

**Maharashtra State Electricity Distribution Co. Ltd.'s  
Consumer Grievance Redressal Forum  
Nagpur Zone, Nagpur**

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**Case No. CGRF(NZ)/62/2017**

Applicant : M/s Ekvira Alloys Pvt. Ltd,  
Kh No.75, Umred Road,  
Pipri, Dist. Nagpur.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
Nagpur Rural Circle,  
MSEDCL. Nagpur.

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Applicant: - Shri. Suhas Khandekar Applicant's representative.

Non-applicant:-- 1) Shri. Harish Gulhane Dy EE, (NRC), MSEDCL. Nagpur  
2) Shri S.S.Sadamate EE Adm, (NRC),MSEDCL.Nagpur

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Quorum Present : 1) Mrs. V.N.Parihar,  
Member, Secretary  
& I/C.Chairman.

2) Shri N.V.Bansod,  
Member

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**ORDER PASSED ON 02.08.2017.**

1. The applicant filed present grievance application before this Forum on 29.05.2017 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).
2. Non applicant, denied applicant's case by filing reply dated 14.07.2017.
3. Forum heard arguments of both the sides and perused record.
4. Applicant has filed the written arguments contending as follows:

a). They are a HT consumer of Non-applicant since 8.9.2016; having sanctioned demand of 1600KVA. Their first electricity bill for the month of September 2016 dated 19.10.2016 was dispatched to them through a courier by Non-applicant. However, as courier did not deliver the same to them, the Energy bill was collected by them on 21.10.2016 from courier. Since 22<sup>nd</sup> and 23<sup>rd</sup> of October were holidays, considering the last date of payment for availing the prompt payment discount, discount mentioned on the bill as 25.10.2016, they paid Rs. 12,57,890.00 against the bill at Non-applicant's office at Vidyut Bhawan, Katol Road vide cheque on 24.10.2016.

b). On 5.11.2016, they received a notice of disconnection from Non-applicant dated 3.11.2016, for not paying an amount of Rs.16958.21. Subsequently, they also received the next bill, for October 2016, which showed principal arrears of Rs. 21997.97. On enquiry with the non-applicant, they were informed that, the cheque given by them on 24.10.2016 was deposited by non-applicant on 25.10.2016, and its credit was received on 27.10.2016, which was after the last date for availing prompt payment discount on the Energy bill. Hence, an amount of Rs. 21997.97 was shown as arrears in the bill for October 2016, which included the interest towards less payment amount. However, they have paid entire bill for October 2016, including the principal arrears shown therein.

c). As per the information given to them by officials of non-applicant, the bill for September 2016 was generated on 19.10.2016, and given for dispatch only on 20.10.2016. Thus a day was already lost in dispatching. Further, they had to collect

the Energy bill from the courier on 21.10.2016, since courier did not deliver the same to them. Since 22<sup>nd</sup> and 23<sup>rd</sup> were holidays, they could not paid the bill; as they were required to pay the same by cheque, as the RTGS facility starts only after the second bill.

d). They pleaded that non-applicant was considering the date of credit in its account as the date of payment, whereas the date of delivery of the cheque to Non-applicant should be considered as the date of payment. Accordingly their payment is done in time.

e). To substantiate their claim, they have relied on the order of Supreme Court In support of their contention in the case of **The Commissioner of Income Tax, vs. Messrs Ogale Glass Works Ltd.** dated 19.4.1954 (1954 AIR 429).

The relevant extracts from page 8 & 9 of the order are reproduced below for the sake of brevity is as below: –

*The High Court repelled this line of argument and held that the assessee received payment on the dates the cheques were delivered to it. We find ourselves substantially in agreement with this conclusion.*

*In Byles on Bills, 20<sup>th</sup> Edition, page 23, the position is summarized pithily as follows.'*

*"A cheque, unless dishonored, is payment."*

*In the case before us none of the cheques has been dishonored on presentation and payment cannot, therefore be said to have been defeated by the happening of the condition subsequent, namely dishonor by non-payment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in*

*the circumstances of this case, an implied agreement under which the cheque were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonored but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques.*

But according to para 3 of the circular No. 25941 of MSEDCL, the date for the purpose of prompt payment should be considered as the date on which the amount is credited to the account of MSEDCL. This is not in consonance with the order of Supreme Court referred above, and therefore has no legal validity. Nevertheless, advertent to the first para, of the circular, it has been stated as follows –

*“In order to avail the prompt payment discount the consumers pay their bills within a period of 7 working days from the date of the bill or 5 days from receipt of the bill, whichever is later.”*

Considering that 22<sup>nd</sup> and 23<sup>rd</sup> were holidays, the seven working days from 19.10.2017 would be over on 28.10.2017. As per para 4a of the order of IGR cell, *the cheque has been credited on 27.10.2017.* Hence even on this account, the payment is well in time. Thus even if the said circular had been interpreted properly, this litigation would not have arisen.

