No. 21560 dated 09.05.2017 & No.34307 dated 03.09.2007).

- (b) **Feeder details:** - The name of the feeder is 33 KV Feeder No. III, which is emanating from 220 / 132 / 33 KV Khairpada Substation. The necessary line extension / tapping and infrastructure works were completed as per the Respondent's directions.
- (c) **Other consumers:** There are many other consumers (i.e. Manohar Process, Orient, Manaan, Kancriya, etc.) getting power supply from the same 33 KV Feeder No. III. Hence, this feeder is non express and the work done are clearly Non DDF.
- (d) **Commission's Order dated 16.02.2008 in Case No. 56 of 2007:** Only the extension and / or tapping work was done by the Appellant and many other consumers are getting supply from the same meters. "*Mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility (DDF)*" is the clarification given by the Commission in Case No. 56 of 2007.
- (e) **Work Non DDF:** It is clear from the definition of DDF in the Regulations and clarifications given by the Commission, their feeders and the works done by the Appellant are clearly Non DDF. Hence, fully eligible for the refund of the total amount Rs.29,41,760/- along with interest as per the Respondent's own office estimates.
- (f) **Commission's Order dated 17.05.2007 in Case No. 82 of 2006:** The Commission has given clear directions that the Respondent must refund to all the consumers all overcharged amounts along with interest thereon that have been collected towards ORC, ORC-P or such other head-based charges which are not allowed in the Supply Code Regulations and also SLC, Cost of Meter which are at variance from the order of the Schedule of Charges dated 08.09.2006. Few extracts of this order are as below: -


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Para 4 – “MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head- based charges, including cost of meter, at variance from the order dated September 8, 2006.”

Para 5 – “The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests.”

Para 9 – “While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge – item which is not defined under the Supply Code and / or the Order dated September 8, 2006.”


(g) **Commission’s Order dated 21.08.2007 in Case No. 82 of 2006:** The Commission has again issued further Order dated 21.08.2007 in the same Case No.82 of 2006 imposing penalty on MSEDCL due to non-compliance of its earlier order dated 17.05.2007 and directed MSEDCL for compliance.

(h) **DDF Clarifications:** Again Case No.56 of 2007 was filed by the same petitioner before the Commission for the compliance of directions issued on 17.05.2007 in Case No. 82 of 2006. In this case, issues of ORC, DDF and Non DDF were fully discussed by the Commission. In this order dated 16.02.2008, the Commission has clarified the concept and issued detailed clarification on DDF on request of MSEDCL itself. Few extracts of this order is as below:

Para 9 – “The Commission observed that consumers should not be burdened with infrastructure costs which are the liability of MSEDCL.MSEDCL may seek the recovery of the same as an annual revenue requirement.”

Para 12 – “It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility.”


Para 12 – “Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers.”


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Para 12 – “Also Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Sector 43 of the Electricity Act, 2003 read with SoP regulations.”

- (i) **Respondent MSEDCL Circular 20.05.2008:** After the order dated 16.02.2008 in Case No. 56 of 2007, the Respondent issued circular dated 20.05.2008 in which guidelines for release of new connections on the basis of abovementioned orders of the Commission were given. The circular itself clarifies that all the Non DDF connections are refundable. Respondent MSEDCL has issued circular only for LT connections and the Commission’s order is for both LT & HT connections.
- (j) **MSEDCL Civil Appeal in Supreme Court:** In the meanwhile, MSEDCL has impleaded this issue of refund in C.A. No. 4305 of 2007 (earlier Stamp No. 20340/2007) in which the Hon’ble Supreme Court had ordered stay on refund on 31.08.2007. Hence, all refunds were stopped.
- (k) **Hon’ble Supreme Court Judgment dated 10.11.2016:** Finally, the Civil Appeal filed by MSEDCL came for final hearing in the year 2016. The Hon’ble Supreme Court has issued final judgment on dated 10.11.2016. and dismissed the Civil Appeal in toto.
- (l) **MSEDCL Circular dated 12.10.2017:** After the order of the Hon’ble Supreme Court, it is binding on MSEDCL to implement concerned orders of the Commission in letter and spirit. MSEDCL issued circular for refund of SLC, ORC and meter cost after 11 months vide its Circular No. CE/Dist/D-IV/MERC No.25079 dated 12.10.2017. In this circular, MSEDCL has denied refund in DDF cases which is correct as per the definition in Supply Code Regulations and as per detailed clarification given by the Commission in its order dated 16.02.2008. But if the connection is actually Non DDF and it is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then it is


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nothing but ORC. Hence, the Appellant is fully eligible to get the refund along with the interest thereon.


(m) **Supply Code Regulations:** After the Supply Code Regulations till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually, using the word 'DDF' and imposing cost on consumers is totally illegal and against the orders of the Commission. Actually, such works are nothing but ORC. Such act and such conditions of MSEDCL are against the Supply Code Regulations. Regulation 19.1 reads as below: -

“Any terms & conditions of the Distribution Licensee, whether contained in the terms and conditions of supply and / or in any circular, order, notification or any other document or communication, which are inconsistent with these Regulations, shall be deemed to be invalid from the date on which these Regulations come into force.”

(n) **Interest:** As per provisions of Section 62 (6) of the Act, it is binding on the licensee to refund the excess recovered amount to the concerned person / consumer along with interest equivalent to the bank rate.

(o) The Appellant stated that their expenditure on all the concerned work is more than the estimate of MSEDCL but logically and reasonably, can claim the estimate amount only. Hence, on the basis of all above mentioned ground, the Appellant is eligible to get the refund of all the above mentioned MSEDCL's own estimate amount total Rs.67,61,648/- along with the interest thereon at bank rate from the corresponding work completion / load release date up to the actual date of repayment.


(p) **MSEDCL Circular dated 07.11.2017:** In this circular, MSEDCL had clearly stated that various offices had taken various stands and the stand by all should


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be corrected on the basis of Hon'ble Supreme Court's final verdict and the cases should be withdrawn.


- (q) **MSEDCL Refund Circular dated 21.12.2009:** In this circular, MSEDCL had clearly stated that refund with respect to circular dated 20.05.2008 should be given in all new connections through the bills, 50% amount in each bill, till the clearance of all the expenditure done by the consumer. This circular is clearly applicable to all LT & HT consumers. However, these instructions are not obeyed in the Appellant's case.
- (r) **Refund Period Circular dated 29.12.2017:** In its first refund circular dated 12.10.2017, MSEDCL has stated the refund period from 20.01.2005 to 30.04.2007. Thereafter, MSEDCL has issued Amendment Circular on 29.12.2017. The refund period is revised from 20.01.2005 up to 20.05.2008. The Appellant's estimates are in the year 2007 and 2008, hence are eligible for refund as per MSEDCL's own refund circulars.
- (s) **Compensation:** The Appellants' complaints are complaints other than bills. Hence, as per Regulation 7.6 of the SOP Regulations 2014, "*In other cases, the complaint shall be resolved during subsequent billing cycle.*" The Appellant has filed complaint on 19.08.2019. It was necessary and binding on MSEDCL to resolve it in subsequent billing cycle means upto the end of September 2019. But MSEDCL has failed to do so, hence, the Appellant is eligible for SOP compensation of Rs.100 per week or part thereof from 01.10.2019.
- (t) **SLC, ORC & DDF all are Infrastructure Charges under different names:** Observations of the IGRC are totally wrong and illegal. All these 3 types of charges are the charges towards infrastructure cost. ORC was allowed up to 20.01.2005 i.e., up to the date of Supply Code Regulations. But ORC expenditure was imposed on the Appellant by the Respondent as per the estimate dated 27.04.2006. DDF is allowed from 20.01.2005, but in the cases only where the connection is actually DDF as per Supply Code Regulations and as per Clarificatory Order of the Commission dated 16.02.2008. In the Appellant case, the works carried out are totally Non DDF but the estimates


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issued under ORC/DDF. As per Regulations and Orders of the Commission, in case of all Non DDF connections, infrastructure costs cannot be recovered from the consumers. Hence, the Appellant is fully eligible for refund.

- (u) **Limitation:** The IGRC and the Forum have observed and noted that the refund demand of estimate dated 29.06.2007 is beyond the period of limitation of 2 years. This observation is totally wrong and illegal. This issue was before Hon'ble Supreme Court in C.A. No. 4305 of 2007 filed by MSEDCL itself. Hon'ble Supreme Court has issued final order on 10.11.2016 and on that date, the stay on refund is vacated. Thereafter, MSEDCL itself has issued circulars for refund on 12.10.2017, 07.11.2017 and 29.12.2017. In the circular dated 29.12.2017, MSEDCL had clarified refund period 20.01.2005 to 20.05.2008. In the Appellant case, the work done period is from April 2005 to December 2007 hence the Appellant is fully eligible for refund as per circular dated 29.12.2017 and amended refund period declared by MSEDCL itself. The cause of action has arisen on 29.12.2017 after declaration of the refund period. Thereafter, the Appellant applied for refund to MSEDCL on 19.08.2019 and to IGRC on 11.09.2019. It fits well within the limitation of two years as per Regulation 6.6 of the CGRF Regulations 2006. Hence the order of the Forum is wrong, illegal.
- (v) It should also be noted that the MSEDCL has itself represented before various Courts that the Judgment towards refund of ORC is pending before the Hon'ble Supreme Court. The IGRC has allowed only estimate no. 1 for refund of SLC, however, interest was not granted. Then the Forum has allowed interest on estimate no. 1 but rejected the refund of ORC expenditure in estimate no. 2 and rejected the DDF expenditure in estimate no. 3. It is against the orders of the Commission dated 17.05.2007 and 21.08.2007 which are already explained above.
- (w) It should also be noted that any excess or illegal recovery is against the provisions of Section 62(6) of the Act and the licensee has no right to retain it with itself on any grounds. It must be refunded to the concerned person with


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interest. The licensee can recover these expenses through ARR as allowed by the Commission in its various orders.

(x) The Appellant's nature of relief sought from the Electricity Ombudsman is as below: -


- (a) The Appellant's connections should be declared as ORC and / or Non DDF connections on the basis of Supply Code Regulations, concerned Commission orders and concerned MSEDCL circulars.
- (b) The expenditure amount as per MSEDCL's own estimate in total of Rs.29,41,760/- should be refunded along with interest at bank rate from the respective work completion / load release date till the date of repayment or alternatively all the total amounts be credited in their further bills.
- (c) SOP Compensation for delay in resolution of complaint, an amount of Rs.100 per week from 01.10.2019 should be awarded.
- (d) Any other orders may be passed by the Hon'ble Ombudsman in the interest of justice, as it may think fit and proper.

4. The Respondent MSEDCL filed its reply dated 24.11.2020 stating in brief as under: -

(i) The Appellant is a 33 KV HT consumer (No. 003019024840) in the name of D'Decor Exports Pvt. Ltd. from 15.10.2003 having Sanctioned Load of 3811 KW with CD of 3500 KVA for Weaving Unit at present, at Plot No. G-7/1, Tarapur MIDC, Taluka & District Palghar. There was another connection in the name of Dicitex Decor Exports Pvt. Ltd. having Consumer No. 003019031300 on record from 12.12.2007 which was permanently disconnected.

(ii) The refund of infrastructure cost is not "Grievance": -

(a) The present case has been filed for refund of expenses which was voluntarily incurred by the Appellant for getting supply/ load extension etc., there was no single protest and thereafter suddenly after 11/12 years,


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it is asking for refund. This conduct of consumer is not equitable and acceptable. Moreover, it will not come within definition of "Grievance" defined under Regulation 2.2 of CGRF Regulations 2006. The Respondent cited the Judgement of Hon'ble High Court of Bombay, Aurangabad Bench dated 01.07.2011 in Writ Petition No. 2032 of 2011, in Case of MSEDCL Rural Circle, Aurangabad V/s. M/s. Kaygaon Paper Mill Limited which held that–

"By no stretch of imagination the grievance of respondent No. 1, mentioned above, would be covered by this definition. A consumer's grievance contemplated under the Regulations is basically a complaint about fault or inadequacy in quality of performance of the Electricity Distribution Company. In this case, admittedly, there is no grievance that performance of the petitioner company, as distribution licensee, had been imperfect or otherwise. The grievance of respondent No. 1 is in respect of breach of statutory obligation allegedly committed by the petitioner-company. So, the grievance would not fall within the four corners of the term "grievance" defined under the Regulations".

In the same Writ Petition No. 2032 of 2011, MSEDCL Vs. M/S. Kaygaon Papers Mill Limited, Hon'ble His lordship held that:-

"Shri H.F. Pawar, learned Advocate for respondent no. 1 then tried to show me certain orders passed by the Maharashtra Electricity Regulatory Commission in the matter of complaint filed by certain consumers of the petitioner company for refund of the amount etc. The Commission directed the petitioner-company to refund the amount to the consumer in those cases. I am afraid, even though in similar situation, the petitioner-company was directed by the Commission to refund the amount to their consumers, still such orders are not capable of being utilized is of civil nature and would not be covered by the term "grievance". The Consumer Grievance Redressal Forum, which had passed the impugned order, apparently did not have jurisdiction to entertain a complaint of this nature. Respondent No. 2 — Forum thus could not have decided the dispute of this nature. Therefore the orders passed by the Commission will be of no use to respondent No. 1".

- (b) The Respondent also cited the Judgment of the Bombay High Court, Nagpur Bench dated 08.01.2020 in matter of W.P.No.1588 of 2019, in Case



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of MSEDCL V/s. Mahamaya Agro Industries which upheld the above ruling and hold that the consumer conduct to ask for refund of costs of infrastructure which he voluntarily incurred in order to getting supply is inappropriate and unethical.

(iii) Issue of Limitation as per Regulation 6.6 of CGRF Regulation 2006:-


- (a) The Appellant has totally misconceived fact and law points and misinterpreted the Commission's order in Case No. 82 of 2006 and Case No.56 of 2007.
- (b) The issue of ORC, SLC etc., as dealt in Case No. 82 of 2006 and Case No.56 of 2007 and issue of limitation under 6.6 of CGRF Regulations 2006 are totally different.
- (c) The Commission in Case No. 82 of 2006 and Case No. 56 of 2007 is dealing with issue of refund of ORC, SLC etc. recovered during the period from 08.09.2006 to 30.04.2007. The matter before the Hon'ble Supreme Court vide Civil Appeal No. 4305 of 2007 and stay order to refund is in respect of recovery of those charges during above period only. That, the Appellant in present case need not necessarily wait till the decision dated 10.11.2016 of the Hon'ble Supreme Court in Civil Appeal No.4305 of 2007.
- (d) The claim of the Appellant is time barred and beyond limitation. Regulation 6.6 of the CGRF Regulations 2006 provides that the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Therefore, as per Regulation 6.6, claim of the Appellant is not maintainable. The Appellant has filed its grievance with IGRC on 11.09.2019 in respect of ORC estimate dated 27.04.2006. If the Appellant was not agreed with the manner and scheme in which the estimate has been sanctioned, (which in fact, had been sanctioned at the request of the Appellant) it had an opportunity to raise


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the grievance in the grievance redressal mechanism available under the Act and the Regulations, within a stipulated time. On the contrary, the Appellant paid supervision charges of Rs.12295/- vide money receipt No.5103688 dated 02.05.2007 against the sanctioned estimate dated 27.04.2006. The Appellant after payment of the supervision charges, started the work at its level.

- (e) Similarly, another estimate for Consumer No.003019031300 was sanctioned on 16.10.2007 for fresh supply. Here also, the Appellant paid supervision charges of Rs.12950/- on 25.10.2007, executed the work at its level and the supply was released on 12.12.2007.
- (f) In view of above, both the estimates do not fit into the matrix of the period from 08.09.2006 to 30.04.2007 wherein 08.09.2006 is the date of Schedule of Charges order passed by the Commission in Case No. 70 of 2005 and in its order dated 17.05.2007 in Case No. 82 of 2006 it has stipulated period of refund from 08.09.2006 to 30.04.2007 for amount collected towards ORC, Cost of Meter and CRA.
- (g) The Appellant raised complaint for the first time with the Respondent for refund of infrastructure cost of these two estimates as above on 19.08.2019. If the Appellant had any reservations on this, it should have filed grievance through grievance redressal mechanism at that point of time only so as to be within the period of limitation as per Regulation 6.6 of the CGRF Regulation 2006. The cause of action being 02.05.2007 and 25.10.2007 which is beyond 30.04.2007, the period of limitation expires on 02.05.2009 and 25.10.2009 whereas the Appellant had approached the Forum on 02.01.2020 much after 2009. Therefore, the claim of the Appellant with respect to these two estimates is time barred. Appellant chose to sit on the fence till somebody else's case came to be decided.
- (h) The Respondent relies on the Judgment dated 21.08.2018 in W.P. No.6859 of 2017 of Aurangabad Bench, Bombay High Court in MSEDCL V/s. Jawahar Shetkari Soot Girni Ltd. On the similar lines, the Electricity


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Ombudsman, Mumbai through its order dated 16.08.2019 has also dismissed the Rep.No.68, 69 & 71 of 2019 in case of G.M. Syntex V/s. MSEDCL.

- (i) The Bombay High Court, Nagpur Bench in its Judgment dated 08.01.2020 in W.P.No.1588 of 2019, MSEDCL Vs. Mahamaya Agro Industries has upheld the above view and held that limitation to file grievance before the Forum is two years from date of cause of action.

(iv) Reply on merit: -

- (a) In the year 2005, Decitex Décor Export Pvt. Ltd. (Consumer No.3019024840) had applied for additional load of 563 KW with total connected load of 2563 KW and MD of 2421 KVA. The MSEDCL on 05.04.2005 sanctioned the estimate. In year 2006, Decitex Décor Export Pvt. Ltd had applied for additional load of 1248 KW with total connected load of 3811 KW and MD of 3600 KVA. MSEDCL on 27.04.2006 sanctioned the estimate. These estimates are sanctioned under SLC/ORC. The estimated amount of SLC of Rs. 5,91,500/- and interest of Rs.66,839/- has been paid by way of credit in the energy bill of the Appellant on 02.02.2018 as directed by the IGRC and the Forum.
- (b) In the year 2007, the Appellant, Dicitex Décor Pvt. Ltd. (Con.N0.3019031300) had applied for New connection of supply of 1393 KW. The estimate was prepared and sanctioned on 16.10.2007 for dedicated supply line. The estimate was agreed by the Appellant and deposited the supervision charges of the estimate. The amount of Rs.12,33,520/- was not deposited with the Respondent. The Appellant carried out the estimated work through licensed electrical contractor and after submission of Work & Completion Report etc., the supply was released. The said supply line and transformer was dedicated to the Appellant and it is DDF supply. The aforesaid connection


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Con.No.3019031300 was thereafter merged with Consumer No.3019024840.

- (c) In view of the definition of DDF and Non-DDF given by the Commission in Case No. 56/2007 on 16.02.2008 wherein it is stated that "*Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)*". The Appellant accepted the sanction given by Respondent Utility and paid the 1.3% supervision charges on 02.05.2007 & 25.10.2007, and carried out the work by itself through a licenced electrical contractor. The Appellant should have raised the grievance at that time only, but it remained silent and now raised the issue of refund of infrastructure cost which is incorrect. The Nagpur Bench, Bombay High Court in its Judgment dated 8.01.2020 in W.P.No.1588 of 2019 in the matter of MSEDCL V/s. Mahamaya Agro Industries has upheld the above ruling that the consumer conduct to ask for refund of costs of infrastructure which he voluntarily incurred in order to getting supply is inappropriate and unethical. Few Extracts of this Order are as below :

27) It is further pointed out that the estimate as regards the expenses was informed to the consumer by communication. The summary report contains an abstract which is also placed on record which indicates the costs of the 11 KV line, the total labour charges and the supervision charges of the company which is 1.3%. The total amount was Rs.3,97,200/- out of which the consumer has actually paid the company an amount of only 1.3%. The rest of the amount is utilized by the consumer for purchasing of the infrastructure material and for making payments of the labour charges for installation of the 11 KV line.

28) I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter storeroom and then turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate.



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- (d) It is apparent that the liability was passed on to the buyers/ consumers by the complainant as electricity supply was taken/ extended/ used to manufacture their products sold in the market, working out the price based on expenditure. It would not be appropriate in the peculiar facts of the case to direct refund to be made by the MSEDCL of the amount recovered by it as it would tantamount to unjust enrichments. The above principle of unjust enrichment in cases of refund by MSEDCL has been upheld by Hon'ble Supreme Court in Reportable decision dated 28.02.2020 Civil Appeal No.4304 of 2007, MSEDCL Vs. Union of India. In Judgment at Para No.27 Hon'ble Supreme Court held as below:

“It is apparent that the liability was passed on to the buyers/consumers by the complainant as electricity supply was taken/ extended/used to manufacture their products sold in the market, working out the price based expenditure. It would not be appropriate in the peculiar facts of the case to direct refund to be made by the MSEDCL of the amount recovered by it as it would tantamount to unjust enrichments.”

- (e) The Commission has approved the Schedule of Charges for MSEDCL with effective from 08.09.2006. The case has been filed by Rajaya Veej Grahak Sanghatana vide No. 82 of 2006 for refund of ORC, SLC collected after the Schedule of Charges approved by the Commission with effect from 08.09.2006. The Commission, by its order dated 17.05.2007, directed to refund the ORC, SLC recovered from all consumers for the period of 08.09.2006 to 30.04.2007. The said issue was thereafter raised in the Case No. 56 of 2007, where the Commission clarifies the definition of "DDF".
- (f) Further the Commission passed an order dated 01.09.2010 in Case No. 93 of 2008 in the matter of petition of Akhil Bhartiya Grahak Panchayat. The above referred matter is related to one of its prayer as
"5. ORC amount, meter cost and other charges collected or DDF amount, earlier to 20.05.2008 till 08.09.2006, may be refunded by way of energy bills as per the procedure adopted for cases following circular No. 22197



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dated 20.05.2008." On this prayer, the Commission expressed its view in Para 19 (iii) of above order as follows: "Regarding, 10,740 number of cases where MSEDCL has recovered charges other than approved Schedule of Charges; the Commission is of the view that these are only indicative cases found out on the sample checking basis. MSEDCL either has to scrutinise details of all the consumers released during the period of 9th September 2006 to 20th May 2008 for charges levied other than approved Schedule of Charges or publicly appeal either through newspapers or electricity bills, asking the consumers to contact MSEDCL if such charges are levied on them during above period. Thereafter, MSEDCL should adjust the extra charges collected by MSEDCL in the energy bills of the respective consumers. If any consumer has any grievance regarding excess charges levied by MSEDCL and its refund, they may file the same before the concerned Consumer Grievance and Redressal Forum established by MSEDCL under the provisions of Section 42(5) of the EA 2003 read with the "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006".

This directive of refund of excesses recovered charges will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007."

- (g) In above directives by the Commission, it is clearly mentioned that refund will not be applicable to the charges of which refund is stayed by Hon'ble Supreme Court in C.A. No. 20340 of 2007. Now, at this stage it is important to check what is Civil Appeal No. 20340 of 2007 pending with Hon'ble Supreme Court. It is a Civil Appeal filed by MSEDCL against the Hon'ble Appellate Tribunal for Electricity(ATE) in Appeal No.22 of 2007 challenging the Commission's order dated 08.09.2006 which was dismissed by ATE by the order dated 14.05.2007. After referring the Appeal No. 22 of 2007 filed before ATE it becomes clear


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what are the issues challenged by MSEDCL against the Commission's order dated 08.09.2006. This point is reproduced below from above order dated 14.05.2007:

"This appeal filed by the Maharashtra State Electricity Distribution Company Ltd. (for short 'MSEDCL') is directed against the order passed on 08.09.2006 by the respondent, The Maharashtra Electricity Regulatory Commission (herein after called as 'the Commission' or 'MERC') whereby the 'Commission' did not approve the proposed "Schedule of Charges" including 'Service Line Charges' submitted to the Commission in compliance to Regulation No. 18 of Supply Code Regulations 2005. The aforesaid Service Line Charges (for brevity to be called as 'SLC') as claimed by the appellant is on the basis of normative expenditure to be incurred on the infrastructure which are required to be created for bringing the distribution network closer to the Consumer premises."


This appeal is dismissed. Against above order the MSEDCL filed Civil Appeal No.20340 of 2007 before the Hon'ble Supreme Court. The Hon'ble Supreme Court made interim order on 31.08.2007, that refund is stayed till the matter comes up for hearing on the date fixed i.e. 14.09.2007, and on that day it passed the following order:

"ORDER

Learned counsel for the appellant is permitted to implead Maharashtra Rajya Beej Grahak Sanghatana as Respondent no.2 in the appeal. Permission to file additional documents is granted.

Delay condoned. Until further orders; interim order passed by this court shall continue to operate."

- (h) The above points clarifies that the Commission ordered the MSEDCL to refund those excess collected charges between the periods 9.9.2006 to 20.5.2008 which are not stayed by the Hon'ble Supreme Court. The Hon'ble Supreme Court stayed only the order passed by ATE on dated 14.05.2007 in respect SLC charges and not others. The Appellant was not precluded from approaching the Forum to resolve its grievance if at



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all any charges in contravention of Schedule of charges has been recovered. The Circular issued by MSEDCL after the Judgement of the Hon'ble Supreme Court, it covers the refund of SLC, ORC and meter cost only. It does not cover the issue of refund of infrastructure cost recovered under the concept of DDF (may be under misconception). Hence, only the alleged DDF estimate was issued between the period of 09.09.2006 to 20.05.2008 does not itself covers the Appellant case under the purview of the Hon'ble Supreme Court Judgement and Circulars of MSEDCL. Appellant is not entitled to claim any refund of DDF charges. Moreover, MSEDCL circular precluded the refund of DDF charges.

- (i) After the dismissal of Civil Appeal in Supreme Court, the MSEDCL has issued various circular in compliance of the order of the Commission in Case No. 82 of 2006. The case of complainant was not covered in those Circular. Further, as per 3.3.3 & 3.3.4 of Supply Code Regulations, the complainant was liable for expenses for DDF and augmentation as its load exceeds 100% of existing load. Hence, complainant was not liable for any refund at all.
- (j) The MSEDCL further states that the Appellant has approached the Forum and filed grievance. The Forum has conducted the hearing in the matter and passed order on dated 17.08.2020 and passed the order which is implemented by the Respondent. In view of above, it is requested to reject the Representation.

5. The first hearing was scheduled on 09.12. 2020 however, it was postponed at the request of the Respondent. Therefore, the hearing was scheduled and held on 10.12.2020 on e-platform through video conferencing. The Appellant argued its case at length completely in line with its written submissions which is already captured above. The Respondent started arguing its case, but the audio and video quality was very poor and therefore it was decided to schedule physical hearing shortly which was agreed by both the parties. However, the Appellant argued that though he has completed his arguments, he be


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allowed to reply on the arguments of the Respondent during next hearing. The physical hearing was therefore scheduled on 13.01.2021 which was again postponed to 22.01.2021 for which notices were issued.

6. During the hearing on 22.01.2021, the Respondent argued its case in line with its written submission and further stated that it has implemented the order of the Forum to the extent of refund of SLC and ORC. When the Respondent was questioned as to whether, it has refunded complete amount of ORC, it replied that the Appellant has paid 1.3% supervision charges of the estimate which has been refunded as no other extra amount under ORC head is paid by the Appellant. Therefore, there is no question of refund of such unpaid amount. The Appellant countered this argument of the Respondent saying that the work was supposed to have been done by the Respondent which is done by the Appellant by spending money from its own pocket and therefore, the amount of expenditure towards such work carried out by it to the extent of sanctioned estimate needs to be refunded by the Respondent. It further argued that its case is well within limitation as it has filed the grievance after issue of circular for refund by the Respondent post dismissal of Civil Appeal by the Hon'ble Supreme Court.


Analysis & Ruling

7. Heard the parties. Perused the documents available on record. To decide the case, I perused various orders of the Commission, Judgments of the Tribunal, and Court concerning the issues in the case. The details are given below:-

- (a) The Commission's order dated 08.09.2006 in Case No. 70 of 2005 regarding Schedule of Charges: -

Relevant portion of the order applicable in the instant representation is reproduced below: -

“The Commission totally rejects MSEDCL proposal to recover Service Line Charges from the prospective consumers except in cases of consumers requiring dedicated distribution facilities. As per the provision of the Act, developing infrastructure is the responsibility of the licensee. The Commission therefore directs that the cost towards infrastructure from


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delivery point of transmission system to distribution mains should be borne by MSEDCL. The recurring expenses related to the capital investment on infrastructure shall be considered during ARR determination [for detail ruling refer Section – III (6)].”

- (b) ATE judgment dated 14.05.2007 in Appeal No. 22 of 2007 filed by MSEDCL against the Commission order in Case No. 70/2005 dated 08.09.2006.

The relevant portion of the order is reproduced as below: -

“18. In view of the above, it is clear that the “Service Line Charges” as proposed by the appellant are being allowed to be recovered through tariff. If the aforesaid proposal on “Service Line Charges” made by the appellant is accepted it will amount to doubling of the recovery of the expenses from the consumers. The appeal is accordingly dismissed.”

- (c) The Commission’s order dated 17.05.2007 in Case No. 82 of 2006

[In the matter of refund of monies collected by MSEDCL towards ORC and cost of meter while providing new connections against the Order dated September 8, 2006 in Case No. 70 of 2005 (Schedule of Charges Order)].


Operative part of order in Case No. 82 of 2006 is reproduced below: -

“9. Having considered the material.....

- (a)
(b)
(c)

- (d) *MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and ‘CRA’, together with interests, on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;*
- (e) *MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of the amount of Rs. 6500/- (collected under the head ‘CRA’) and the interest amount collected towards ORC, cost of meter and ‘CRA’ from Devang Sanstha.....*

The Commission observes with concern that primarily incidences of collection of amounts towards ORC, cost of meter and ‘CRA’ post the operation of the Order dated September 8, 2006 in Case No. 70 of 2005 and the issuance of the Commercial Circular No.43 on September 27, 2006, are demonstrative of severe anomalies in the functioning of MSEDCL. The said acts have been overtly mechanical on the part of errant and negligent officials who have not paid adherence to the revisions in the erstwhile schedule of charges which have been mandated under the Order dated September 8, 2006. The Commission


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further observes that the stand taken by MSEDCL that their field officers should gain clarity on the implementation procedure enunciated under the Order dated September 8, 2006 within two weeks from April 13, 2007, is misconceived. The Commercial Circular No. 43 issued by MSEDCL themselves on September 27, 2006 provides for enough clarity on the import of the said Order. On the issues raised in the complaint as to refund of the depreciated value of amounts spent on DDF, as per Regulation 3.3.3 of the Supply Code having not yet materialised in favour of various consumers, the Commission observes that the position of law is well settled under the Supply Code.

While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006. The Commission further observes that consumer representatives /organisations who/which are invited to attend hearings and/or make submissions, should ensure sufficient co-operation.


There shall be directions to MSEDCL in terms of the above. The Commission reiterates that appropriate action under Section 142 of the EA, 2003 may be considered by the Commission on the Managing Director, Director (Operations) and Chief Engineer (Commercial) of MSEDCL, should the directives issued to MSEDCL under this Order not be complied with.” **(Emphasis added)**

(d) The Commission’s order dated 21.08.2007 in Case No. 82 of 2006

(In the matter of compliance by MSEDCL of directions issued under Order dated 17.05.2007.)

Relevant portion of the order is reproduced below: -

“8. MSEDCL has submitted under affidavit that the amounts collected under the head CRA actually pertains to SCC (service connection charges) and is therefore not liable to be refunded. The Commission is of the finding that completely contradictory statements have been made by MSEDCL, which one hand during the hearing, as recorded in the order dated May 17, 2007, submitted before the Commission that CRA is a head-based charge akin to SLC (service line charges). In fact, on the Commission’s finding that collection of head-based charges in the nature of ‘CRA’ has been unlawful, Shri. K.B. Fakir, Electrical Engineer, MSEDCL-Beed Circle, undertook to refund amounts collected from Devang Sanstha, towards ORC, CRA, and cost of meter, together with interest. To this, the Commission had directed MSEDCL to refund to Devang Sanstha and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interest. The Commission is of the view that MSEDCL had all the time available if there was a need to seek a review of the Order dated May 17, 2007 on the contention that CRA is nothing but SCC. However, no such review application has been filed by MSEDCL. MSEDCL has not found it pertinent or necessary to seek a review but has gone ahead and


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concluded itself that compliance of the Commission's direction to refund CRA amounts, is not required, as CRA pertains to SCC. This is based on MSEDCL's interpretation which MSEDCL has not found necessary to check with the Commission by seeking a review. In view of the submissions of MSEDCL under its affidavit filed on May 28, 2007, the Commission holds that MSEDCL has contravened the directions of the Commission under the Order dated May 17, 2007 is therefore liable to be penalized under Section 142.

11. MSEDCL shall submit to the Commission their statutory auditor's certificate to the effect that the amounts collected illegally together with interest, as held at paragraph 9(d) and (e) of the Order dated May 17, 2007, have been refunded to the concerned consumers."

(Emphasis added)

- (e) Hon. Supreme Court Judgment in Civil Appeal No. 4305 of 2007 (DPR No. 20340 of 2007) filed by MSEDCL against ATE judgment in Appeal No. 22 of 2007.

"Refund is stayed till the matter comes up for hearing on the date fixed i.e. 14th September, 2007"

The above interim stay was continued by the Supreme Court vide its order dated 14th September 2007 as follows:

"Until further order, interim order passed by this Court shall continue to operate."

- (f) Commission's order dated 16.02.2008 in Case No. 56 of 2007.


(In the matter of Compliance of directives issued to MSEDCL under Order dated May 17, 2007 passed in Case No. 82 of 2006).

Relevant portion of the order (56 of 2007) is reproduced below: -

"12. Having heard the parties and after considering the material placed on record, the Commission is of the view as under:

(1) Since, MSEDCL do not have a clear conception of Dedicated Distribution Facility and the levy of ORC in the EA 2003 regime, it is necessary to provide guidance on the same and issue necessary directions as under:

(i) At many places prospective consumers with an intention to get better quality of


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supply seek Dedicated Distribution Facility, though distribution network is available in nearby vicinity and it is possible to give supply by extending the existing network. Such consumers seeking Dedicated Distribution Facility will have to pay the cost incurred in providing the Dedicated Distribution Facility. As per Regulation 2(g) of the Supply Code:


“(g) **“Dedicated distribution facilities”** means such facilities, not including a Service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises;”

It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as a facility solely or clearly dedicated for giving supply. Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers. The transformer or the substation can also form a part of Dedicated Distribution Facility if it is provided exclusively for giving supply to these consumers and no other consumer is fed from the said transformer/substation. Also, Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Section 43 of the EA 2003 read with the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. In fact, the licensee should take advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfil ‘Universal Service Obligation’ as per the spirit envisaged in the EA 2003 and the Regulations made thereunder.

It is also necessary to point out certain specific portions of the Supply Code Regulations dealing with Dedicated Distribution Facilities, as under:

“3.3.5 Where the Distribution Licensee has recovered the expenses referred to in Regulation 3.3.3 above at any time after the notification of these Regulations, the consumer shall be entitled to the depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:

Provided that where such facilities have been provided by the consumer, then such facilities may be retained by the consumer upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:


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Provided however that where the discontinuance of supply is on account of the consumer's failure to pay any sum under Section 56 of the Act, the Distribution Licensee, in addition to the rights available under that Section, shall be entitled to adjust such sums due from the depreciated value of facilities to which the consumer is entitled under this Regulation 3.3.5 or to retain facilities of such depreciated value as to cover such sums due from such consumer to the Distribution Licensee."

(2) In view of the above, the Commission hereby directs that:

(i) MSEDCL should submit 'Schedule of Charges' proposing rates on normative basis, for providing Dedicated Distribution Facilities within two weeks from the date of this order, in accordance with the requirement of Regulation 3.3.3 of the Supply Code Regulations, which specifies as under:

3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated Distribution Facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.


Therefore, the MSEDCL are directed to levy charges for Dedicated Distribution Facilities based on the schedule of charges approved by the Commission under Regulation 18. The MSEDCL shall take immediate action in this regard. There shall be direction to the MSEDCL in terms hereof.

(ii) Issue instructions to the field offices clarifying the meaning of the term Dedicated Distribution Facility and making it clear that the charges towards the same, as approved by the Commission, should be recovered only if the consumer precisely seeks such facilities.

(iii) Should immediately prepare and submit CAPEX schemes for network expansion required for catering prospective consumers based on load survey and demand projection.

The scheme should basically cover the equipment/material required to release anticipated new connections.

*(3) With reference to the prayers of the Petitioners to direct refund of ORC and such other head based charges, the Commission is of the view that taking into account the submissions of the MSEDCL that there have been many instances where there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities) though different nomenclatures may have been used, hair splitting will not be possible in the present petition in this regard. **It will not be appropriate to direct refund under this Order as the***


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Order dated August 31, 2007 passed by the Hon'ble Supreme Court in Appeal No. 20340 of 2007 is still in force as the term SLC which is subject matter of appeal has purportedly been charged by MSEDCL herein using the nomenclature of ORC in many cases although they both are and pertain to SLC. In view of the admittedly overlapping nature of these charges with Service Line Charges which is sub-judice before the Hon'ble Supreme Court, the Commission declines to order refund as stipulated under its Order dated May 17, 2007. It is for the Petitioners to make suitable prayers and agitate in the said proceedings in Appeal No. 20340 of 2007 as the stay Order dated August 31, 2007 continues. This applies also in case of the third prayer in the present petition.

(4) *The issue raised by the Petitioners relating to refund of meter cost, has been raised by MSEDCL under its petition filed on December 19, 2007 seeking a review of the direction contained in the Order dated May 17, 2007 to refund the cost of meter, which stipulates as under:*

“5.The refunding should be made by MSEDCL in a lumpsum and at one go, and not via adjustments in future energy bills.”
(Emphasis added)


(g) The Commission's order dated 01.09.2010 in Case No. 93 of 2008.

(In the matter of Petition of Akhil Bhartiya Grahak Panchayat, Latur seeking directions against MSEDCL for non-compliance of the Electricity Supply Code Regulations and the Electricity Act, 2003).

“19. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

*iii. Regarding, 10,740 number of cases where MSEDCL has recovered charges other than approved Schedule of Charges; the Commission is of the view that these are only indicative cases found out on the sample checking basis. MSEDCL either has to scrutinise details of all the consumers released during the period of 9th September 2006 to 20th May 2008 for charges levied other than approved Schedule of Charges or publicly appeal either through newspapers or electricity bills, asking the consumers to contact MSEDCL if such charges are levied on them during above period. Thereafter, MSEDCL should adjust the extra charges collected by MSEDCL in the energy bills of the respective consumers. **If any consumer has any grievance regarding excess charges levied by MSEDCL and its refund, they may file the same before the concerned Consumer Grievance and Redressal Forum established by MSEDCL under the provisions of Section 42(5) of the EA 2003 read with the “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006”. This directive of refund of excesses recovered charges will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007.”***

(Emphasis added)


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- (h) The Commission's order dated 08.12.2014 in Case No. 105 of 2014
(In the matter of Petition of MRVGS for penal action against MSEDCL for breach of provisions of law in respect of new electricity connections to Agricultural consumers, and non-compliance of certain other directions).

The relevant portion is reproduced below: -

“16. MSEDCL appears to have complied with the direction to ascertain if additional charges beyond the approved Schedule of Charges were recovered during the relevant period from consumers, or publicly appeal to affected consumers and refund the charges. Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response. However, MSEDCL should submit to the Commission, before the Technical Validation Session (TVS) in respect of its pending MYT Petition, the number of consumers identified, and additional charges refunded or pending for refund so far.

17. The Commission has noted MSEDCL's submission regarding compliance of directions to review its Circulars and practices in the context of DDF, service connections, etc.

18. MSEDCL's Reply in the present proceedings is silent on submission of a Schedule of Charges for DDF. While there may be complexities in such an exercise, the Commission directs MSEDCL to make its submission to the Commission on this matter before the TVS to be held on its pending MYT Petition, since the Schedule of Charges would also be addressed in those proceedings.


19. The Commission is of the view that, while there has been no breach of the provisions of law or the Commission's Orders as contended in some matters, with regard to the remaining no useful purpose would be served by invoking Sections 142 and 146 of the EA, 2003 in view of the foregoing.”
(Emphasis added)

- (i) Supreme Court judgment dated 10.11.2016 in Civil Appeal No. 4305 of 2007 filed by MSEDCL.

Relevant portion of the judgment is reproduced below: -

“Ms. Rimali Batra, the learned counsel, appearing for the appellant has argued vehemently and has made all submissions, which could have been made. However, we are unable to agree with her submissions. The impugned judgement does not require any interference.

The Civil Appeal is dismissed. Pending application, if any, stands disposed of.”


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- (j) Letter No.3955 dated 20.07.2017 from the Commission addressed to MSEDCL for compliance of Commission's directives regarding refund of amount recovered other than approved schedule of charges by the MSEDCL, after the Judgment dated 10.11.2016 of the Supreme Court dismissing Civil Appeal No. 4305 of 2007.

Relevant portion of the letter is quoted below:-

“6. With dismissal of MSEDCL's Appeal, stay granted on refund of amount becomes non exist. Hence, MSEDCL needs to comply with the Commission's order dated 17May, 2007 and 21 August, 2007 and refund the amount to the consumers.

7. In view of above, MSEDCL is required to submit compliance of the Commission's orders dated 17May, 2007 and 21 August, 2007.”


8. From above referred orders, few things emerged out distinctly: -

- (i) Commission issued Schedule of Charges order dated 08.09.2006 in Case No. 70 of 2005. MRVGS filed petition (Case No. 82 of 2006) with the Commission as MSEDCL unauthorizedly collected monies under the head of ORC, cost of meter and CRA in violation of Schedule of Charges order. The directions of the Commission dated 17.05.2007 in this case is as below: -

“9 (d) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and 'CRA', together with interests, on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007.”

It clearly means that the refund was limited to the period from 08.09.2006 to 30.04.2007.


- (ii) MSEDCL filed Appeal with the ATE being Appeal No. 22 of 2007 against Commission's order in Case No. 70 of 2005. ATE in its judgment dated 14.05.2007 upheld the order of the Commission. This was challenged by the MSEDCL in Hon'ble Supreme Court in Civil Appeal No. 4305 of 2007.
- (iii) MRVGS filed a complaint through Case No. 82 of 2006 seeking refund of monies collected by MSEDCL towards ORC, cost of meter and CRA. Commission issued order on 21.08.2007 and imposed penalty on MSEDCL. Relevant portion being as below:-


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“11. MSEDCL shall submit to the Commission their statutory auditor’s certificate to the effect that the amounts collected illegally together with interest, as held at paragraph 9(d) and (e) of the Order dated May 17, 2007, have been refunded to the concerned consumers.”
(Emphasis added)


- (iv) The Hon’ble Supreme Court stayed the judgement of ATE by order dated 31.08.2007 thereby staying the refund and further on 14.09.2007 the Hon’ble Supreme Court issued directions that until further orders, interim order issued by it shall continue to operate.
- (v) MRVGS filed petition with the Commission on 05.11.2007 through Case No. 56 of 2007 seeking compliance of directions issued by the Commission in its order dated 17.05.2007 in Case No. 82 of 2006. The Commission in this order said that it will not be appropriate to direct MSEDCL for refund in view of the pendency of Civil Appeal in the Supreme Court. It also clarified the issue of DDF. It means that no refund can be ordered for the cases falling between 08.9.2006 to 30.04.2007, on account of stay granted by the Hon’ble Supreme Court.
- (vi) At this stage, in view of above development, MSEDCL issued Circulars on 09.05.2007 for refund of meter cost, and on 20.05.2008 regarding guidelines for releasing new connections and augmentation. In this Circular MSEDCL framed policy for recovery of charges towards development of infrastructure.
- (vii) In the meantime, on 10.11.2016, the Hon’ble Supreme Court dismissed Civil Appeal No. 4305 of 2007 which was filed by MSEDCL against ATE judgment. Therefore, the stay got automatically vacated and the Commission’s order in Case No. 70 of 2005 dated 08.09.2006 became operative.
- (viii) The Commission issued letter dated 20.07.2017 to MSEDCL for compliance of Commission’s directives regarding implementation of its order dated 17.05.2007 and 21.08.2007 both in Case No. 82 of 2006.
- (ix) On close scrutiny of the legal travel of the case, it is noted that the issue of SLC was taken up at ATE and then in Hon’ble Supreme Court by MSEDCL. The Commission has also accepted the reality that there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities). The Commission, in its order


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dated 17.05.2007 in Case No. 82 of 2006 has stipulated period of refund for amount collected towards ORC, Cost of Meter and CRA from 08.09.2006 to 30.04.2007. However, this refund could not take place because of specific order of the Commission dated 16.02.2008 in Case No. 56 of 2007 due to Civil Appeal No. 4305 of 2007 pending in Hon'ble Supreme Court and stay thereon.

9. It is important to note that barring the consumers from whom the amount towards ORC, Cost of Meter and CRA is collected by MSEDCL during 08.09.2006 to 30.04.2007, rest of the consumers, if any, and have paid such amount, they were having an option to adopt the grievance redressal mechanism under the Regulations of the Commission for redressal of their grievance with respect to refund. This is very much clear from para 19 of the Commission's order dated 01.09.2010 in Case No. 93 of 2008 which is quoted above at Para No.7 (g). Moreover, the Commission, in its order dated 08.12.2014 in Case of 105 of 2014 has specifically said that it is satisfied with the action of MSEDCL in compliance of its order in Case No. 82 of 2006. The Commission in this order has specifically said that ***"Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response."*** The relevant paragraph of the Commission's order is captured at Para No. 7 (h) of this order.
10. Now, let us examine as to whether the instant representations fit into the matrix of the period 08.09.2006 to 30.04.2007 which is considered by the Commission for refund with respect to their date of payment. This is envisaged in the Commission's order dated 17.05.2007 in Case No. 82 of 2006.
11. Further, the Commission in its order dated 16.02.2008 in Case No. 56 of 2007 has specifically denied grant of relief as regards refund of the cost as stipulated under its order dated 17.05.2007 in Case No. 82 of 2006. In this order dated 17.05.2007 at para 9 (d), the Commission has said that ***"MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of Meter and 'CRA', together with interest, on and from September 8, 2006***



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(which was the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;”


12. Therefore, it is clear that the amount collected by the MSEDCL during period from 08.09.2006 to 30.04.2007 was the subject matter of dispute and which was subsequently ordered to be refunded post dismissal of C.A. No. 4305 of 2007 by the Hon’ble Supreme Court.
13. On conjoint reading of all the Orders of the Commission, the Judgment of the Hon’ble Supreme Court and more particularly, the Commission’s order dated 08.12.2014 in Case 105 of 2014, the refund to the eligible consumer needs to be done on the criteria of date of payment of those charges by the individual consumer and in this case, by the Appellant.
14. The Appellant under this Representation has agitated the matter of refund of ORC, metering cost, etc. which it has incurred / paid for work carried out by it. The details of estimates with sanctioned number, amount paid, etc. is tabulated in the table below:

Consumer No.	3019024840	3019024840	3019031300	Remarks
Voltage Level (kV)	33	33	33	
Name of Consumer	M/s.Dicitex Decor Exports Pvt. Ltd.	M/s.Dicitex Decor Exports Pvt. Ltd.	M/s.Dicitex Decor Exports Pvt. Ltd.	
CD Sanctioned (KVA)	1511+910=2421	2421+1179=3600	1250	
Estimate Sanction No.	SE/VC/Tech/PLG/Con./D-3/No.1985 dtd.05/04/2005 SLC	SE/VC/Tech/PLG/Con./D-3/No.1879 dtd.27/04/2006 ORC	SE/VC/Tech/PLG/Con./No.6329 dtd.16/10/2007	
Estimate Amount (in Rs.)	591500/- on 22.06.2005 (SLC paid by consumer)	1116740/-	1233520/-	
Supervision Charges paid with date		12295/- on 02.05.2007	12950/- on 25.10.2007	Consumer No.3019031300 was permanently disconnected on 01.07.2016 and thereafter merged with Consumer No.3019024840.
Work Involved	Additional HT - 563 KW / 910 KVA SLC	Additional HT - 1248 KW / 1179 KVA ORC	Fresh Supply to M/s. Dicitex Décor pvt ltd (Dying and Painting Unit) With load 1393 KW and MD 1250 KVA	
Other details	The SLC estimated amount of Rs. 5,91,500.00 and interest of Rs.66,839.00 has been credited in energy bill of complainant on 02.02.2018.	Consumer only paid supervision charges and work is done by the Appellant at its own cost.	Consumer only paid supervision charges and work is done by the Appellant at its own cost.	
Application filed before IGRC	11.09.2019			
Application filed before the Forum	02.01.2020			


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15. The Respondent has already refunded SLC charges to the Appellant. The Appellant has paid the supervision charges on 02.05.2007 and 25.10.2007 against the estimates prepared by the Respondent and work is done by the Appellant. If the work was supposed to have been done by the Respondent, the Appellant would have obviously paid all charges under ORC on 02.05.2007 and 25.10.2007, after which the Respondent would have started the work and completed it. Therefore, the dates 02.05.2007 and 25.10.2007 are reckoned for the purpose of deciding the representation.
16. Therefore, the works under this representation does not fall in the bracket of the period 08.09.2006 to 30.04.2007 as contemplated under the orders of the Commission which has been explained hereinabove. The Appellant was at liberty to have agitated the matter before the grievance redressal mechanism at that point of time. Even if it had not chosen to agitate the matter at that point of time, it could have well agitated the issue after the Commission's order dated 08.12.2014 in Case 105 of 2014 wherein it has been made very crystal clear by the Commission at para 16 that "**Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response.**" If it is presumed for the sake of argument that the Appellant has missed this order of the Commission, it could have well filed the grievance before the Forum after issue of circulars by the Respondent's H.O. on 12.10.2017 and 29.12.2017. Instead, it approached the Forum on 02.01.2020 and therefore, does not fit into the regulatory matrix stipulated under Regulation 6.6 of the CGRF Regulations 2006 which says that the Forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. Arguing at a later stage that the work was not DDF and the Respondent has compelled it to toe its line and take connection, and then waiting for favourable opportunity to agitate like a fence sitter after reaping the benefits whatever, does not hold good even in the eyes of law.
17. The Appellant in his attempt to prove his case not being time barred, it has cited ATE Judgment dated 11.03.2011 in Appeal No. 197 of 2009 through his email dated


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22.01.2021. I have perused the said Judgment of ATE. The case in this ATE Judgment is with respect to tariff fixation under the provision of the Act. obviously, there is no question of any limitation in this regard. The Hon'ble ATE on the facts therein held that Limitation Act is not applicable to the State Commission in their regular activities of fixation of tariff. This judgment cited by the Appellant is not relevant to the instant representation because once the tariff / order of the Commission such as Schedule of Charges, etc. is issued, distribution licensee applies it to respective consumers across the board. Once it is applied and if consumer has any grievance about its application, then it falls under the individual case of the consumer. As a matter of fact, at this stage, the mechanism for grievance redressal needs to be invoked by the consumer suffered.

18. Even the Judgments of the Bombay High Court, Nagpur Bench in W.P. No.1650 of 2012 dated 10th July 2013, and Aurangabad Bench in W.P. No.6859, 6860, 6861 and 6862 of 2017 dated 21.08.2018 has explicitly upheld the provision under Regulation 6.6 of the CGRF Regulations 2006. In view of these Judgments, limitation as envisaged under Regulation 6.6 of the CGRF Regulations 2006 is a settled position of law. In a recent judgment, the Hon'ble Supreme Court in Civil Appeal No.2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if suit is clearly barred by limitation.
19. I am, therefore, of the opinion that if Regulation 6.6 is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all to contest the claim irrespective of the period elapsed from the cause of action. If the issues are allowed to be exhumed and dissected on the basis of hindsight and that too with no bar on time elapsed, no decision can be made in Regulatory Framework and the provision of Regulation 6.6 will be frustrated and there will be complete chaos. The Appellant has taken a plea that it has filed a grievance with the IGRC on 11.09.2019 and therefore, its case is within time limit as per CGRF Regulations 2006. However, this contention of the Appellant is wrong as there is no specific time limit provided for filing grievance with the IGRC though overall time limit of two years is provided under Regulation 6.6 of the



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CGRF Regulations 2006. It inter alia means that total time limit inclusive of the period taken by the Appellant to approach the IGRC from the cause of action is two years only. The case of the Appellant does not fit into this matrix as it has approached the Forum on 02.01.2020 and the cause of action being pretty old much prior to two years.

20. The Respondent has also cited certain Judgments, which I do not find it necessary to delve into as the issue of limitation under Regulation 6.6 of the CGRF Regulations 2006 is pretty clear. Therefore, the prayers of the Appellant do not stand scrutiny in the face of Regulation 6.6 of the CGRF Regulations 2006 and relevant Orders of the Commission. The issue of refund of money collected illegally by the Respondent has genesis in the Schedule of Charges Order and its subsequent legal travel.
21. The Representation is time barred in view of the CGRF Regulations 2006 and therefore rejected and disposed of accordingly.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

