BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 16 OF 2020

In the matter of tariff difference

ESDS Software Solution Pvt. Ltd. …….. Appellant

V/s.

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

Appearances

For Appellant : 1. Rajesh Gaikar, Sr. Manager
2. A. Bhandarker, Manager
3. Sheshrao Pawar, Representative

For Respondent : 1. D. R. Mandlik, Sr. Manager (F & A)
2. Nital Varpe. Jr. Law Officer

Coram: Deepak Lad

Date of Order: - 6th March 2020

ORDER

This Representation is filed on 27th January 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 3rd January 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Nashik Zone (the Forum).

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2. The Forum, by its order dated 03.01.2020 has dismissed the grievance in Case No. 80 of 2019-20.

3. Aggrieved by the order of the Forum dated 03.01.2020, the Appellant filed this representation stating in brief as below: -

(i) The Appellant is a HT Industrial consumer (No. 049069021420) at Plot No. 24/25 at Satpur MIDC, Nashik. The Appellant is lawful owner of the premises and is carrying out its activity related to Information Technology/ Information Technology Enabled Services (IT/ITES).

(ii) It is registered with the District Industries Centre (DIC), Nashik for IT / ITES. Appellant is in continuation of such DIC registration since its inception in the year 2005 and there is no change in the nature of business till date. Appellant is major contributor in the overall growth of Nashik City and takes pride in operating and conducting a world class business of Data-Centre services in Nashik.

(iii) The Appellant received electricity bill of Rs. 3,13,60,630/- (Rupees three crores thirteen lakhs sixty thousand six hundred & thirty only) for the month of July 2019 with due date of payment on 19.08.2019. The said bill is huge, shocking and contains an excessive amount. Appellant immediately raised its concern about the same with the Respondent and sought clarification.

(iv) Accordingly, the Respondent by its letter dated 19.07.2019 communicated that the said amount is on account of tariff difference (as per Commercial Circular No. 275 and 318 of MSEDCL) for past consumption for the period 21.10.2010 to 02.01.2011 and 01.01.2016 to 02.04.2019 due to non-submission of relevant certificate for the relevant period.

(v) Not satisfied with the said letter, the Appellant filed grievance application before Internal Grievance Redressal Cell (IGRC) on 08.08.2019 which issued order on 01.10.2019 rejecting the grievance. The order of the IGRC reads as under-

"As per MERC-MYT order in case No.121/2014, HT-I (A) Industry -General tariff this tariff category shall be applicable for use of electricity/ power supply by an Information Technology [IT) or IT-enabled Services (ITeS) Unit as defined in the applicable IT/ITes policy of Government of Maharashtra. Where such Unit does not hold the relevant permanent registration Certificate, the tariff shall be as per the HT II category, and the

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HT I tariff shall apply to it after receipt of such permanent registration Certificate and till it is Valid.

Consumer not submitting permanent registration certificate for period Dt.1.01.2016 to 02.04.2019 for period dt. 21.10.2010 to 02.01.2011 from Directorate of Industries. So tariff difference HT-I to HT-II for period dt. 01.01.2016 to 02.04.2019 is Rs.2,96,94,352/- & for period dt. 21.10.2010 to 02.01.2011 Rs.4,51,672/- is recover in bill of July 2019 is correct.

So requested to consumer to pay Said tariff difference amount."

(vi) Aggrieved by the above decision of IGRC, the Appellant filed grievance on 04.10.2019 before the Forum which was registered as Case No. 80/19. The Forum issued order on 03.01.2020 dismissing the application of the Appellant. Aggrieved by this, the present appeal is filed by the Appellant on the following grounds: -

(a) The Forum has passed the order in casual manner without applying judicial mind.

(b) The Forum did not take pains to go through the factual aspects and documentary evidence filed by the Appellant on record. It did not even discuss any single document filed by the Appellant on record and passed judgment in most casual manner.

(c) The Forum completely omitted to discuss the written arguments and issues raised therein. It erroneously and casually passed judgment by merely discussing the guidelines of circular without even checking its applicability in the present case.

(d) The Forum erroneously decided the aspect of limitation of retrospective recovery of amount by concurring the demands of MSEDCL without going into the merits of the case. It made serious mistakes in holding starting point of limitation 02.03.2019.

(e) The Forum failed to consider the judgments of Appellate Tribunal of Electricity (ATE), the orders of the Maharashtra Electricity Regulatory Commission (the Commission) and earlier orders passed by Electricity Ombudsman, Mumbai in this regard.

