BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 189 OF 2019

In the matter of application of proper tariff category

Ascent Hotel Pvt. Ltd….. …… Appellant

V/s.

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

Appearances

For Appellant : Ashok N. Patil, Representative

For Respondent : 1. V.P. Paithankar, Executive Engineer (Adm), Rastapeth Circle
2. G.V. Satpute, Law Officer

Coram: Deepak Lad

Date of Order: - 20th January 2020

ORDER

This Representation is filed on 22nd October 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated 19th August 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).

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2. The Forum, by its order dated 19.08.2019 has disposed the grievance application in Case No. 28 of 2019. The operative part of the order is as below: -

> *"1. The consumer dispute of Case No. 28 of 2019 is shall be disposed off accordingly.*
> *2. The consumer is at liberty to file the fresh issue in this regard subject to decision of dispute pending before High Court."*

3. Aggrieved by the order of the Forum, the Appellant has stated in representation in brief as below: -

(i) The Appellant is a HT Commercial Consumer (No.170019035320) from 26.03.2010 having Contract Demand of 3000 KVA at Survey No. 32/1, A+B, Wadagoansheri, Pune for hotel purpose.

(ii) The Appellant has applied for change of tariff category from continuous to non-continuous on 17.04.2012 to the Respondent.

(iii) As per Regulation 9.2 of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 (SOP Regulations), the change of tariff category shall be effected by the Distribution Licensee before the expiry of the second billing cycle. The said Regulation is reproduced as follows: -

> *"9.2 Any change of name or change of tariff category shall be effected by the Distribution Licensee before the expiry of the second billing cycle after the date of receipt of application."*

It is clear that tariff category of the Appellant should have been changed from continuous to non-continuous from next billing cycle i.e. from May 2012. However, the Respondent has not taken any action as per Regulation and violated regulation. As per order of the Maharashtra Electricity Regulatory Commission (the Commission) dated 19.08.2016 in Case No. 94 of 2015, there can be no restrictions like submitting application within one month after declaration of Tariff Order. The restrictions stipulated earlier are inconsistent with the SOP regulations.

(iv) The Superintending Engineer, Rastapeth of the Respondent forwarded Appellant's application dated 17.04.2012 to their Chief Engineer (Commercial) by letter dated 29.04.2013 for approval. However, the Appellant's name was not included in the

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list of pending consumers for change of tariff category from continuous to non-continuous in the list of the Head Office of the Respondent for unknown reasons.

(v) The Appellant visited the Respondent including Head Office at Prakashgad, Bandra, Mumbai for follow ups, however no positive response was given, and the Respondent has not communicated any reply in this matter to the Appellant.

(vi) The Head Office of the Respondent then informed that the Respondent has filed review petition to the Commission vide Case No. 94 of 2015 for finalizing pending cases of change of category from continuous to non-continuous. The Respondent has changed categories from continuous to non-continuous for some consumers. But for some consumers it did not change tariff category stating reason of the Commission's order in Case No. 44 of 2008 that consumer has not applied within one month of tariff declaration. This was discrimination done by the Respondent with some consumers including the Appellant which has been discussed in the order of the Commission dated 19.08.2016 in Case No.94 of 2015. The relevant portion of this order is reproduced as below: -

> *"26.9……From the above Judgements, it is clear that the SoP Regulations being in the nature of subordinate legislation, an Order issued in contravention of these Regulations is not tenable. It will also be clear from the wording of Regulation 9.2 , quoted above, that it sets the period within which a Licensee has to dispose of an application for change of tariff category, but places no restriction on when such an application can be made. The provisions of the subsequent SoP Regulations, 2014 are similar. The Commission notes that its Electricity Supply Code Regulations, 2005 also do not circumscribe applications in this manner. Hence, the Commission is of the view that the restriction stipulated by it earlier is inconsistent with the SoP Regulations.*
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> ……
> ……
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> *29. In these proceedings, Shri. Ashish Chandarana has cited several specific instances of irregularities committed by MSEDCL while deciding applications for change of category from Continuous to Non-Continuous. While these alleged irregularities cannot be a ground for rejection of MSEDCL's claim for review and the Commission has already held that its earlier stipulation is inconsistent with the SoP Regulations, MSEDCL has admitted during these proceedings that it had taken an ad hoc and inconsistent approach not only on such applications but also in different judicial forums with regard to individual cases, and that it had revised its stand in these forums after filing this Petition. The Commission directs MSEDCL to*

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examine and take appropriate action with regard to such selective, inconsistent and discriminatory treatment given to different applicants."