f). Further they pleaded that, if Non-applicant is so fussy about timely credit of payment in its account, it should also direct its officials to make sure that the cheques are deposited promptly. In this particular case, MSEDCL should have shown promptness and deposited the cheque on 24.10.2017. The statement of accounts furnished by

Non-applicant shows that the cheque has been deposited on 25.10.2016, and not 24.10.2016 as claimed in Sr. No.4 of the order of IGR cell.

g). Meanwhile Non-applicant issued them a notice for disconnection, which is received by them on 5.11.2016. Out of a Total bill of 12.74 lakhs, the bulk amount of about Rs. 12.5 lakhs had already been paid by them, and only a small amount remained. The payment was made by them considering prompt payment discount, and not with the intention of making less payment to MSEDCL. Non-applicant also held an amount of Rs. 28 lakhs towards security deposit from them. Disconnection notice is a serious matter, as it is insulting to an honest payer, and due care has to be taken while issuing the same. It should be used against consumers who have exhibited intentions of avoiding or neglecting payments. In this particular case it can be inferred from the facts of the case that there was no such intention on the part of the consumer, and a mere polite letter would have been adequate. The action of Non-applicant in sending the disconnection notice was therefore unwarranted, and shows a high handed approach towards its consumers. On this, subject, they had addressed a letter to Non-applicant , however, no clarification has been received from Non-applicant, therefore they should be adequately compensated for the unwarranted notice issued by MSEDCL, as well as for drawing them into this unnecessary litigation.

h). Aggrieved by this, they filed grievance to the IGR cell, pointing out that as per law, they had paid in time, and therefore they should not be charged any delayed payment charges or interest. Further, they should also be given the applicable prompt payment discount and load factor incentive.

5. The IGR cell however, rejected their application, stating that on the basis of their circular No. 25941 dated 24.8.2011, their payment is delayed and hence interest and penalty are correctly levied.

6. Aggrieved by this order of IGRC, they filed present grievance and prayed to the forum to advise the Non-applicant and provide the relief on following lines –

- a. To treat our payment for the bill of September in time, and refund the delayed payment charges and interest levied on us, and already paid by us.
- b. To pay them interest on the refund amount @9.5% pa from the date of deduction.
- c. To give them credit of load factor incentive as applicable for the month of September, and pay us interest @ 9.5% pa, from the date of our payment (24.10.2016) till the date of credit of this amount.
- d. To pay them a compensation of Rs. 5000.00 for issuing us unwarranted disconnection notice, and drawing us in this unnecessary litigation.
- e. Declare the circular No 25941 dated 24.8.2011 of MSEDCL as void, as it is not in conformity with the order of Supreme Court.
- f. Not to issue unwarranted disconnection threats to consumers in future.
- g. Specify the time period in which the above should be complied.

#### **7. Written Argument furnished by the Non-applicant**

a] It is submitted that, a HT Consumer bearing no. 430019056290 M/s Ekvira

Alloys Pvt. Ltd., is an consumer under Nagpur Rural Circle load of 1600KVA, The First Energy bill of the them was issued on date 19.10.2016 by courier. Same is

received by applicant on 21.10.2016. The signed copy is attached h/w for the record of the forum. The Prompt payment date was 25.10.2016, the applicant has submitted the cheque on dt. 24.10.2016 vide ch.No. 096416 & the cheque were deposited in the bank on the same day. As per bank statement cheque is credited on dt 27.10.2016. Cheque date mentioned as 22.10.2016 is incorrect. Copy of Bank statement is attached h/w. As per Bank procedure amount was credited in MSEDCL account on dt 27.10.2016. As amount has been credited after prompt payment date hence consumer is not entitled for the prompt payment facility accordingly amount towards less payment is charged in next bill to the consumer as Rs.21997.97. Due to Non-payment of the same by applicant, as per procedure legal notice was issued by Assistant legal officer against the outstanding bill.

b] It is submitted that, as Energy Bill is issued by this office timely on dt 19.10.2016 by courier, applicant should have credited the payment of the bill in the bank on or before 25.10.2016 for availing the prompt payment facility but cheque is credited on dt 27.10.2016, Hence applicant is deprived of the said facility.

c] It is submitted that, the said fact is very clear from the departmental circular Dir (F)/MSEDCL/25941 dtd 24.08.2011 which states that:-

*“Considering the volume of revenue realized from HT consumers, it is necessary that all out efforts are needed at every level to speed up the revenue realization. In view of this, it is now decided, that in case of payments made by the consumers in the form of Cheque/DD/Pay Order, the money receipt is to be issued to the consumers*