(f) The Forum failed to understand that the Appellant has permanent STPI registration, on the strength of the same he was exempted from electricity duty from past ten years which clearly proves that applicant is permanently STPI

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registered, coupled with its company registration certificate dated 8.08.2005, DIC registration DIC dated 28.06.2012, Udyog Adhar (MSME Registration) dated 18.08.2005, Memorandum and Articles of registration of company all other documents which clearly proves the same. Appellant states that registration with DIC or any other governmental institute as IT-IT enabled service is an once time process and every such registration is permanent unless such certificate is quashed or cancelled.

(g) The Forum failed to consider the law laid down by the Commission in Case No. 111/2009 regarding categorisation based on purpose.

(h) The Forum failed to understand that, tariff category of a consumer cannot be changed without giving notice and without affording opportunity of hearing to the concerned consumer. This ratio has been laid down by the ATE in Appeal No.48 of 2009 dated May 21, 2009.

(i) In the Forum, no documentary evidence with respect to audit report as claimed by the Respondent was tabled.

(j) The Forum failed to understand the settled position of law laid down by Commission and ATE that a consumer cannot be retrospectively charged for any difference in tariff category or towards any escaped billing. The Appellant relied on the ATE Judgment in Appeal No. 131 of 2013 dated 7th August, 2014. The Appellant also relied on the order of the Commission in Case No. 24 of 2001 dated 11.02.2003.

(k) The Forum failed to understand that by letter dated 07.03.2019 MSEDCL requested the Appellant to submit the certificate from appropriate authority, about registration of firm as (Software) Industry i.e. IT enabled Service within 03 days and letter dated 19.07.2019 quoting to change applicants tariff category from Industrial (HT I) to Commercial (HT II) from next billing month i.e. July 2019 till the receipt of permanent registration Certificate and recovery for tariff change difference will be adjusted in your electricity bill.

(l) The Forum failed to understand that Circular No. 275 and 243 are not applicable and useful in the present case. It is required to understand that, applicant is registered with DIC, MSME and all other government organizations as IT/ITES industry since inception DIC registration is a one time-permanent process, however it only requires payment of process fees at

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an interval of three years. Since, Appellant is registered with DIC, said fact is not disputed by MSEDCL. It is not required for Appellant to register afresh with DIC and to produce new fresh registration certificate with MSEDCL. However, the Forum failed to understand the very fact and ordered against the Appellant without applying its mind in its proper sense. Further the circular no. 318, Dt. 26/06/2019.

(vii) Considering the totality of circumstances, it is prayed that,

A. Order passed by the Forum in Case no. 80/2019 be quashed and set aside.

B. Retrospective recovery amount claimed by respondent MSEDCL to the tune of Rs. 3,13,60,630/- be quashed.

4. The Respondent filed its reply by letter dated 18.02.2020 stating in brief as below: -

(i) The Appellant is a HT consumer (No. 049069021420) at Plot No. 24/25 at Satpur MIDC, Nashik having Sanctioned Load 490 kW, Contract Demand 470kVA and currently billed in HT Industrial Tariff.

(ii) As per Maharashtra's IT / ITES Policy 2015, the IT/ITES units registered with the Directorate of Industries will be supplied power at industrial rates applicable as per the tariff orders of the Commission.

(iii) HT-I (A) Industry General Tariff category shall be applicable for use of electricity/power supply by an IT/ITES Unit as defined in the applicable IT/ITES policy of Government of Maharashtra. Where such Unit does not hold the relevant permanent registration Certificate, the tariff shall be as per the HT-II category and the HT-I tariff shall apply to it after receipt of such permanent registration Certificate and till it is Valid. This is incorporated in

(a) the Tariff Order dated 26.06.2015 in Case No. 121 of 2014 of the Commission and Commercial circular No.243,

(b) the Tariff Order dated 03.11.2016 in Case No. 48 of 2016 of the Commission and Commercial circular No.275 and 318

(iv) The Appellant has submitted letter on 26.04.2017 with registration certificate of Software Technology Parks of India (STPI) No. STPI/NSK/VIII (A) (010)/2005/333 dated 21.10.2005 wherein permission was valid from 21.10.2005 to 20.10.2010, letter of intent (LOI) and letter No.STPI/NSK/VIII (A)

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(010)/2005/1814 dated 10.01.2011 extension permission valid from 03.01.2011 to 02.01.2016 as an IT /ITES unit.