It was cleared that Regulation 9.2 of SOP Regulations 2005 is in nature of subordinate legislation. Even Commission`s orders in contravention to this are not tenable. Respondent circulars or any restriction like availing open access supply are also not tenable.

(vii) As per the order of the Commission dated 12.09.2008 in Case No. 44 of 2008 the Commission's ruling and clarification is quoted as below:-

"***Commission's Ruling and Clarification***

The Commission is of the view that MSEDCL should not ignore the benefits of load relief that could be achieved, in case certain HT-I continuous industries, who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence, the HT industrial consumer connected on express feeder should be given the option to select between continuous and non –continuous type of supply, and there is no justification for removing the clause "demanding continuous supply" from the definition of HT-I continuous category. However, ***it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period****. In the present instance, the consumer may be given one month time from the date of issue of this Order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorisation will be continued."* ***(Emphasis added)***

Here it is clearly mentioned that consumer on express feeder can exercise choice for availing non-continuous supply which has been disputed in IGRC hearing. As per order of the Commission in Case No. 94 of 2015, the condition of applying within the first month of issue of the order has been removed. In the order, it is stated in Point No. 29 that

"The Commission directs MSEDCL to examine and take appropriate action with regard to such selective, inconsistent and discriminatory treatment given to different applicants."

(viii) The Appellant filed the grievance application in the Internal Grievance Redressal Cell (IGRC) on 12.12.2018 which was registered on 31.12.2018. The IGRC by its order dated 25.02.2019 has rejected the grievance.

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(ix) The Appellant summarized the case for cause of action as below:-

Appellant has applied to the Respondent for change in billing category from continuous to non-continuous on 17.04.2012. The Superintending Engineer Pune submitted the request of the Appellant vide letter no SE/RUPC/T/3099 dated 29.04.2013 i.e. after one year to the Chief Engineer (Commercial) for approval. Respondent filed review petition for such pending applications which was registered as Case No. 94 of 2015. After Order of the Commission dated 19.08.2016 in Case No. 94 of 2015, the Head Office of the Respondent issued guidelines as per Order of the Commission in Case 94 of 2015 on 05.07.2017 and 10.07.2017 to finalize such pending cases. Many cases have been compiled by Respondent from October 2017 to March 2018 by refunding tariff difference between continuous and non-continuous in their electric bills up to March 2018. The Appellant was not given refund by Respondent though their application was pending with Respondent till March 2018. This was again new discrimination by Respondent with them. The cause of action arose in July 2017 after issuance of guidelines by Respondent for such cases till March 2018 due to non-compliance by Respondent. Appellant has complained on 01.11.2018 to the SE, Rastapeth for non-receipt of refund of tariff difference between continuous and non-continuous with interest. No reply to their complaint was given by the Respondent. Appellant filed complained to IGRC on 31.12.2018. The Respondent has not replied to the Appellant till IGRC order dated 25.02.2019. There is no communication by Respondent prior to that. Hence, Respondent's claim that the Appellant has not complained within two years of cause of action is totally false.

(x) As directed in Commission's Order No. 94 of 2015 for finalization of pending continuous to non-continuous cases, as per instructions of the Head Office of the Respondent for withdrawing cases for implementation of 94 of 2015 dated 05.07.2017, and as per guidelines of the Respondent, Head Office giving procedure for finalizing such pending cases for implementation of order dated 10.07.2017 in Case No. 94 of 2015 (In these guidelines there is no mention of any condition that consumer availing open access will not get refund as claimed in IGRC by

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Respondent). Appellant should have been given tariff difference with interest between continuous and non-continuous for the period May 2012 to October 2016 including open access units as per our letter dated 01.11.2018.

