Consumer Grievance Redressal Forum
Maharashtra State Electricity Distribution Co. Ltd.
Bhandup Urban Zone, Bhandup

Ref. No. Member Secretary/MSEDCL/CGRF/BNDUZ/ Date :

Case No. 466 Hearing Dt. 24/09/2012 & 04/10/2012

M/s. Panacea Biotech - Applicant

Vs.

MSEDCL, Vashi Divn - Respondent

Present during the hearing
A] - On behalf of CGRF, Bhandup
1) Shri S.K. Chaudhari, Chairman, CGRF Bhandup
2) Shri R.M Chavan, Member Secretary, CGRF, Bhandup.
3) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B] - On behalf of Applicant
1) Shri Suraj Chakravarti, Consumer representative.
2) Shri Saroj Upadhayay, Consumer representative.

C] - On behalf of Opponent
1) Shri S.A. Kachare, Nodal Officer, Vashi Circle.
2) Shri C.R. Mishra, Ex. Engr., Vashi Division.
3) Shri Talwalkar, Dy. Ex. Engr., Vashi.
4) Shri D.M. Jadhav, Law Officer.

Dictated by Hon'ble Member

Panacea Bio-tech, Global R & D Centre (herein after referred to as the "applicant") having consumer number 000149033610, meter no. 055-MSE61237, situated at plot no. 72/3, General Block, TTC, MIDC, Mhape, Navi Mumbai (for the sake of brevity, referred to as the 'premises') has filed this complaint, claiming wrong application of tariff; on 25/07/2012 before CGRF.

1) Facts in brief of this complaint are as follows :

On 29/10/2007applicant applied for electricity connection for industry (load 1895 kw installed load, 22 kVA maximum demand) at the premises where the applicant is running R & D Centre and manufacturing the drug PacliAll.

The Respondent (MSEDCL) sanctioned fresh power supply to the applicant vide letter dated 12 October 2007.

From the time of connection till February 2010 the applicant was billed as HTIN

In March 2010, Flying Squad visited the applicant's premises. Spot inspection was carried on by the utility on 04/03/2010 and remark was made to shift the tariff from HTIN to HTII. As per its report, rate of power supply was revised from 4.74 to 7.15/KWh, thereby raising bill of ₹ 11,60,660/-. Thus, the tariff was changed retrospectively from 01/06/2008 and bill of ₹ 80,55,506/- was issued to the applicant.

The applicant approached the IGRC on 01/10/2010, but no decision is given till date. Being aggrieved by this, applicant has approached this Forum relying on tariff order 72/07, dtd. 20/06/2008.

2) It is the contention of complainant that

A) It is engaged in purely "Research and Development Biotechnological Science and life saving medicines such as in cancer and kidney disease in aid and furtherance of their activities as Pharmaceutical Industrial Activities". Hence, it should be billed at industrial rate for the benefit of mankind.

B) It has obtained Patent in the year 2010 for PacliAll. At the time when this applicant took sanction, there were no specific guidelines available from MERC. Had any such guidelines made available, the applicant would have taken sanction for production or would have waited for 2 years more.

C) Maharashtra Biological Policy 2001 has prescribed financial incentives which inter alia explicitly provide that government will make industrial tariff applicable to all biotechnological units.

D) National Electricity Policy under Electricity Act 2003 is to the effect that actual increase in the tariff should not be more than 8.79% on an average, whereas an act of change of tariff category of this Consumer amounts to increase by 106%.

E) Upto tariff order of 20th June 2008, there was consistent legislative policy to classify Research Laboratories under Industrial category. Thus, the change of category is beyond statutory mandate.

F) Tariff order of 31/05/2008 has specified a list of various activities falling under HTII commercial category. But it has not mentioned Research Laboratories in it. Therefore, it is clear from it that it did not contemplate Research Laboratories to come under HTII commercial category.

G) Hon'ble Supreme Court has given a ruling (1978) 2 SCC 213 that true test for classification of the activity is "predominant nature of the activity carried on by establishment. Since the predominant activity of this applicant is manufacturing of the drug PacliAll and R&D activities are ancillary to it, the complainant should be billed as Manufacturer.

H) Section 62(3) of Electricity Act 2003 indicates that "purpose of the user" is relevant factor for determining tariff.

I) Panacea is a registered company. Memorandum and Articles of Association state object of the Company as: "to manufacture, formulate, process, develop and refine all kind of pharmaceuticals, antibiotics and medicines". The Company is manufacturing the product PacliAll at the said premises.