(v) The Respondent requested to submit the certificate of registration as (Software) Industry i.e. IT/ITES. The Appellant submitted letter on 22.03.2019 with Form.No.5 i.e. Registration form for DIC, Nashik. The Appellant has filled the form and has acknowledgment of DIC, Nashik. The Appellant is orally saying that the acknowledgment copy is "as good as" DIC certificate, and no certificate is required, hence ESDS cannot be considered as having permanent registration certificate under IT/ITES.

(vi) The Appellant failed to provide permanent registration certificate under IT/ITES for the period from 03.01.2016 and 02.04.2019, where it is consumer's responsibility to avail the certificate from the concerned authorities and to submit time to time regarding specific period to MSEDCL to make necessary changes of tariff.

(vii) Government Auditor has raised the audit para that the consumer is dealing with the development of all types of software and allied activities and was registered with Software Technology Parks of India (STPI), Ministry of Communication & Information Technology, Government of India. The date of the registration was up to 02.01.2016. The Appellant should submit the valid certificate for further period. The Appellant had not submitted the valid certificate of registration from January 2016, thus the category would be HT-II (Comm) due to non-submission of the registration certificate from the Competent Authority.

(viii) The Appellant failed to provide certificate for period 02.01.2016 to 02.04.2019, hence tariff difference of HT-I to HT-II is charged to it in the month of July 2019 amounting to Rs.2,96,94,351.97.

(ix) The Appellant in its application has referred that, "*The criteria of purpose of supply has been used extensively to differentiate between categories, with categories such as residential- Non- residential/ commercial purpose, industrial purpose, agriculture purpose etc. It is clarified that the commercial category actually refers to all non-residential purpose or which has not been classified under any other specific category. Further it is clarified that the consumer categorization should reflect main purpose of the consumer purpose.* Further, consumer has submitted DIC certificate No. JDINSK/IT-Registration/2018-19/603 dated 03.05.2019 where

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registration is valid from date 03.04.2019 to 02.04.2022 and to be renewed before three month before the date of expiry. It clearly indicates that the Appellant agrees, if he fails to provide registration certificate of valid period, then HT-II (Commercial) Tariff will be applicable.

(x) The Respondent referred the orders passed by the Electricity Ombudsman, Mumbai in Representation No.245 of 2018 and Representation No.67 of 2019 order regarding rightful recovery of tariff difference in support to its submission.

(xi) The Respondent prays that the representation of the Appellant be rejected.

5. During the hearing on 24.02.2020, both the parties argued in line with their written submissions. Most of the submission of the Appellant by way of written arguments is more or less repetition of its submission in the main representation which is appropriately captured above. Besides this, its other written arguments in brief are as below: -

(i) The Commission's order in the matter of Petition of Seafood Exporters Association of India regarding wrongful Tariff categorization by the Respondent in violation of Tariff Order dated 16.8.2012 in Case No. 19 of 2012, Case No. 42 of 2015 and M.A. No. 3 of 2015 M.A. No. 4 of 2015, Dt. 13 May, 2016 further held that

"*As far as retrospective application of a different tariff category is concerned, the Commission's ruling in its Order dated 11 February, 2003 in Case No. 24 of 2001, which is relevant in this Case, was as follows:*
No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process… and the recovery, if any, would be prospective only… The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively."

(ii) EO Nagpur order dated 21.09.2018 in representation No. 33/2018 held that-

6. Since this is a case of reclassification, the order of the Maharashtra Electricity Regulatory Commission of 11th February 2003 in case No. 24/2001 will apply. This order states that "No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the terms to be recovered retrospectively."

(iii) EO, Mumbai order dated 14.03.2018 in Representation No.12 of 2018 held that-

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"9….. The respondent has not changed the tariff category pursuant to their inspection and admittedly, the purpose of use remained the same. In case no 24 of 2001, the commission in its order Dt. 11 February 2003 has held that no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of consumer even though the same might have been pointed out by the auditor. The ApTel in appeal no 131 of 2013 has also ruled in its order Dt. 01 august 2014 that the arrears for difference in tariff could be recovered only from the date of detection of error. Similarly in representation no 124, 125 and 126 of 2014 decided on 23 December 2014, it is held that the recovery on account of reclassification can be prospective only. Even if it is held that, at the relevant time, no manufacturing activity was in operation, the supplementary bill issued by the respondent for recovery of tariff difference retrospectively for the period from August 2013 to august 2015 will not be tenable."

(iv) It has also referred the Larger Bench Judgment dated 12.03.2019 of Bombay High Court in W. P. 10764 of 2011 with others and argued that demand difference of tariff for the period 21.10.2010 to 02.01.2011 is clearly out of limitation, so also demand for the period between 01.01.2016 to July 2017 is also time barred and the same cannot be recovered. Only retrospective recovery for two years prior the date of issue of bill for amount due can be recovered.

(v) Commercial Circular No. 275 and 243 are not applicable and useful in the present case. It is required to understand that, Appellant is registered with DIC, MSME and all other government organizations as IT/ITES since inception DIC registration is a one time-permanent process, however it only requires payment of process fees at an interval of three years. Since, Appellant is registered with DIC and said fact is not disputed by MSEDCL, it is not required for Appellant to register afresh with DIC and to produce new fresh registration certificate with MSEDCL. Further the circular no. 318 dated 26.06.2019 only explains the method which is required to be followed by MSEDCL for giving (NEW) connections as per circular no. 212 dated 01.10.2013 is not at all relevant and applicable to the present case. Applicant is old consumer of MSEDCL and hence the same has no bearing on the present case.

(vi) MSEDCL has come up with the case of re-categorization due to alleged non-compliance of registration papers, however demand raised by MSEDCL cannot be applied retrospectively even for a single day and same shall only be prospective in nature, even if the auditor has pointed out so. Bill raised by MSEDCL for the period 21.10.2010 to 02.01.2011 and 01.01.2016 to 02.04.2019 becomes illegal and no recoverable and the same is required to be quashed and set aside. Respondent be

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further directed not to cut off the electricity supply on account of the illegal demand of bill.

6. The Respondent argued that the Appellant was having valid IT/ITES certification for the following periods and was therefore billed as per the appropriate tariff category then applicable for IT/ITES.

(a) 21.10.2005 to 20.10.2010

(b) 03.01.2011 to 02.01.2016

(c) 03.04.2019 to 02.04.2022

It clearly indicates that registration certificate was not available for the following periods: -

(d) 21.10.2010 to 02.01.2011

(e) 03.01.2016 to 02.04.2019

However, inadvertently, the Appellant was billed as per IT/ITES policy for the period mentioned at (d) and (e) above. Therefore, recovery for the same period is proposed and raised in the bill of July 2019. This was duly informed to the Appellant. The Respondent cited the Judgment dated 18.02.2020 of the Supreme Court of India in Civil Appeal No. 1672 of 2020 arising out of SLP (Civil) No. 5190 of 2019. The Respondent while maintaining the claim for entire recovery as raised in the bill on one hand and on the other, it has cited the EO(Mumbai) Order dated 13.02.2020 in Representation No. 220 of 2019 which is decided in accordance with the provision of Section 56 (2) of the Act is really surprising.

Analysis and Ruling

7. The Appellant cited judgment of ATE, various orders of the Commission and various orders of the Electricity Ombudsman. The Appellant argued that purpose is the deciding criteria in application of tariff. While this is true, it is not a straight jacket formula, because the tariff is with respect to the purpose for which the electricity is used but certain qualifying conditions in the form of permissions / approvals / NOCs / registrations from various statutory competent authorities are required to be submitted which will finally put a stamp of approval on the nature of the purpose which dovetails into application of that particular tariff category to the consumer. Moreover, purpose cannot be superficially looked into as it has multiple

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layers of various processes which need to be considered in detail, before the final product is made. It, therefore, follows that a relevant certificate required for application of appropriate tariff for IT/ITES activity of the Appellant has become necessary as per the tariff orders. This is very much the part of the orders of the Commission which are given below: -

(A) Case No. 121 of 2014 dated 26.06.2015,

HT I: HT- Industry
Applicability

This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purposes of manufacturing. This Tariff shall also be applicable (but not limited to) for use of electricity / power supply ……;

This Tariff shall also be applicable for use of electricity / power supply to IT/ITES units covered under IT Industry and IT enabled Services (as defined in the Policy of Government of Maharashtra as may be prevailing from time to time). Till the establishment doesn't receive permanent registration certificate as may be applicable; Tariff shall be as per HT-II Category and after receipt of permanent registration certificate HT I category shall be applicable till the validity of the Certificate. (Emphasis added)

(B) Case No. 48 of 2016 dated 03.11.2016

HT I: HT – Industry

HT I (A): Industry – General

Applicability:
This tariff category is applicable for electricity for Industrial use at High Voltage for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.