(xi) This is serious disobedience of Commission's Order dated 19.08.2016 in Case of 94 of 2015 and Respondent's own instructions letter 05.07.2017 and guidelines vide letter No. 10.07.2017. The Respondent should have checked and taken suo motu action for including the name of the Appellant in the list and given refund of tariff difference between continuous and non-continuous for the period May 2012 to October 2016 with other pending consumers up to March 2018. Even after the Appellant's complaint letter dated 01.11.2018, no action was taken for checking why Appellant's name was not included in list of pending consumers. The Respondent cannot do such discrimination with the Appellant by not giving tariff difference while it has given to many other consumers as per list of consumers with Respondent letter No. PR-3/Tariff/16720 dated 10.07.2017.

(xii) As there is over delay in granting tariff difference by Respondent, as per Section 62(6) of the Electricity Act, 2003 (the Act), interest should be given by the Respondent to the Appellant on the amount of refund due at the bank rate.

(xiii) The Appellant approached the Forum on 24.04.2019 and the Forum by its order dated 19.08.2019 has disposed the grievance application without giving substantial benefit. The Forum has not given justice to the Appellant. The Forum, in its order has referred a case which is pending before Nagpur Bench of Bombay High Court. Hence, it has not given any decision. The Appellant has also noted that the name given in the Forum's order is Demantex Vs MSEDCL which is wrong. When inquired with the Forum, actual name is Gimatex Industries Pvt Ltd V/s MSEDCL in W.P. Nos. 1297 of 2017 and 1298 of 2017. These cases are pending in the Court and relates to grant of interest on the amount refunded by MSEDCL towards tariff difference between continuous and non-continuous. On last hearing of that case, MSEDCL Advocate has agreed to pay interest as per the Commission's Order in Case No. 90 of 2019. The Forum has remained silent in giving refund of tariff

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difference between continuous and non-continuous including open access units with interest.

(xiv) The Appellant prays that the Respondent be directed to refund tariff difference between continuous to non-continuous from May 2012 to October 2016 including open access units to the Appellant`s Consumer No.170019035320 along with interest as per bank rate.

4. The Respondent MSEDCL has submitted their reply dated 13.11.2019 in brief stating as under: -

(i) The Appellant is a HT Commercial Consumer (No.170019035320) having contract demand of 3000 KVA for hotel purpose at Survey No. – 32/1, A+B, Wadagoansheri, Pune from 26.03.2010.

(ii) The Appellant on its request for uninterrupted supply, is connected on Express feeder known as 11 kV Hyatt Express Feeder emanating from 22 KV/11 KV Wakefield Sub-station.

(iii) The Appellant has submitted its application dated 07.04.2012 for change of tariff category from continuous to non-continuous which was received by this office on 17.04.2012. The power to consider the said request of Appellant is vested with Corporate office of the Respondent. Hence, the proposal has been sent to the Corporate office vide letter SE/RPUC/T/3099 dated 29.04.2013.

(iv) The restrictions on submitting application within month is based on Commission's Ruling in Case No. 44 of 2008 dated 12.09.2008. Moreover, it would like to add here that such restriction was in force till 19.08.2016 (i.e. till issue of Order in Case No. 94 of 2015). It infers that, it was a mandate on consumer to apply within a month for change of tariff as per Order dated 12.09.2008. Due to this reason, application would not have been considered. Meanwhile, there were two different MYT Orders issued by the Commission. The first one being in Case No.19 of 2012 (dated 16.08.2012), and second one being in Case No.121 of 2014 (dated 26.06.2015). The second one is in force with effect from 01.06.2015. When these orders came into effect Appellant was supposed to apply within a month as per

directions in Case No.44 of 2008. But Appellant did not opt to apply. Said ruling was in force till the Order dated 19.08.2016 in Case No.94 of 2015 which cleared this restriction of submission of application within one month stipulated under Order of Case No.44 of 2008.

(a) Respondent would like to mention here that, Order in Case No.44 of 2008 was in force when the Appellant had submitted its application dated 17.04.2012 for change in tariff category, hence the contention for change in tariff is baseless.

(b) Further Respondent would like to submit that after 2012, Appellant has not submitted any application for charge of tariff, hence, onus is on Appellant and not on Respondent.

(v) Respondent submits that besides this background, for the sake of Appellant, Respondent has sent the proposal to Corporate Office. Though this shows Appellant has made an application but the same was not as per the prevailing rules.