*only after credit of the amount to the MSEDCL's account. At the time of deposit of the Cheque/DD/Pay Order by the consumer at various collection centers, only acknowledgment of the receipt of payment shall be issued to the consumers following the money receipt after ensuring realization of the amount to MSEDCL's account, the date of money receipt issued after crediting the amount to the MSEDCL's account as above, shall only be considered for allowing the prompt payment discount to the consumers"*

d) They also relied on provisions in clause .Nos. 23.6 & 23.8.3 of the conditions of supply based on MERC (Electricity Supply Code & Other Conditions of supply) Regulations 2005, reads as under:

**(23.6)***"Provided further that the non-receipt of bill or loss of bill does not excuse the consumer from discharging his obligation to make payment within due date."*

**(23.8.3)***"Any consumer, who so ever desires to pay the energy bill by cheque drawn on the local bank, shall tender the cheque or shall send the same by post/ courier, sufficiently in advance, so as to reach the concerned cash collection center at least clear two(2) working days in advance before the due date of payment. In the present case, the applicant has not deposited the cheque as per the regulation".*

e] It is submitted, that similar matter in Writ Petition No. 4999 of 2014 & Writ Petition No. 5567 of 2015 is stayed by the Hon High Court Nagpur Bench on 30 Sep 2014.

f] It is submitted, as per provision given section 15.5.4 of the MERC Regulation 2005 for supply code consumer is liable to pay late payment amount if bills are not paid



after determined date of payment. Hence recovery of charges Rs. 21997.97 are justified and non-applicant is entitled to collect them from the applicant

g). Non-applicant requested to this Forum, that the application of the applicant may be rejected in the interest of justice.

8. To enable the Applicant and Non-applicant to put forth their arguments in person, a hearing was conducted before the forum.

9. The applicant argued that the cheque was presented to the bank on 24.10.2016, and it is their contention that "a cheque unless dishonored is payment". In such circumstances the levy of DPC of Rs.21997 towards arrears of bill for Sept-2016 is totally unwarranted It is the negligence of the non-applicant in encashing the cheque in time is the cause of non-realization, therefore they are entitled for prompt payment discount and load factor Incentive.

10. The Non-applicant during the argument submitted that the energy bill was generated on dt.19.10.2016 and was Auto-mailed to the applicant on the same day at 5.40 PM (Xerox copy of IT mail is submitted for record).

, As per clause no.23.8.3 of conditions of supply based on MERC (Electricity supply code and other conditions of supply) regulations, 2005, which reads as under:-

*"Any consumer, who so ever desires to pay the energy bill drawn on the local bank, shall tender the cheque or shall send the same by post/courier, sufficiently in advance, so as to reach the concerned cash collection centre at least clear two (2) working days in advance before the due date of payment, presentation of the cheque is treated as the receipt of the payment.*

The applicant received the energy bill on 19.10.2016 through mail and hence dt. of receipt of bill by applicant is dt.19.10.2016 instead of dt.21.10.2016.

Hence they could have make payment on dt.20.10.2016 in order to avail prompt payment discount as per MERC case no 19 of 2012at page no 302 which reads as below:-

*“A prompt payment discount of one percent on the monthly bill (excluding and taxes and duties ) shall be available to the consumer if the bills are paid within a period of 7 days from the issue of the bill, or within 5 days of the receipt of the bill, whichever is later”*

But, the applicant made the payment on 24.10.2016 through cheque. Which is realized on dt.27.10.2017.Whearas cheque should have been credited in the bank on or before 25.10.2017 for availing the facility of prompt payment discount and load factor Incentive.

For this Non-applicant rely on the MERC’s ruling in case no.183 of 2011.at sr. no.13 at page no 5 MERC ruled in r/o of petition filed to withdraw commercial circular no.25941dt.24.08.2011stipulating that the date of realization of the amount to MSEDCL account shall be considered as the date of payment that:-

*‘The commission has not found any relevant material from petitioner’s side to show that the date of payment of bill should be considered as the date of receipt of cheque by the distribution licensee. The petitioner has not provided any relevant material to support that the circular issued by the Respondent MSEDCL ,on dt.24.082011saying that the amount of bill should be credited to MSEDCL’s account on or before the last*

*date applicable for availing the prompt payment discount is a will full misinterpretation of commission's order, and is against the standard commercial principles for which the said circular needed to be quashed. However the Respondent in order to sustain/support its circular, that the payment procedure introduced therein is in line with the Central Government Account Rules, had submitted the publication issued by Controller General Accounts, Department of Expenditure, Ministry of Finance---*

*When a deposit is made in the PPF account by means of local cheque or demand draft by the subscribe, the date of realization of the amount will be the date of deposit.*

*In view of central Government account Rules quoted above the petitioner's prayer is rejected. Hence in view of aforesaid contention, Non-applicant therefore prayed to the forum that claim of applicant may be rejected and grievance application may be dismissed.*

11. During hearing on dt 14.06.2017 Non-applicant sought adjournment till 10.07.2017 and on dt.10.08.2017 Applicant's representative sought adjournment till 18.07.2017. At the hearing on 18 July, 2017, the Parties were informed of the expiry of term of Chairperson of the Forum on dt 30.06.2017, consequent to which the matter would now be heard by the two remaining Members. At the time of hearing Quorum present was

1) Member Secretary & I/C. Chairman.

2) Member (CPO).

As per in clause 4.1(c) of MERC (CGRF & EO) Regulation2006 which reads as under,

4.1(c) “Provided also that where the Chairperson is absent from a sitting of the Forum, the technical member, who fulfills the eligibility criteria of sub-clause (b) above, shall be the Chairperson for such sitting”.

Needless to say that, in absence of Hon’ble Chairman, Member Secretary is In-Charge Chairman. There is difference of opinion amongst the two. Since I/Charge. Chairman has one additional casting vote, therefore as per provision given in clause 8.4 of MERC (CGRF & EO) Regulation2006 which reads as under,

8.4 “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”.

Hence, the Judgment is based on majority view of I/C chairman and Member Secretary. However the separate dissenting note of Hon’ble Member (CPO) is noted in the judgment and it is part and parcel of the judgment. But the judgment is based on majority view and reasoning thereof is as under:

12. Forum heard the arguments of both the sides and perused the documents furnished by them. On careful examination of documents furnished findings are discussed issuewise.

A) Whether non- applicant has issued timely bill and whether applicant made payment after the date of prompt payment discount? ----yes

It is clear that fact that the non- applicant has sent electricity bill for the Month

Sept-2016 via mail on dt.19.10.2016 although, applicant has collected the same from courier services on dt.21.10.2016.Hence It is clear to the forum that non- applicant has issued bill on time. The due date for availing prompt payment and load factor Incentive of the bill was 25.10.2016.But it is seen that on dt.24.10.2016 the applicant remitted the bill considering prompt payment discount through Cheque. As the cheque furnished by applicant is credited on dt.27.10.2016 which is after prompt payment date 25.10.2016, Hence it is a fact that applicant made the payment after the date of prompt payment discount.

B) Whether applicant is entitled for prompt payment discount and load incentive charges. ---No

It is very clear to the forum that, the cheque was realized on dt 27.10.2016 i.e on the date after prompt payment discount and load factor incentive date i.e. 25.10.2016.In this regard, forum refer to the MERC ruling in case no.183 of 2011.At sr. no.13 at page no 5 MERC ruled in r/o of petition filed to withdraw commercial circular no.25941dt.24.08.2011stipulating that the date of realization of the amount to MSEDCL account shall be considered as the date of payment which are extracted below:-

*The commission has not found any relevant material from petitioner's side to show that the date of payment of bill should be considered as the date of receipt of cheque by the distribution licensee. The petitioner has not provided any relevant material to support that the circular issued by the Respondent MSEDCL, on dt.24.082011saying that the amount of bill should be credited to MSEDCL's account*

*on or before the last date applicable for availing the prompt payment discount is a will full misinterpretation of commission's order, and is against the standard*

*commercial principles for which the said circular needed to be quashed. However the Respondent in order to sustain/support its circular, that the payment procedure introduced therein is in line with the Central Government Account Rules, had submitted the publication issued by Controller General Accounts, Department of Expenditure, and Ministry of Finance---*

*When a deposit is made in the PPF account by means of local cheque or demand draft by the subscribe, the date of realization of the amount will be the date of deposit. In view of central Government account Rules quoted above the petitioner's prayer is rejected."*

Therefore as per above ruling, forum hold that, the consumer has to make payment sufficiently in advance so that their cheque is credited in bank on or before the prompt payment discount date. When a payment is made in the bank account by means of local cheque, the date of realization of the amount will be the date of deposit. Therefore Forum is of the view that even though cheque is presented on 24.10.2017 which is the date before the dt of prompt payment discount, but it is actually realized on dt. 27.10.2016. Which is after the prompt payment discount date i.e. 25.10.2016. As *the* date of realization of the amount will be the date of deposit, applicant is not entitled for the said prompt payment discount. This fact is further substantiated by ruling In the Tariff order dt. 12.09.2010 in case No.111/2009, of MERC, wherein provision is made for Prompt Payment Discount as under:-

*“Prompt Payment Discount of one percent on the monthly bill (excluding taxes and duties) shall be available to the consumers if the bills are paid within a period of seven days from the date of issue of the bill or within five days of the receipt of the bill, whichever is later.”*

In the same tariff order, the MERC also made provision of load factor Incentive, the relevant portion of which is as under:-

*“Consumer having load over 75% up to 85% will be entitled to a rebate of 0.75% on the energy charges for every percentage point increase in load factor from 75% to 85%. Consumer having load factor over 85 % will be entitled to rebate of 1% on the energy charges for every percentage point increase in load factor from 85%. The total rebate under this head will be subject to a ceiling of 15 % of the energy charges for that consumer. The Incentive is limited to HT I and HT II categories only. Further, The load factor rebate will be available only if consumer has no arrears with MSEDCL and payment is made within seven days from the date of the bill”*

As per above regulation, if payment is not made within seven days of the bill, consumer will not be given Load incentive rebate. The Bill was issued on 19<sup>th</sup> oct 2016, which makes mandatory to consumer to make payment on or before 26<sup>th</sup> oct. 2016 invariably, but date of deposit of the bill is 27.10.2016. In view of these findings, forum is of the view as the bill amount is received by non- applicant's account after the prescribed date, the applicant is not entitled for prompt payment discount and load incentive charges. Secondly applicant has confessed that payment has been by the made considering the prompt payment discount and when the applicant is not entitled for the said discount. non-applicant has rightly charged applicant Rs.21997, being a less payment made by the applicant towards bill for Sept-2016.

consequently the applicant is liable to pay the same.

c) As regards to matter of issue of notice for recovery of principal arrears of Rs. 21997.97. forum rely on section 56(l) of Electricity act 2003,when any consumer fails to pay any charge for electricity due from them ,the licensee can issue fifteen days notice ,hence legal notice issued by Assistant legal officer against outstanding bill is in order. Hence Disconnection notice is a mandatatory legal matter; it should not be perceived as an insult by applicant.

d)Also, MERC in case no.183 of 2011.At sr. no.13 at page no 5 MERC has already ruled in r/o of petition filed to withdraw commercial circular no.25941dt.24.08.2011stipulating that the date of realization of the amount to MSEDCL account shall be considered as the date of payment.

e)Besides other grievance such as Applicant suffered unnecessary by dragging into unnecessary litigation, it was duty of applicant to pay bill on time, when he was in receipt of the same well in advance i.e. on 19<sup>th</sup> oct-16via mail. Late Collection of the copy of the bill on 21<sup>st</sup> Oct-2016 by applicant from courier service does not give any excuse to the applicant to deny the actual dt. of issue of the bill as 19.10.2016. Had the applicant paid the bill received by them via mail timely, they wouldn't have been dragged in to this Litigation. Hence this claim therefore deserves to be rejected, and Applicant not is liable to pay any compensation towards this grievance.

f)Therefore grievance application deserves to be dismissed on merits.

**Separate dissenting note of Hon'ble Member (CPO) is given as under.**

**Dissent note By Member (CPO) Mr. Naresh Bansod Dated 25.07.2017 in case No. 62/2017**



**The grievance of the applicant is as under**

1. Applicant is H.T Consumer of MSEDCL Since 8.9.2016. First electricity bill for the month of September 2016 dated 19.10.2016 was dispatched through courier and same has to be collected by Applicant from courier as not delivered to the applicant by Jet courier service and applicant collected on 21.10.2016 (As per page 45 acknowledgment by courier).
2. As per Applicant, 22<sup>nd</sup> & 23<sup>rd</sup> of Oct 2016 were holidays. Rs. 1257890/- against bill, paid at MSEDCL office at vidyut Bhawan, Katol Road by cheque on 24.10.2016. Applicant said while paying, Prompt payment Discount was considered because last date of payment for availing discount was 25.10.2016 as mentioned in bill.
3. Applicant received notice disconnection on 5.11.2016 from Asst. Law officer of Non Applicant dated 3.11.2016 for not paying amount of Rs. 16958.21 Ps. Next bill for Oct 2016, principle arrears of Rs. 21997.97 was shown.
4. On enquiry, Non Applicant informed that cheque dated 24.10.2016 deposited by Non Applicant on 25.10.2016 and credited on 27.10.2016 which was after Stipulated last date for availing by discount and Rs 21997.97 shown as arrears in Oct 2016 bill (Including interest towards late payment etc). Applicant paid entire bill including principle arrears.
5. Applicant state that this being the 1<sup>st</sup> bill (bill dated 19.10.2016) he was

required to pay the same by cheque, as RTGS Facility starts only after the 2<sup>nd</sup> bill and Non Applicant considered date of credit as date of payment and RTGS is from consumer's bank to another bank of Non applicant which gives credit promptly on same date.

6. Applicant applied IGRC for refund of the amount, delayed charges or interest as well as load factor incentive but IGRC rejected case of applicant inspite of clear direction of Supreme court of India – The commissioner of Income Tax V/s M/s Ofale Glass Works Ltd Dated 19.4.1954 (1954 AIR 429) –i.e. that the dated of delivery of the cheque to MSEDCL should be considered as the date of payment. Hence Applicant payment is in time according to Supreme Court Judgement above.

7. Applicant prayed to Advise Non Applicant to treat our payment for the bill of September 2016 in time and refund delayed payment charges, interest levied on them which is already paid and also to pay interest @ 9.5% PA from date of payment Oct 2016 Bill and credit of load factor incentive applicable for September 2016 with interest @ 9.5% P from 24.10.2016, and Compensation of Rs.5000/- for unwarranted disconnection notice and dragged to unnecessary litigation. Applicant also prayed to declare the Cir No 25941 dated 24.8.2011 of MSEDCL as void as it not in conformity with the order of Supreme Court as above and not to issue unwarranted disconnection notices in future.

8. Non applicant in their reply dated 14.7.2017, the contentions and pleadings are same as were before IGRC and same are noted in their order of IGRC and hence no need to again mention the submission of the non applicant.

9. We heard the arguments of both the parties & perused the papers on record as well as Judgments, orders, Circulars etc filed by the parties. The undisputed facts are that Non applicant has generated the bill of applicant on 19.10.2016 at 5.54 pm (after office hours of non applicant) and non applicant sent the same through jet courier service (7 to 8 Km away from office Non Applicant) and collected by Applicant on 21.10.2016 as not delivered by courier 22<sup>nd</sup> & 23<sup>rd</sup> were Saturday & Sunday. Date of cheque is 22.10.2016 having cheque number 096416 amounting Rs. 1257890/- after reducing the amount prompt payment Discount and delivered the cheque to Non Applicant on 24.10.2016, On perusal of document at Sr. Page 49 HDFC- Statement of A/c of Non Applicant by their Banker (page 49)

10. During Argument Non Applicant raised the question as to how the Applicant came to know about generating the bill which is baseless because the bill generated on 19.10.2016 at 5.54 pm was given to courier and probably courier man before delivery or collection by applicant may have informed the applicant and collected by applicant on 21.10.2016.

Secondly it is not the submission of the Non Applicant that they have telephonically or through E-mail informed Applicant to draw the computer generated bill from their web sight , hence question of Non Applicant is further baseless.

11. As per submission of the applicant, that the bill dated 19.10.2016 being their first bill, then were required to pay the same by cheque, as RTGS facility starts only

after the second billing which is confirmed by the representative of the Non Applicant during arguments, but was totally silent in reply. Hence applicant rightly deposited the cheque dated 22.10.2017 on 24.10.2017 to Non Applicant on 1<sup>st</sup> working day of the week starting from 24.10.2017

12. The date of cheque is 22.10.2017 which proves the inclination of the Applicant to pay the bill by cheque on 24.10.2016 as 22<sup>nd</sup> & 23<sup>rd</sup> October were holidays.

13. Non Applicant's reply in Para 7 regarding non receipt of bill or loss of bill is totally irrelevant in the present case as the bill was collected by Applicant from courier on 21.10.2016 (MERC (Electricity Supply code & Other Conditions of Supply) Regulation 2005 Sr. No 23.(Referred by Non applicant).

14. Non Applicant in reply Para (Referred Sr. No. 23.83) of above regulation is "Any Consumer, Who so ever desires to pay the energy bill by cheque drawn on the local bank, shall tender the cheque sufficiently in advance, so as to reach the Concerned Cash Collection Centre at least clear two (2) working days in advance in advance before the due date of payment"

Due date was 25.10.2016 and at least 2 clear working days in advance means on 21.10.2016 because 23<sup>rd</sup> was Sunday as well as earlier day was 4<sup>th</sup> Saturday (22.10.2016) holiday and bill was collected on 21.10.2016. Which was totally impossible for applicant to pay amount of bill by coming from distance of 27 to 28 KMs from Pipri to Katol Road, Nagpur and pay the bill by cheque on 21.10.2016

itself. Hence the cited regulation does not attract to the present case and reliance of Non Applicant is irrelevant.

15. Non Applicant relied on stay granted to the in writ petition No.5567 of 2015 and W.D. No 4999 of 2014, challenging the orders of Electricity Ombudsman Nagpur in Reg. of M/s Spentex Industries Ltd, and M/s Surya Lax shmi Catton Mills limited in which Electricity Ombudsman Nagpur, Elaborately discussed the facts, circulars of Non Applicant and Concluded and ordered refund to Applicants which has purseusive value till issue is finally decided by the High Court.