……

…… ……

This tariff category shall be applicable for use of electricity / power supply by an Information Technology (IT) or IT-enabled Services (ITeS) Unit as defined in the applicable IT/ITes Policy of Government of Maharashtra. Where such Unit does not hold the relevant permanent registration Certificate, the tariff shall be as per the HT II category, and the HT I tariff shall apply to it after receipt of such permanent registration Certificate and till it is valid. (Emphasis added)

(C) Case No. 195 of 2017 dated 12.09.2018

HT I: HT – Industry

HT I (A): Industry – General

Applicability:

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This tariff category is applicable for electricity for Industrial use at High Voltage for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.

……..

This tariff category shall be applicable for use of electricity / power supply by an Information Technology (IT) or IT-enabled Services (ITeS) Unit as defined in the applicable IT/ITes Policy of Government of Maharashtra. Where such Unit does not hold the relevant permanent registration Certificate, the tariff shall be as per the HT II category, and the HT I tariff shall apply to it after receipt of such permanent registration Certificate and till it is valid.
(Emphasis added)

It is evident from all these three tariff orders that the industry which is IT/ITES but does not provide necessary permanent registration certificate, it would not get the benefit of appropriate tariff category. Therefore, the submission of relevant certification is very much necessary.

8. Secondly, it has cited the ATE Judgment and the Commission's order in Case No. 24 of 2001 dated 11.02.2003 which is with respect to retrospective recovery. While on the subject, it is to note that the undersigned has decided many cases in view of the Judgment dated 12.03.2019 of the Larger Bench of Bombay High Court in W.P. No .10764 of 2011 with others which has interpreted Section 56 (2) of the Act. The Appellant itself has referred this Judgment in its submission. Therefore, I do not find it necessary to go into all other citations of the Appellant as the Larger Bench Judgment has settled the position of law with respect to retrospective recovery and the Judgment of ATE and the respective orders of the Commission are no more relevant. The Respondent also cited one Supreme Court Judgment referred above which is on disconnection under Section 56(1) of the consumer where recovery under 56(2) has been proposed and hence not relevant.

9. The Respondent has raised the supplementary bill for the tariff difference from 21.10.2010 to 02.01.2011 and 03.01.2016 to 02.04.2019 for total amount of (Rs. 2,96,94,352/- + 4,51,672/-) in the month of July 2019. The case needs to be decided in view of the Larger Bench Judgment dated 12.03.2019 of Bombay High Court in W.P. No. 10764 of 2011 with others. The relevant portion of the Section 56 (2) of the Act and the Larger Bench Judgment is quoted below.

Section 56 (2) of the Act

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

The Larger Bench Judgment dated 12.03.2019 of the Bombay High Court.

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

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised

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in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

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

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

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

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

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

10. In view of the above discussions and Larger Bench Judgment, the Respondent can recover retrospective recovery from July 2017 to June 2019 as the debit bill has been raised in the month of July 2019. However, the record shows that the Appellant has submitted the relevant certificate dated 03.05.2019 and having validity period as 03.04.2019 to 02.04.2022. Therefore, the retrospective recovery shall be limited to March 2019 only i.e. for the period from July 2017 to March 2019.

11. While parting with the order, I am constraint to pen down that the Forum has grossly erred in applying its mind to the facts of the case and further miserably failed in appreciating the settled position of law for retrospective recovery under Section 56 (2) of the Act, based on which the undersigned has issued many orders. Therefore, the order of the Forum is set aside. In view of the above, I pass the following order: -

(a) The Respondent to revise the tariff difference bill considering the period from July 2017 to March 2019 only, without DPC and interest.

(b) Suitable instalments may be granted if the Appellant so desires. If the instalments are granted, then the Appellant needs to pay the amount of the current bill along with the instalment within due date.

(c) The Respondent's higher officials are at liberty to inquire as to how the error occurred in non-application of appropriate tariff during the no certification period of IT/ITES in respect of the Appellant and may decide on recovery of such arrears from the erring officials.

(d) Compliance to be submitted within two months from the date of issue of this order.

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

Sd/-
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Electricity Ombudsman (Mumbai)

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Secretary
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