(vi) The Regulation 9.2 of SOP Regulations is an undisputed fact. Same is not applicable in this case. It has a nexus which covered under the Commission's Case No.94 of 2015, which was decided on 19.08.2016. Hence, there is no question of violation of Regulation. After the said order of the Commission, the execution have been initiated by the Respondent.

(vii) The cause of action arises on 17.04.2012. As per Regulation 6.6 of CGRF Regulations and hence is not maintainable as the same is not filed within limitation of 2 years in grievance mechanism.

(viii) The Review Petition had been filed by MSEDCL before the Commission vide Case No.94 of 2015. It is true that category of some consumers has been altered from continuous to non-continuous in view of ushered guidelines in Case No.44 of 2008. That is consumer who have applied within a month from declaration of said tariff order. Others category have not been changed in view of aforesaid ground. It has been exercised by MSEDCL keeping it well within existing legal framework. It shows Respondent is not in fault while dealing Appellant's matter. Respondent was following prevailing set of Rules. Said order in Case No.94 of 2015 came into force in 19.08.2016, articulating a period for application for change of tariff from

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continuous to non-continuous. In that case, Appellant cannot blame Respondent for not considering his request dated 17.04.2012. In other words, Appellant cannot ask to correct the action with retrospective effect even though same was appropriate as per then existing rules. Contextually, once the Commission has restricted the period within which the option for change from Continuous to Non-Continuous has to be exercised, an application seeking such change which is made beyond that period is not a valid application and MSEDCL cannot process it as such.

(ix) However, Appellant cannot raise claim for earlier period by giving retrospective effect to present Order. For certain actions of MSEDCL, the Commission directed it to take appropriate action with regard to such selective, inconsistent and discriminatory treatment given to different applicants. It is to note here that, these directives were limited for the applications received by MSEDCL. Excerpts of para 30 is as under-

> *In view of the foregoing, the review Petition is allowed. The Commission directs MSEDCL to assess the impact of this Order after examining all the applications received by it which merit revision, based on the principles settled in this Order, including the impact on account of any selective, inconsistent or discriminatory treatment given to different applicants, and submit it to the Commission within three months.*
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> These 'received applications' were those which have followed prevailing rules under Case No.44 of 2008 however, the Appellant never applied by following that rule.

(x) It is general rule that no Order can be passed in contravention with prevailing rules. Order dated 12.09.2008 in Case No.44 of 2008 was struck down by Order dated 19.08.2016 in Case No.94 of 2015. From 12.09.2008 to 19.08.2016 ruling in Case No.44 of 2008 was in effect. If Appellant is aggrieved to the Order in Case No.44 of 2008, they should have approached the Appellate Tribunal for Electricity. This is not the proper Forum at present for this grievance. Notably, Appellant is raising the issue after it has been struck down by further Order of the Commission. Hence, Appellant has no locus to get benefit of this complaining before some other Forum. It has been made very clear by the Commission in Clarificatory Order-

> *"19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said*

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order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

Further, Appellant quoted ruling of the Commission in Order dated 19.08.2016 in Case No.94 of 2015 which inferred the Appellant as consumer on express feeder who can exercise choice for availing non-continuous supply prospectively.

The Respondent would like to submit further part of ruling in Case No. 94 of 2015 which is as under-

Hence, the Commission distinguished, within HT-I Industry, between industries requiring Continuous and Non-Continuous supply. However, the Commission also restricted the period within which such industrial consumers could exercise their option to shift from one to the other.

In addition to this, in the same Clarificatory Order, the Commission pointed out in Para 26.10, 26.11which are as below: -

"26.10 That being the case, there can also be no questioning the principle that there cannot be any estoppel against law, as contended by MSEDCL. However, that does not mean that a Licencee, MSEDCL in this case, can take upon itself the prerogative of deciding which Order of the Commission it shall follow and which it will disregard. While, as the Commission has held above, its earlier Orders of 2008 and 2012 put fetters on the right given to consumers in the SoP Regulations to apply for change in tariff category at any time, MSEDCL was not entitled, in law, to take upon itself to ignore or violate such Orders. Even if these Orders were invalid, being contrary to the Regulations, it is well settled that any such Order has to be obeyed nothwithstanding that it may be wrong in law or may even be void. In its Judgment in the Case of Krishnadevi Malchand Kamathia vs. Bombay Environmental Action Group & Ors. ((2011) 3 SCC 363), the Supreme Court held as follows:

"16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil [(1996) 1 SCC 435 : AIR 1996 SC 906] , Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. [(1997) 3 SCC 443 : AIR 1997 SC 1240] , M. Meenakshi v. Metadin Agarwal [(2006) 7 SCC 470] and Sneh Gupta v. Devi Sarup [(2009) 6 SCC 194] , this Court held that

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whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

17. In State of Punjab v. Gurdev Singh [(1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287 : AIR 1991 SC 2219] this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Elloe RDC [1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855] , wherein Lord Radcliffe observed (AC pp. 769-70) "... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

18. In Sultan Sadik v. Sanjay Raj Subba [(2004) 2 SCC 377 : AIR 2004 SC 1377] , this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

26.11 Such being the position, it was not open to MSEDCL to treat on its own the directions of this Commission as merely 'directory', and even less so as being in contravention of the SoP Regulations. If MSEDCL had any grievance, it ought to have initiated appropriate proceedings to have the stipulations laid down by the Commission corrected, if at all it found any fault in its Orders. Without taking any such steps, it was not open to MSEDCL to take it upon itself to violate the Orders of the Commission and to accept applications for change of category beyond the stipulated period. Moreover, as brought out in this Order, till the present review Petition MSEDCL has acknowledged and accepted the restriction on applications stipulated by the Commission. That stipulation, first introduced in 2008, was not challenged in review or appeal. At the same time, as brought out in the

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MYT Order as well as in these proceedings, MSEDCL has implemented that stipulation selectively and inconsistently."

(xi) The Appellant has filed application with IGRC on 12.12.2018 which was acknowledged on 31.12.2018 for refund of tariff difference between express and non-express feeder. The IGRC by its order dated 25.02.2019 has rejected the grievance. Not satisfied with the order of the IGRC, the Appellant approached the Forum on 24.04.2019. The Forum by its order dated 19.08.2019 has disposed the grievance application in Case No. 28 of 2019. As per Regulation 6.6 of the CGRF Regulations, the consumer needs to file the grievance application with the Forum within two years from the cause of action. Similarly, as per Regulation 4.13 (b) [referring to repealed Regulation 9.2 of the SOP Regulations 2005] of the SOP Regulations, 2014, change of tariff category is to be implemented within the second billing cycle from the receipt of application. However, in this case, since the date of filing application with the Forum is 24.04.2019, the retrospective effect towards cause of action would be 24.04.2017. There was no tariff in existence for express and non-express feeder under the tariff order of the Commission in force. The Commission through its tariff order in Case No. 48 of 2016 dated 03.11.2016 has merged continuous and non-continuous tariff categories from 01.11.2016.

(xii) In view of the above considering the facts on record and as per Regulation 6.6 of CGRF Regulations, the Respondent prays that, the representation of the Appellant be rejected.

5. The hearing was held on 23.12.2019. During hearing, the Appellant and the Respondent argued in line with their written submissions. The Appellant argued that in view of the Commission's dispensation in Case No.94 of 2015, its case is not time barred and appropriate relief needs to be granted as a matter of right. The Respondent has not dealt its case diligently and not even bothered to respond to the application submitted by it.

6. On the contrary, the Respondent argued that the case squarely falls under Regulation 6.6 of the CGRF Regulations. The Appellant filed the case with the Forum on 24.04.2019 and

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the cause of action period is tenable for retrospective two years i.e. 24.04.2017. Therefore, the remedy for cause of action prior to 24.04.2017 is time barred. After 01.11.2016, both the tariff categories are merged by the Commission's order dated 03.11.2016 in Case No.48 of 2016 hence the tariff category of continuous and non-continuous seized to exist. Hence, the claim of the Appellant is not tenable. The Respondent argued that the High Court has not issued any stay or passed any interim directions which would affect this case. The Respondent prayed that the representation of the Appellant be rejected.