In Both the above cases before Electricity Ombudsman as well as before the Hon'ble High Court, the issues are regarding date of R.T.G.S. payments on the contrary applicant's payment being 1<sup>st</sup> payment was by cheque, DD, pay order of local Bank. Which was admitted by Non Applicant with free mind. Hence cannot be made applicable to the present case, as well as High Court ad interim order pertains to R.T.G.S. payments which is different in present case. Secondly above sighted Judgement of Supreme court was probably not filed by the parties, and as per principle of per curiam, the high court's interim orders cannot be made applicable.

16. Non Applicant filed the copy of order of MERC in case No. 19 of 2012 dated 16.8.2012 & case No 183 of 2011 dated 26.8.2012 & highlighted the following –

A] Commission's ruling - The commission is not increasing the prompt payment discount a as it is of the view that a discount of 1% is sufficient to encourage consumers to pay their bills before the date and within the stipulated time for availing this incentive (Non applicant smartly did not files the pages of order after 307 to 352 which does not show its good intention or to suppress some observation).

B] To withdraw commercial Circular dated 24.8.2011 of MSEDCL Stipulating that the date of realization of the amount to MSEDCL account shall be considered as the date of Payment

In view of the central Govt Account Rules Quoted above and for the above stated reasons, the petitioner prayers are rejected being devoid of merits and on account of lacking sufficient grounds.

C] Non Applicant relied on Cir No Dir (f)/ MSEDCL/25941 dated 24.8.2011.

In my opinion, “ Para 6 of reply” probably the Judgement of Supreme Court relied by applicant noted in Para 6. above, may not be before the commission or high court placed by the litigant which is law of land and no discussion required.

17. In the above Circular, in earlier Para No. 1 “In order to avail the prompt payment discount, the consumers pay their bills within a period of 7 working days from the date of issue of the bills or within 5 days from the receipt of bill, which ever is later.

A] Non Applicant issued the bill on 19.10.2016- 7 working days i.e. 20, 21 (22 &23 holidays) 24, 25,26,27,28. Applicant deposited cheque on 24.10.2016 & credit in A/C Non Applicant is on 27.10.2016. Hence applicant has not faulted and entitle for prompt payment discount.

B] Within 5 days from the receipt of bill whichever is later Applicant received the bill on later 21.10.2016- 22 & 23 were holiday-24,25,26,27,28. (Within 5 working days) Hence applicant has not faulted and entitle for prompt payment discount.

Hence in view of the above observations deposit of cheque on 24.10.2016. on first working days & its credit on 27.10.2016 is exactly as per expectation of above Circular dated 24.8.2011 and Applicant is entitle for prompt payment discount & load factor incentive as prayed by Applicant with interest @ 9.5% PA. It is further Proved that Non Applicant's way of issuing bills and fixing due date to allow prompt payment discount is totally faulty as without considering holidays after issue of the bills.

18. Applicant strongly relied on the order of Supreme Court, in the case of "The commissioner of Income Tax V/s Messrs ofale Glass Works Ltd dated 19.4.1954" (1954 AIG 429)

Para 8 & 9 of Judgement are much importance to be considered.

Para 7 of Application Page 25, Besides Elaborate discussion and Conclusions drawn in it are mentioned here below as extract of Supreme Court order on record

"The High Court repelled this line of argument and held that the accesse received payments on the dates of cheque were delivered to it. We find ourselves substantially in Agreement with this conclusion"

"A cheque, unless dishonored its payment"

"The date of payment, if the cheque is duly me or honoured at proper date , is the date when the cheque was posted"

"In the case before us none of the cheque has been dishonored on presentation and payment cannot, therefore be said to have defeated by the happening of the conditions subsequent, namely dishonour by non-payment and that being so there is

no question, therefore that the assesses did not receive payment by the receipt of the cheque. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheque were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheque not having been dishonored but having been cashed, the payment related back to the dates of the receipt of the cheque and in law the dates of payments were dates of the delivery of the cheque.

Hence payment by Applicant is within the due date and Applicant is entitle for refund of prompt payment discount and load factor incentives (for Sept 2016) with interest @ 9.5% Pa from 24.10.2016 till date of payment to Applicant or credit in his bill as prayed by Applicant.

19. Applicant prayed to declare the circular No. 25941 dated 24.8.2011 of MSEDCL as void as it is not in Conformity with the order of Supreme Court as per Para 19 above

As per Article 141 of constitution of Godia – law declared by the Supreme Court (as mentioned in Para 19 above) to be binding on all Court within the territory of India- Supreme Court held as under

A] When the decision of High Court is set aside by the Supreme Court it becomes the law of the land and it is the duty of everybody in including High Court to obey the order and not try to avoid it. It is not open to High Court to find fault with same – (Narinder singh V Surjit sings AIR 1984 SC 1359).



B] The law laid down by the Supreme Court is binding on all, not with standing in the fact that it is against the State or Private party and it is binding on even those who ever not Parties before the Court- (M/s Shenoy and Co Bangalore V/s Commercial Tax Officer, Circle II Bangalore-AIR 1958 SC 621 at 626.)

It appears that while issuing the circular No. 25941 dated 24.8.2011 of MSEDCL, Non Applicant did not consider or taken into account the ratio laid by Supreme Court in the case of “The Commissioner of Income Tax V/s Messrs ofale Glass Works Ltd Dated 19.04.1954”, while deciding date of payment (correct), the Circular dated 24.8.2011 is void as applies squarely and as it is not in conformity with the Judgement of of Supreme Court. Hence circular No. 25941 dated 24.8.2011 is void at the 1<sup>st</sup> instance.

19. Non Applicant issued Notice Disconnection of Electricity Supply for nonpayment of electricity charges dated 3.11.2016 through Assistant Law Officer for the amount Rs 16958/21 towards payment of electricity charges (prompt payment discount) which was illegally disallowed by the non applicant which is without proper interpretation of the circular dated 24.8.2011 and overlooking above Supreme Court Judgement.

Non Applicant totally failed to consider the security deposit of the applicant amounting Rs 28 lacks while issuing notice dated 3.11.2017 for Rs. 16958/21 which is an act of high handedness, without application of mind and arbitrary Act, Causing serious harassment & putting the consumer in unnecessary litigation. Hence

applicant is entitle to compensation of Rs 5000/- and not issue any such unwarranted disconnected threats to the consumers in future.

20. It is observed that due to nonpayment of disallowed amount of prompt payment discount Rs. 16958/21 which was added in 2<sup>nd</sup> bill along with delayed payment charges & interest etc totaling Rs. 21997/97 Ps added in the bill, applicant is entitle for refund of Rs 21997/97 with interest @ 9.5% from the date of deposit till its payment by cheque or credit in the bill as prayed by Applicant

Hence the application of the applicant deserves to be allowed and Non Applicant is liable to refund Rs 21997/97 with interest @ 9.5% PA till date of payment by cheque or credit in the bill and circular No. 25941 dated 24.8.2011 is void as to determination on date payment for prompt payment discount and Applicant is entitle to load factor incentive for Sept 2016 with interest at the rate of 9.5% PA till its payment by cheque or credit in the bill and compensation of Rs 5000/- toward harassment caused to Applicant due to unwarranted disconnection notice without his fault. The compliance of this order to be done with 30 days from the date of this order. The order of IGR dated 3.2.2017 is set aside.

As per 4.1 ( C) proviso of above said regulation. Secondly on perusal case No CGRF (NUZ) 031/2009, order dated 26.6.2009 where so called member secretary i.e. present technical member was representative of non applicant and is well aware that Mrs. Langewar acted as member secretary and smt Gouri Chandrayan as member as per regulation 5.2 of above said regulation and same practice was observed to have followed earlier whenever the post of chairperson was vacant.

This means that when chairperson is appointed in the CGRF and he is absent from sitting of the forum, then technical member, shall be the chairperson for such sitting (during leave, sick leave etc) but presently the Chairperson's post is vacant in the forum on date of sitting, so the technical member and member (CPO) can continue to run sitting and decides the cases as per regulation 5.2 of said regulation but technical member does not get position of Chairperson and second & casting vote, which is done in earlier cases after 16/5/2017, Which is illegal as per me because in case of vacant post of Chairman of MERC, Hon'ble Shri Ajj Khan & Mr. Deepak Lad Saheb sign as member and not as chairman as per seniority, Hence order of the Technical person or so called member secretary cannot be order of Majority order.

Naresh Bansod  
Member (CPO)

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21. Before reaching to the final order, it is necessary to decide the matter within two months from the date of filing of the application. Applicant filed application on 26-05-2017. Therefore it was necessary to dispose of the application on or before 26-7-2017. Term of Chairperson In charge of the Forum expired on dt.30 June 2017. Forum heard argument on 18-07-2017 due to adjournment taken by Non-applicant on dt.14.06.17 and Applicant on dt.10.07.2017. The separate dissenting

note of Hon'ble Member (CPO) is given on dt.29.07.2017 due to both these reason,  
there is delay in deciding the matter.

22. In view of the majority we hold that, considering all the above, No vital reasons are found in the appeal to interfere with the order of the IGRC. The proceedings and order of the IGRC is in order. Hence the appeal is dismissed.

Therefore we proceed to pass the following order.

Thus we proceed to pass the following order.

### **ORDER**

1) Grievance application is dismissed.

**(Shri.N.V.Bansod)**

MEMBER

**(Mrs.V.N.Parihar),**

MEMBER/SECRETARY

& I/C. CHAIRMAN