J) All load of the Complainant is motive load, which comes under industrial category.

K) The Complainant is in to production of the drug PacliAll; and R&D is carried on for their own product, manufactured at the same premises where R&D load is 20% and production load is 80%.

L) Flying Squad did not inspect the premises. They never saw the actual usage, but inspected the documents only; based on which the utility has changed the category of this consumer.

M) As per Tariff order 2012-13, this consumer clearly comes under the category of industry.

N) As per CE Commercial guidelines (PR-3/Tariff) dtd. 05/08/2010 this complainant must be charged as per industrial tariff.

O) Food and Drug Administration, Maharashtra has given a GMP (good manufacturing practices) certificate to this complainant.

P) Respondent cannot claim recovery: as the same has not been shown continuously as arrears. (Section 56 (2) of EA 2003)

3) Main objections which the Respondent has raised are as follows :

A) Supply was sanctioned for R&D purpose only and the consumer is not carrying on any manufacturing activity at the said premises. The consumer is consuming supply for R&D purpose only. Development of the drug is not 'manufacturing'.

B) As per Sec. 126, EA 2003, consumer should have informed the Respondent about the change in activity, when the complainant started with actually manufacturing the drug.

C) Flying Squad has inspected the premises and based on it's report, the category has been changed to commercial.

D) All consumers under Vashi and Thane area, who are doing the same business of R&D service centers e.g. Glenmark Laboratories are categorized under commercial category w.e.f. 01/06/2008, against which no one else has complained till today. Thus, there is no illegality in changing the tariff of this complainant to commercial.

E) Major load of this consumer belongs to laboratory. Hence, the Respondents are entitled to send the bill at commercial rate.

F) The documents filed by the complainant viz.

a) Letters of the consumer dtd. 19/09/2007 and 13/03/2010 stating that they will manufacture life saving drug.

b) License for manufacture dtd. 20/02/2010.

c) An application for excise registration dtd. 13/03/2010.

d) License dtd. 20/10/2010 and

e) Product permission letter dtd. 04/01/2011.

Clearly discloses that the activity of complaint is not that of Industry. Therefore it was argued by the Respondent that the commercial tariff made applicable to the complainant is legal and does not require to be changed.

g) The utility has further stated that "at the time of joint inspection of the premises it was noticed that on 2nd floor; more than 50% is used for R&D. Some part was not shown from inside, which was claimed to be for production. It was observed that there was no production work in process".

Hence, the complainant is not entitled to be categorized as an industry.

h) As per Respondent the complaint is barred by limitation as the cause of action arose in the month of March 2010, when 1st bill was served as per commercial rate.

4) Observations

An inspection was carried on by this Forum in the presence of representatives of both complainant and the utility.

During this joint inspection it was observed that :

a) The complainant is not into hard core research, but its primary activity is production/manufacturing of the drug PacliAll.

b) The R&D activity carried on by the consumer is solely for their own purpose, ancillary to its own production.

c) The final product i.e. the injection PacliAll carries on it an inscription "Manufactured by Panacea".

d) It is true that actual manufacturing/production process is carried on at 2nd floor, which occupies nearly 50% of the floor space. But to my opinion, space occupied by the actual manufacturing machinery cannot be a criterion to decide activity of the complainant.

e) I do not agree with the contention of the utility that there was no production work in process, as during the said visit dtd. 11/09/2012 by the CGRF, it was noted that the production activity was very much in process. It is also to be noted that load of the supply cannot be decided depending only on the area, but the vital parameters to decide the consumption will be the machinery used by the consumer at particular section/floor.

f) It is not denied by the consumer that they have R&D centre at this place, but there contention is that, said R&D is carried on for their very own purpose.

g) Vide letter no. SF/VC/Tech/W-1319 dtd. 12th October 2007, the utility has sanctioned the electric supply to this consumer for the purpose of pharmaceutical R&D centre (at the time, the actual production had not started as per oral submission of the Complainant) and the same was billed as "Industry" till the year 2010.

h) CE Commercial guideline (PR-3/Tariff) dtd. 05/08/2010 given in reference to letter nos. P-Com/GKUC/211957, dtd. 26/06/2009, P-Com/Thane/26894, dtd 17/08/2009 and P-Com/Kalyan-1/Tariff category 32504 dtd. 17/10/2009 has stated as :

- When any industrial consumer is having testing and R&D laboratory as its ancillary unit, it is duty of the concerned incharge of MSEDCL to check the purpose and usage of the supply.
- If in such case industrial load is predominant as compared to the R&D load and also if the R&D is being carried on by the industry exclusively for its own product development, then it's but natural to apply "Industrial Tariff" to such consumer.
- In other cases, if the consumer is having only R&D and testing load, then such consumer should be billed as per Commercial tariff.

i) This order makes it crystal clear that the objection raised by MSEDCL that Development of the drug is not 'manufacturing' has no merits.

j) Tariff order 2012-13 has made it crystal clear that:-

"HT-1: HT Industry –

This tariff shall also be applicable to R&D units-situated in same premises of an Industry:

-taking supply from same point of supply-

R&D units situated at other places and taking supply from different points shall be billed as HT(II) A or HT (II) B as the case may be".

k) The Respondents have produced citations of M/s. Atul Impex Pvt Ltd. and M/s. Allied Mining Company.

But to my opinion, these are not applicable in the present case, as the citations are of the cases where there was no production/manufacturing activity.

l) The consumer has filed citations of this CGRF of case no. 322 of M/s. Lumis Biotech Pvt. Ltd., where this Forum has ordered reverting back the commercial tariff to Industrial tariff, holding that the activity of the consumer was of manufacturing.

Also in complaint no, 356 of KET's Scientific Research Centre, this Forum has ordered reversal of tariff from commercial to HT-V: as the R&D Lab is exclusively for its own product development and not for any commercial testing for outsiders.

I agree with it in principle, though we are not bound by it.

m) The Electricity Act 2003 has not given definition of Manufacturer or Industry. But the same can be derived from the Consumer Protection Act 2003 and Industrial Disputes Act 1947.

Definition of Industry as given in Industrial Disputes Act 1947 reads as : "Industry mean

- Any systematic activity

- Carried on by co-operation between an employer directly or workmen (whether such workmen are employed by such employer directly or by or through any agency including a contractor)
- For the production, supply, distribution of goods or services.
- With a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual of religious in nature)."

n. Manufacturer as defined under the Consumer Protection Act 1986 2(d) (j) states as: "Manufacturer means a person who-

i) Makes or manufactures any goods or parts thereof or

ii) Does not make or manufacture any goods but assembles parts thereof, made or manufactured by others or

iii) Puts or causes to be put his own mark on any goods, made or manufactured by any other manufacturer.

In the light of these definitions, I hold that this complainant satisfies both the definitions.

o) Tariff order dtd. 17th August 2009 has clarified that the commercial category actually refers to all 'non-residential, non-industrial purpose' or which has not been classified under any other specific category. We hold that this consumer satisfies the definition of industry as well as manufacturer as

- It is manufacturing the drug PacliAll, which bears an inscription on it indicating in very clear terms that the said drug is 'manufactured by Panacea Biotech, Global R&D Centre, situated at plot no. 72/3, General block, TTC, MIDC, Mhape, Navi Mumbai.
- It is engaged in production and distribution of the drug-PacliAll.

p) During the course of arguments, as the report of flying squad was challenged by the consumer; the utility was asked to file the documents, based on which it has changed the category. But MSEDCL was unable to file/quote the documents.

q) The utility has relied upon the citation of Hon'ble Bombay High Court in the matter of M/s. Rototex Polyester v/s Administrator, where in it has been

mentioned that the consumer cannot raise the bar of limitation in cases of clerical mistake. Here, according to us, this particular matter does not belong to any clerical mistake; hence the citation is not relevant.

r) It is on record that the consumer had approached IGRC on 01/10/2010. He approached this Forum as no decision was given by IGRC. Hence, the complaint is not barred by limitation.

s) The Respondent (MSEDCL) has sanctioned fresh power supply to the complainant vide letter dtd. 12th October 2007. In the said letter, under the column "purpose", it has been mentioned as "Pharmaceutical R&D Centre". Thus, the respondent being fully aware of the nature of business of the Complainant; had changed as per Industrial rate till the year 2010 March.

t) I have also gone through the Maharashtra Biological Policy 2001. I hereby produce Section 36 (financial incentives) of the said policy.

Financial Institute

36) Government will make the industrial power tariff applicable to all Biotechnology industries engaged in the production of high-end products. This benefit will be applicable to both new and old companies. Additionally, agricultural Biotechnology companies will be given power at agricultural rates. All Biological Industries will be exempted from statutory power cuts.

37. Biological units will be exempted from paying electricity duty. Captive power generation will be permitted to Biotechnology units through out the State. Public bodies or their joint ventures will be permitted to establish 'Independent Power Producers' for the dedicated provision of power to Biotechnology Parks promoted by them.

I therefore hold that the activity of the Complainant can be unambiguously termed as "Industrial".

With this observation I conclude my order and forward papers to Hon'ble Member Secretary for his observation and findings.

Dictated by Hon'ble Member Secretary :

I have gone through the observations made by Hon'ble Member and my opinion being differ from the observations given by the other Member I am inclined to submit my observations as below :

1) The documents on record clearly indicates that the activity in the premises from year 2007 onward is only Research and Development. The consumer's own letter dtd. 19th Sept. 2007 confirms that there is no manufacturation and only R&D activity is going on. The said letter is addressed to the Superintending Engineer, Vashi Circle and is on letter head of Panacea Biotech; therein in the second paragraph consumer has admitted that : *"we are coming up with a state of the art research centre facility at plot no. 72/3, TTC Industrial area, Mahape Village, Navi Mumbai-400710, we are into research of various drugs delivery systems which is intended for benefit of mankind. "Hence we do not manufacture any product at our R&D centre at Mahape""*.

2) It is also on record, the Joint Commissioner (Konkan Division) food and drug Administration, Maharashtra State, Thane has issued G M P certificate on dtd. 30/04/2011 which is an approval for production purpose reveals that consumer was not manufacturing any product before 2011.

3) The MERC tariff order for year 2012-13 on page no. 326 under the title of tariff for HT-I (Industry) speaks as "This tariff shall also be applicable to Research and Development unit situated in the same premises of an Industry and taking supply from the same point of supply. However Research and Development unit situated at other place and taking supply from different point of supply shall be billed as per either HT (II) (A) or HT(II) (B) as the case may be ".

4) It means the industrial tariff is applicable if there is R&D in the industry and not industry in the R&D, this attract the quantum of electrical load used for each activity i.e. for industry and R&D. During the joint visit to the premises on 11/09/2012 it was observed that four floor building was occupied with instruments used for R&D activities only mere load was used for production purpose on the second floor which cannot personally observe as entry was restricted for the outsider being more sensitive zone. This show that major quantum of building

was occupied for R&D purpose. It shows that it is a Industry in the R&D and hence Industrial tariff HT-1 cannot be made applicable, instead it should be HT-II commercial considering only and only R&D premises hence in my view as the activity/predominant nature of the work of Complainant is Research and Development and therefore in my humble opinion the commercial tariff is required to be applicable to the complainant

It is worth to note here that, the Hon'ble Commission has declared the HT-I industrial tariff in the case no. 19 tariff order 2012-13 effective from 1st August 2012; It shows that for the earlier period, means before August-12 the R&D was not categories as an industry.

5) Also as stated by the consumer representative that in early days from 2008 to 2010 the primary testing & development process was going on, because any life saving drug cannot be produce before its testing and approved by the Govt. authorities, this also shows that during the above period only R&D activity was carried out and no production was there, hence supplementary bill issued for tariff difference is correct and payable by the consumer. This being a correct supplementary bill in view of the commercial activity, I am of the opinion the said amount is recoverable alongwith interest thereon from the complainant.

6) Perusal of list of machineries produced by the complainant during the inspection of Flying Squad unit shows that all the instruments are used mainly for R&D purpose and machineries for production process is not seen.

7) Documents on record shows that while getting the sanction of fresh power supply consumer have sought this electrical connection for the purpose of "Pharmaceutical R&D Centre". This shows his willingness and declaration of his R&D activity which comes under the commercial activity and hence Respondent has rightly categories as commercial consumer.

8) Moreover as stated by the consumer applicant that considering the supplementary bill raised and issued in March 2010 by the Respondent towards tariff difference for last 23 months which is shown in bill after the period of 27 months (i.e. in the month of July-2012) is time barred as observed in the section 56 (2) of Electricity Act 2003; But documents of correspondence from the Respondent and consumer side which asked the consumer applicant to pay the supplementary bill from March-2008, shows that the matter was continuous on paper between the parties and hence could not allow the implication of section

56 (2) of E.A. 2003. The Respondent was in regular touch with the consumer applicant and insisted to pay the supplementary bill and also had issued notice of disconnection for non-payment of this supplementary bill. Hence, the question of application of 56 (2) does not arise. The representative for Complaint which interpreting section 56 (2) of E.A. 2003 tried to convenience to the Forum that the demand made by the utility is not shown continuously in bill, the demand made by the utility for the period July-2008 to Feb-2010 is time barred. According to him it is only for the first time in July-2012 the due amount i.e. the differential amount after calculation of commercial rate is shown as due for the first time.

However, I am not satisfied with his submission; to make it more clear, I would like to refer some of the dates and quick action taken by utility for the demand of arrears.

Undisputedly, flying squad visited on 04/03./2010 I have gone through the flying squad report and I found that on the basis of the documents and facts on the site verified by the flying squad, it has come to the conclusion that the predominant activity run by the complainant is Research and Development. We have personally when visited the unit, found that the product if any as claimed by the complainant is ancillary one. Utility on 11/03/2010 issued the supplementary bill claiming the arrears i.e. difference of amount as commercial tariff, it would have been made applicable as per Commission's order since June-2008 to Feb-2010. When the supplementary bill was issued on 11/03/2010, the due amount calculated by utility is for 21 months which squarely shows that this claim is within 2 years as required under 56 (2) of Electricity Act 2003.

Now, I would like to enlight the attitude of the complainant. First of all as admitted this supplementary bill received by the complainant in March-2010 this supplementary bill was not challenged by the complainant before any Court of Law. More so ever when utility since April-2010 regularly issued the bills with commercial tariff and the same was being paid regularly by complainant may be under protest. This indicates that keeping mum by complainant has excepted the difference of arrears as per supplementary bill with commercial tariff. Not challenging it before any Court of Law and act of complainant to pay regular bill since April-2010 will definitely show that the complainant was aware about issuing the bills at commercial tariff. The amount first became due in March-2010 and that was within the knowledge of complainant.

It is true the arrears were loaded in regular bill in July-2012. Complainant is trying to convince it is more than 2 years period so cannot be claimed. The continuously showing the arrears manually for certain reason may not be shown in regular bills since April-2010. To my mind this deficiency is on the part of any employee will not deprive utility to claim the arrears since July-2008 as it was within the knowledge of complainant in March-2010 about this due and it was being first due in the month of March-2010 and not in the month of July-2012. For these reasons a discard the submissions made by complainant and uphold the submission made by Respondent. Apart from the above discussion as to when it is to be treated about demand bill. According to complainant the demand bill was issued in July-2012 I do not agree with this the reason is obvious, within 7 days from the date of squad inspection the supplementary bill was issued and this according to me the first demand bill. In my humble opinion the utility can recover this amount as the consumption of electricity is for the activity of Research and Development.

9) Moreover, the Respondent has raised the supplementary bill towards the tariff difference from Industrial to Commercial on 11/03/2010 where the cause of action has arose and the applicant consumers has filed his grievance on 25/07/2012, it means after the laps of 30 months. The MERC Regulations 2006 there in Section 6.6 clearly speaks 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".

Hence, grievance filed after the lapse of 24 months from the cause of action arisen cannot be admitted in the Forum for its redressal; and hence considered to be time barred.

After I opined my view considering the arguments between the rival parties and documents on record the case is handed over to the Hon'ble Chairperson to quote his final judgment.

Dictated by Hon'ble Chairman :

1) Before turning to the observations I would like to refer a Regulation from Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 (hear in after to be referred

as Regulation 2006). Chapter 2 of Regulation 2006 is regarding Forum for Redressal of consumers Grievances. Regulation 4 is regarding constitution of Forum for Redressal of Consumers Grievances. Regulation 6 is regarding procedure for Grievance Redressal. Regulation 8 is regarding findings of the Forum, Regulation 8.1 reads as below :

"On completion of the proceedings conducted under Regulation 6, excepts where the Forum consists of a single Member, the Forum shall take a decision by a majority of votes of the members of the Forum and in the event of equality of votes, the Chairperson shall have the second and casting vote".

Regulation 8.1 reads as below :

"If, after the completion of the proceedings, the Forum is satisfied after voting under Regulation 8.1 that any of the allegations contained in the Grievance is correct, it shall issue an order to the Distribution Licensee…"

The first proviso to Regulation 8.4 reads as below "

"Provided that where the members differ on any point or points, the opinion of the majority shall be the order of the Forum. The Opinion of the minority shall however be recorded and shall form part of the order".

2) After having full and complete hearing from both the sides at length initially Hon'ble Member inclined to give its observations and accordingly it appears from her observations that she came to the conclusion that activity run by company being a product and the research and development is ancillary the product by complainant and that is how in her opinion the commercial tariff made applicable to the complainant being illegal the same is required to be set-aside and complainant should be charged as per Industrial tariff.

3) Now the Hon'ble Member Secretary differ from the opinion and observations by Hon'ble Member and for the reason given by him the commercial tariff made applicable to the complainant is correct and does not require any interference by this Forum.

4) Under these circumstances now as referred above in view of Regulation 8.1 the matter placed before the Chairman for his second and casting vote.

5) Regulation 6.18 of Regulation 2006 is one of the Regulations regarding procedure for grievance redressal. The main Regulation 6.18 mandate to the Forum to pass appropriate order on the grievance for its redressal giving maximum period of two months from the date of receipt by Forum. It means in other words it is expected that the Forum should pass this order and disposed the matter within two months from the date of registration of complaint/grievance. However some times there may a certain ground where the matter could not disposed off within two months in that case the second proviso read as below:

"Provided further that if the order of the Forum is passed after completion of the said period of two (2) months, the Forum shall record in writing reasons for the same."

6) Here in this case it appears the case was registered on 25th of July 2012 so at the most the matter could have been disposed off by 24th September 2012. It could not be disposed off by its date and that is how the reasons are required to be mentioned in the order.

7) The noting discloses that the first hearing was on 09/08/2012, the next on 23/08/2012. There after 27/08/2012, it appears by that time the argument of complainant were heard and the Forum was of the inclination to have a site inspection for the confirmation of activity. The date of inspection was communicated later on. On 17/09/12 on the request of consumer after inspection the hearing was adjourned till 24/09/2012. On 24/09 & 28/09/2012 the quorum of the Forum could not be completed as Hon'ble Member for her personal grounds was unable to attend. Ultimately the matter was adjourned on 04/10/2012. After hearing the arguments from both the sides and giving opportunity, both the sides while certain documents required in support of their submission the matter was adjourned. Thereafter Hon'ble Member took its own time for her observation. Thereafter Hon'ble Member Secretary took his own time for its observations & ultimately as I said above for casting second vote the papers were placed before the Chairman. These are the reasons as to how the matter could not be disposed off within stipulated period.

8) After going through the observations of Hon'ble Member & Member Secretary, for my own observation, I may refer certain documents on record but before that it would be better to decide one of the objections raised by Respondent regarding the limitation. As replied by Respondent in paragraph no. 14 that the cause of action arose on dtd. 11/03/2010 when the supplementary bill was issued. The present grievance is filed on 25/07/2012 i.e. after lapse of 30 months from actual cause of action. As per Regulation 6.6 of MERC Regulation no. 6 "the present grievance is time barred and therefore it is not maintainable".

9) In other words according to Respondent it is time barred by six months so it should not be considered. We may refer Regulation 6.6 which states :

"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".

10) In Regulation 2006 there is no definition of cause of action. In Electricity Act 2003 also there is no definition of cause of action. So now considering the fact of present case we have to see as to which is the date on which the cause of action arises? It is true and also admitted the supplementary bill was issued on dtd. 11/03/2010. We have to see after receiving this supplementary bill whether complainant kept mum or whether he has put forth his grievance before the competent authority challenging the validity of supplementary bill. The latest correspondence between Complainant and Respondent shows that complainant did not keep mum but he has referred his grievances before approaching this Forum at the various levels & requested to resolve that grievance. As the matter could not be resolved before competent authority ultimately he approached this Forum. So according to me the real cause of action arose when there was failure by competent authority in resolving his grievance and not the date of issuing of supplementary bill. Respondent has filed one letter on record alongwith say it is dtd. 02/08/2012 it is true the letter was issued by Respondent during the pendency of this case before the Forum but in this letter reference has been given about the various letters correspondence with the party the next letter dtd. 20/10/2010 it is issued by Nodal Officer to the complainant here it is mentioned the grievance of complainant dtd. 27/09/2010 in the letter it is mentioned that the hearing is scheduled on 22/10/2010 instead of 20/10/2010 it is the latest letter which is dtd. 20/10/2010. The grievance could not be solved in the hearing dtd. 22/10/2010 and that is how the cause of action arose to

complainant to approach to this Forum which is within 2 years from the dt. 20/10/2010 therefore in my humble opinion the complaint is within limitation.

11) Now, as I have stated above I would like to refer some documents. The formation of company may be private or may be limited. We have a memorandum and articles of association as basic for the reason that the registration authority of company should know basic objects of the formation of company. It appears from the papers initially the certification of incorporation was issued in the name of M/s. Panacea Drugs Pvt. Ltd. Some where dtd. 2nd Feb 1984 subsequently, the word private was removed and again the fresh certificate of incorporation was issued on 7th Sept. 1993 as the name of M/s. Panacea Drugs Ltd. Was change as M/s. Panacea Biotech Ltd. Now this Panacea Biotech Ltd. Has enlisted before the registration authority it memorandum of association. I would like to mention as below as what was the main object to be pursued by the company.

i) "To manufacture, formulate, proceed, develop, refine all kind of pharmaceuticals, antibiotics, medicines, medicines preparation, drugs, chemicals, chemical products, dry salters, suitable for infants, invalid and allied foods and to carry on the business of chemist and druggist, importers, exporters, buyers, sellers, agents, distributors and stockiest of all kind of pharmaceuticals".
ii) "To manufacture, buy, sell & deal in mineral water, medicinal goods such as surgical instruments etc."
iii) To carry on business of viallined bottling, repacking, processing of capsules, syrups, tablets etc."
iv) Now these objects will show as what was the basic purpose of the incorporation of company. It is true in 2007 the application was submitted to the Respondent for electric connection. In the application it is mentioned by complainant that the purpose of company is research & development centre more particularly pharmaceutical research.

12) In 2007 there was installation of building for the process of research & development at purpose of production of drugs. The company for delegate R & D for its own product of breast cancer it is clearly admitted by complainant that initially 2007 there was no production and that is how the application was submitted with the purpose of R&D centre. As a fact there was no any commercial category. Therefore the industrial tariff was made applicable to the complainant. As per the order of MERC for the first time the commercial tariff

was introduced on 01/06/2008. On 01/06/2008 admittedly there was no production by the complainant. Though the MERC has issued order that any non domestic or not industrial activity should be charged as commercial tariff till 04/03/2010 the regular bill was issued to the complainant as per industrial tariff. We have the Flying Squad report dtd. 04/03/2010 which mentioned in the "report" "type of installation and nature of work" carried out there was research & development. Now according to the complainant the initial product was started some where in the month of March-2010. The observation of the Flying Squad report is as below:

"Consumer is having HT-1N sanctioned but however on site consumer is utilizing LT-1N tariff for research & development which is confirm after verifying all documents produced by consumer". But on record Respondent has not filed any copies of the documents on which basis he came to the conclusion that it was research & development activity. Mean while after having commercial tariff category there was little bit confusion amongst the industrial list more particular those who are dealing in research & development activity. We have on record one letter issued by the Chief Engineer (Comm.) dtd.05/08/2010. This letter is addressed to the all Superintending Engineer, MSEDCL, the subject is "applying tariff to research & development". In this letter there are three references as below:

i) This office letter no. P-com-GAUL-21957, dtd./ 26/06/2009.

ii) This office letter no. P-com/Thane/26894, dtd. 17/08/2009.

iii) This office letter no. P-com/Kalyan-1/tariff category, dtd. 07/10/2009

I would like to reproduce the content of the said letter as below :

"Guidelines may issued by this office for applying commercial tariff to all R&D centres as per letter at reference no. (1), (2) & (3) above".

Various representations have been received from company stating that commercial tariff is applied to their testing laboratory and research and development laboratory which should have the industrial tariff.

When any industrial consumer is having testing and research and development laboratory, an its ancillary unit "it is the duty of the concerned incharge of MSEDCL to get the purpose of usage of supply". In such cases industrial load is predominant as compare to research and development load and also if the research and development is being carried out by the industries exclusively for its won product development then it is but natural to apply industrial tariff to such consumer.

In other cases the consumer is only having R&D and testing load, then such consumer should be billed as per commercial tariff.

It is directed to instruct the concerned officer to verify the actual load of such disputed consumer and apply the proper tariff as per guidelines given above"

Sd/
C.E. (Com)

13) In the letter to my mind the most important thing is, there are two categories i) if there is a Industrial load predominant as compare to research and development ii) if research and development is carried by the Industries exclusively for its own product development then in these two types of cases industrial tariff is required to made applicable and not commercial.

14) The letter will show it was received to Bhandup zone on 16/08/2010. The hearing was scheduled regarding the grievance of complainant on 22/10/2010 it means the letter was with the Bhandup zone about two months prior to the hearing was scheduled. It is the say of complainant is that the product and research and development in the same area in the same place in one building and research and development are exclusively for its own product. It is really pertainant to note that in reply by Respondent in paragraph no. 4 it is stated "the consumer is testing the products of their various customers and giving reports of such customers after testing their products. It is only an authority of giving services to others. It is neither any kind of industrial activity. It is only a service centre for research and development purpose".

15) The pleading is made but in support of this pleading nothing is brought on record by Respondent to show that the complainant is taking the product of others and giving reports to others. On the date of Squad inspection various documents verified by squad party then to my mind they could have seen the documents which should have been shown that complainant was testing the product of others. Complainant was giving the report to those customers after testing their product. It is for the best reasons known to the Respondent as to why those important documents are not produced before the Forum to show that the activity of the complainant is not for its own product but it is also for the other customers? It is for the best reason known to the Respondent as to why various documents are not produced on record. In view of the letter given by C.E. (comm.) referred above it was the duty of concerned officer to verify whether to apply industrial tariff or commercial tariff as the case may be.

16) We have inspected the site. We have also noted that there is a product of medicine for breast cancer. We have also been shown that the said industry is a continuous processing industry and the product is round the clock. We have seen a chart also as the how the raw material is tested. The raw material is purchased by the company. After having R&D of raw material and after having various process the injection know as PacliAll is being a product of the company and the same is manufactured and put on for the same product having on its packet the word like this "Manufactured by : Panacea Biotic Ltd., 72/3, GEN Block, TTC Industrial Area, Mahape, Navi Mumbai – 400 710."

17) It goes to shows also Mfg licensee no. KD-495, batch no., Mfg. date, expiry date, max. Retail price ₹ inclusive of all taxes. So we can see from the packet of PacliAll that there is a product of company. It is true the said product probably started some where in the year 2010 but the guidelines given by the C.E. (Com.) in 2009 to some of the zones discloses that what precaution should be exactly taken by the officer to come to the correct conclusion for application of commercial/industrial tariff as the case may be is not followed in this case. We feel in the absence of any evidence the complainant was testing the product for other customers and in view of non production of documents which confirms by flying squad as well as in the light of the letter of the C.E. (Com.) which has given the guidelines, the activity of complainant is a predominant of production which is related to the research and development and not for the others.

18) Apart from that there were various representations before Hon'ble MERC. Its latest order of 2012 has very clear "HT-1, HT-Ind, this tariff shall also be applicable to research and development units situated in same premises of an industry and taking supply from the same point of supply". Here we feel the research and development unit in the same premise where there is product. It is true that the supply is from the same point of supply so to my mind it has to be concluded that the activity of complainant is an industry for which only HT-1 tariff will be applicable & not commercial.

19) In my humble opinion I differ myself from the observations from Hon'ble Member Secretary more particularly the interpretation made by Hon'ble Member Secretary regarding the MERC tariff order for the year 2012-13 on page no. 12. On the other hand I cast my vote in the findings and observations made by Hon'ble Member which came to conclusion that industrial tariff is to be made applicable for the activity of the complainant.

20) I am not referring the representation of 10/2010, representation no. 140 of 2009 in it as those activities is purely research and development laboratory there was no question of having product by that company. So in view of majority having on record the observations of minority it is very clear that activity of complainant is an industrial and therefore industrial category could have to made applicable according the following order is passed.

O R D E R

1) Complaint is allowed.

2) It is hereby declared that the activity of complainant is an industry so the tariff HT-1 shall be made applicable.

3) The supplementary bill of ₹ 80,55,506/- issued by Respondent on dtd. 11/03/2010 being contra set-aside.

4) The charging of commercial tariff since March 2010 had a commercial one with a commercial rate is hereby set-aside.

5) The extra amount collected by Respondent since March 2010 onwards with commercial tariff is being changed as Industrial tariff, the difference of amount should be covered in the bill as extra amount collected since March-2010

is to be add in subsequent bill herein after a Respondent should bill with Industrial tariff HT-1.

No order as to the cost

Both the parties be informed accordingly.

The order is issued under the seal of consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 31st of October 2012.

Note : 1) If Consumer is not satisfied with the decision, he may go in appeal within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051.

2) If utility is not satisfied with order, it may proceed before the Hon. High Court within 60 days from receipt of the order.

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP

S. K. CHOUDHARY
CHAIRMAN
CGRF, BHANDUP

R.M. CHAVAN
MEMBER SECRETARY
CGRF, BHANDUP