Analysis and Ruling

7. The Forum has referred cases of Gimatex Industries Pvt. Ltd. V/s. MSEDCL Wardha on the issue of continuous to non-continuous tariff category and interest thereof filed at Nagpur Bench of Bombay High Court. The detailed status of these cases as downloaded from the website of High Court of Bombay, Bench at Nagpur is as below: -

Writ Petition Details	Filing Date	Registration Date	Status on Last Date
W.P.No.1297 of 2017	18.02.2017	03.03.2017	Pre-admission on 03.12.2019
W.P.No.1298 of 2017	18.02.2017	03.03.2017	Pre-admission on 03.12.2019
W.P.No.1300 of 2017	18.02.2017	03.03.2017	Pre-admission on 03.12.2019

There is no interim stay, nor any directions issued by the Hon'ble High Court of Bombay in respect of cases referred above. Moreover, despite the Forum's directions, the Appellant has filed this representation for deciding the matter by this Authority. I am, therefore, of the opinion that issues involved in each case is completely different and unique and not a generic one. Therefore, I prefer to issue this order.

8. In this case, the following issues are emerged.

(a) The Appellant was billed under continuous tariff category for commercial use. The Appellant referred Regulation 9.2 of the SOP Regulations for change of tariff category from continuous to non-continuous and submitted its application for the

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same on 17.04.2012 to the Respondent. When this application was submitted, the order of the Commission dated 12.09.2008 in Case No.44 of 2008 was in force. In this order, it was mandatory for the continuous tariff category consumer to submit an application for change of tariff from continuous to non-continuous within one month from the date of issue of this order. The date of this order is 12.09.2008. This order was valid till issue of order of the Commission in Case No.94 of 2015 dated 19.08.2016. Therefore, if the Appellant has not submitted its application for change of tariff category within one month from the date of the order then valid and in force, there is no question of entertaining such applications by the Respondent. In the instance case, the Appellant has submitted first ever application for such change of tariff category on 17.04.2012 i.e. much after 12.09.2008. Even it has not taken up its case for change of tariff category post issue of subsequent tariff orders in Case No.19 of 2012 (dated 16.08.2012) and Case No.121 of 2014 (dated 26.06.2015) despite the Respondent implementing continuous and non-continuous tariff category.

(b) There was option available to the Appellant at the very beginning when it applied for change of tariff category on 17.04.2012 to have filed its grievance before IGRC and then CGRF, as in its opinion, the Respondent has not taken any action on its application. On the contrary, the Appellant again wrote a letter dated 01.11.2018 to the Respondent which is received by it on 14.11.2018. So, practically, from 17.04.2012 to 14.11.2018, the Appellant was dormant, and it never approached the grievance mechanism available under the regulations for redressal of its grievance. Even till issue of subsequent tariff order in Case No.48 of 2016 in which the two tariff categories are merged with effect from 01.11.2016, the Appellant chose to remain silent.

9. I noted that the Appellant approached the Forum on 24.04.2019 whereas it has prayed for refund of tariff difference for continuous to non-continuous tariff category for the period starting from May 2012 to October 2016. This does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations. The relief could be granted from 24.04.2017 which is two years prior to date of filing the application with the Forum which is

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24.04.2019. But on 24.04.2017, no such two categories were in existence because it was merged by the Commission in its order dated 03.11.2016 in Case No.48 of 2016. Therefore, the Appellant does not have any case as such. The Regulation 6.6 of CGRF Regulations is quoted below: -

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

10. It is expected that the consumer should approach the IGRC in a reasonable period though there is no such limit provided under the Regulations. This needs to be harmoniously read with Regulation 6.6 of CGRF Regulations which ultimately puts two years limitation period for CGRF to admit the case. This principle and logic is upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon. Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the judgment is quoted below: -

> *"37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.*
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> *38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.*
>
> *39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.*

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42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period."

11. In view of the above discussions, I am of the considered view that the Appellant does not have any case as it does not fit into the regulatory framework of Regulation 6.6 of the CGRF Regulations and therefore the representation is rejected and disposed of accordingly. The order of the Forum stands modified accordingly.

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12. The Secretariat of this office is directed to refund an amount of Rs.25000/- deposited by the Appellant immediately.

13. No order as to cost.

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

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai