

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

Case No. CGRF(NZ)/61/2017

Applicant : M/s Mahamaya Agro Industries,
Kh No. 32, PH No.73,
Ramtek Road, Tal Mauda,
Dist. - Nagpur

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

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

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

2) Shri N.V.Bansod,
Member

ORDER PASSED ON 02.08.2017

1. The applicant filed present grievance application before this Forum on 26.05.2017 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. The applicant's History of the case is that, as per their application for power connection, Non-applicant had sanctioned HT power with contract demand of 450 KVA as per order dated 30.07.2014 and released connection on dt 22.01.2016 As per sanctioned order they have erected 400 mtr. and born expenses of service connection of HT overhead Line, constructed room costing about Rs.3, 22,000/- for the metering cubicle. As per order of MERC in case no. 70 of 2005, the entire infrastructure is to be created by MSEDCL by bearing the cost and same is to be recovered through Annual Revenue Requirement. But Non-applicant had asked them to create infrastructure of costing Rs.3,97,220/- and same is borne by the applicant. In spite of cheaper option for overhead connection was available at the rate of Rs.15000/- as per regulation of MERC, they had been given costly underground connection for which charges approved by the commission is Rs.2, 00,000. By making compulsion of costlier option i.e. underground to the applicant, they alleged a MSEDCL is adopting unfair Trade practice. Also as per Central Electricity Authority (Installation and operation of Meters) amendment Regulations 2010, section 2(C), both outdoor and indoor cubicles are permitted giving option for outdoor and indoor metering. But Non-applicant has asked us to spend Rs.3, 22,000/- for construction of room for indoor metering arrangement.

The applicant filed their grievance application to Internal Grievance Redressal Cell, Nagpur Rural Circle, Nagpur on dt.27.10.2016 but their application was Rejected by IGRC Therefore, aggrieved by order of IGRC, applicant filed present grievance application and claim following reliefs namely:-

- 1) Refund the difference of cost of overhead and underground connections i.e. Rs.1, 85,000/-

2) Refund the cost of construction of metering room of Rs,3, 22,000/-.

3) Refund the cost of Infrastructure Rs.3, 97,220/-

Thus, they claimed total refund of amount of Rs.9, 04,220/- with [interest@9.5](#) % per annum from the Non-applicant.

5. The non-applicant denied the claim of the applicant by filing reply on dated 14.07.2017. It is submitted by them that, M/s.Mahamaya Agro Industries being the consumer of Non-applicant have been sanctioned contract demand of 450 KVA as per sanctioned order 30.07.2014 and connection was released on dt. 22.01.2016. According to Regulation 6.6 of the said Regulation "*The Forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen*". In this case cause of action arose on first dt. of grievance application dt.30-07-2014 which is the date of sanction as well as the date on which charges to be borne by applicant was informed . Therefore it was necessary for the applicant to file grievance application refund of amount of charges paid by them within 2 years from the date of cause of action arose i.e. on or before dt.30-07-2016 but present grievance application is filed before this forum on dt.26-05-2017. Therefore it is barred by limitation. On this sole ground of limitation application deserves to be dismissed.

6. It is submitted that as regards the work of 0.4Km.HT line, which is carried out by the applicant through the licensed Electrical Contractor by paying 1.3% charges of estimate towards the supervision of the work, consent for carrying out the work through a licensed electrical contractor was given by the applicant for the payment of the supervision charges. In the consent letter applicant has stated that "*he is ready*

to carry out the work through the Licensed Electrical contractor at own cost” hence is not entitled to claim for refund of the expenditure incurred for electrification of the above work and this documents is attached along with the reply. The underground cable was provided instead of overhead line due to site condition, feasibility report taking into account safety measures etc.

Regarding installation of meter in consumer’s premises, non-applicant stated that, as per clause no 9, 9.1, 9.2, 9.3 for MSEDCL’s supply mains and apparatus of conditions of supply based on MERC (Electricity supply code and other conditions of supply) regulations 2005, installation of meter is to be provided in the consumer’s premises and as per guidelines are circulated and followed all over the organization vide circular no.21194 dt..01.07.2006. As per clause at sr. no.10 of this circular, it was necessary to provide compact kiosks for metering purpose invariably.

7. Moreover an Agreement was executed on dt.23.01.2015 between applicant and Non-applicant, wherein as per clause no.4.6 applicant agreed that,

“The consumer shall provide and continue to provide, during continuance of the agreement, suitable accommodation to be approved by the authorized officer of the licensee, for placing equipment and apparatus of the Licensee. As per clause (4.7) of the said agreement “The Licensee shall be at liberty to bring upon the accommodation so provided at the consumer’s premises, not only the cables required for the supply of electrical energy to the consumer but also the cable and other accessories and equipment necessary for giving connections to other consumers through the cables and terminals situated on the consumer’s premises.”

Further non-applicant submitted that so far as matter of refund of infrastructure cost

is concerned, matter is subjudice before Supreme Court of India in civil appeal no.4305 of 2007(D no. 20340 of 2007) and stay has been granted on dt.31.08.2007and continued vide its order dt.14.05.2009.It is civil Appeal filed by MSEDCL against Hon'ble APTEL order dt.14.05.2007 passed in appeal no.22/2007 challenging the Hon'ble MERC order dt.8.09.2006 passed in case no.70/2005.

8. Hence in view of aforesaid contention, Non-applicant denied that the applicant is entitled to refund the amount of Rs.9,04,220/-from Applicant. It is therefore submitted that claim of applicant may be rejected and grievance application may be dismissed.

9. 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".

10. 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) Regulation 2006 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:

11. Forum heard the arguments of both the parties and perused the documents on record. Before going to the merits of the matter, it is necessary to decide whether the present application is within limitation.

A) Whether grievance application dated 26-05-2017 is barred by limitation? --- -

Yes

According to Regulation 6.6 of the said Regulation "The Forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen". Cause of action firstly arose on date of sanction i.e. 30-07-2014 and lastly on date of connection which is 22.01.2015. The applicant ought to have filed grievance before the forum on or before 22.01.17. The Applicant however filed the grievance before this forum on dated 26-05-2017, which is obviously beyond two years from the last date on which cause of action arose. The Grievance is, therefore

barred by Limitation. As regards applicant's contention that they have filed their application with IGRC on dt.27.10.2016 and this date should be considered as date of cause of action. Forum is of the view that, no doubt that, the applicant has approached IGRC on dt.27.10.2016, but .Hon'ble Electricity Ombudsman's ruling in this regard in case no 7/2016 of M/s Chanvim Engineering(India) Pvt.Ltd Vs.MSEDCL is as per para (22) of their order:-

"The applicant no doubt approached IGRC, but this would not extend the cause of action for filing grievance before the forum. On this ground of application deserves to be dismissed."

Once it is found that grievance is barred by Limitation, the applicant is not entitled for any relief from the forum. However, if for sake of argument, it is presumed that grievance is not barred by the Limitation, and then what should be the result on merit. Therefore we turned to the merits of the case,

B) Whether applicant is entitled to following refund

- 1) Refund the cost of construction of metering room of Rs.3, 22,000/-.
- 2) Refund the difference of cost of overhead and underground connections i.e.

Rs.1, 85,000/- from Non-applicant.----No.

After careful perusal of clause of MSEDCL's supply mains and apparatus of conditions of supply (COS) based on MERC(Electricity supply code and other conditions of supply) regulations, 2005, regarding installation of meter in consumer's premises, non-applicant has to provide installation of meter as per clause 9.9.1, 9.2, 9.3 Subsequently as per clause 4.2.9.1 sub-section (a) and (b) of COS which reads as below:-

- a) The Applicant /consumer shall be required to carry out such work strictly as per specification/drawings as may be prescribed by MSEDCL
- b) The Applicant /consumer shall strictly follow standard practice of construction as may be prescribed by the MSEDCL.

Hence works carried out such as providing underground cable instead of overhead line on the basis of feasibility report and safety criterion point of view, installing Indoor metering in the consumer's premises in the room provided by applicant and providing invariably compact kiosks for Metering purpose, is according to standard practice of construction as prescribed by the MSEDCL for which guidelines are circulated and followed all over the organization vide circular no.21194 dt.1.07.2006, Moreover an Agreement was executed on dt.23.01.2015 between applicant and Non-applicant wherein as per clause no.4.6 applicant has agreed that, *the consumer shall provide and continue to provide, during continuance of the agreement, suitable accommodation to be approved by the authorized officer of the licensee, for placing equipment and apparatus of the Licensee. As per clause (4.7) of the said agreement "The Licensee shall be at liberty to bring upon the accommodation so provided at the consumer's premises, not only the cables required for the supply of electrical energy to the consumer but also the cable and other accessories and equipment necessary for giving connections to other consumers through the cables and terminals situated on the consumer's premises. On the basis of above clauses, forum is of the view that, Non-applicant has followed the guidelines of the circulars and stipulation of agreements Hence consumer's contention that No-applicant has asked them to spend Rs.3,22,000/-un-necessarily for construction of room for indoor metering*

arrangement and they have been forced to avail costlier underground arrangement instead of cheaper option of overhead line is baseless. Hence claim for refund the difference of cost of overhead and underground connections i.e. Rs.1, 85,000/-and refund the cost of construction of metering room of Rs,3, 22,000/-, is liable for rejection.

C) Whether applicant is entitled to refund of cost of H.T. line work, i.e. cost of infrastructure, the claim amounting to Rs.3, 97,220/-?----No

It is further submitted that HT line, 0.4km.,which is laid down by the applicant, through the Licensed Electrical Contractor, a consent on stamp paper of Rs.100/-for carrying out the work through a licensed electrical contractor was given by the applicant by paying supervision charges. In the consent applicant has clearly stated that “ *I am/we are ready to carry out the work through the licensed Electrical contractor at our own cost and material under the supervision charges of 1.3%of normative charges/estimate amount as per MERC Regulation 2005 and terms and conditions of MSEDCL.* This document is attached along with reply. It is therefore clear to the forum that the applicant willingly carried out the work of HT line, DTC, LT line and service connection at his own cost,

As regards to Non-applicant's say that the refund of infrastructure cost from the order date which under challenge i.e 8.9.2006 is stayed by the Hon. Supreme Court and the issue is sub-judised before Hon. Supreme Court. This is denied by the Applicant during argument and stated that Civil appeal no.4305 of 2007 MSEDCL Vs. MERC is dismissed and application is disposed off.

1] In directives by the commission it is clearly mentioned that refund will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007. Now, at this stage it is important to check what is Civil Appeal no. 20340 of 2007 pending with Hon. Supreme Court. It is a Civil Appeal filed by MSEDCL against the Hon. Appellate Tribunal for Electricity (APTEL) in appeal no. 22 of 2007 challenging the Hon. Commission's order dtd. 8.9.2006. This was dismissed by APTEL by the order dtd 14.5.2007. The Hon. Supreme Court stayed the order passed by Hon. APTEL on dtd. 14.5.2007. In this order the Hon. APTEL dismissed the MSEDCL's appeal that Service Line Charges which are the normative expenditure to be incurred on the infrastructure which are required to be created for bringing the distribution network closer to the Consumer premises. In other words the refund of infrastructure cost from the order date which under challenge i.e 8.9.2006 was stayed by the Hon. Supreme Court and the issue is now dismissed by the Hon. Supreme Court.

"This appeal filed by the Maharashtra State Electricity Distribution Company Ltd. (for short 'MSEDCL') is directed against the order passed on 08.09.2006 by the respondent, The Maharashtra Electricity Regulatory Commission (hereinafter called as 'the Commission' or 'MERC') whereby the 'Commission' did not approve the proposed "Schedule of Charges" including 'Service Line Charges' submitted to the Commission in compliance to Regulation No. 18 of MERC (Electricity Supply Code and other Conditions of Supply) Regulations, 2005 (hereinafter to be called as 'Regulations 2005'). The aforesaid Service Line Charges (for brevity to be called as 'SLC') as claimed by the appellant is on the basis of normative expenditure to be

incurred on the infrastructure which are required to be created for bringing the distribution network closer to the Consumer premises.”

This appeal is dismissed by the order as follow:

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

Under such circumstances, as per Regulation 3.3.3 of Electricity Supply Code authorizes the Distribution Licensee to recover all expenses reasonably incurred in laying down line from Distributing Main to the point of supply at consumer’s premises as per Schedule of Charges only under DDF facility and as per choice of consumer . As per consent given by applicant which states that applicant is ready to bear the cost of infrastructure and ready to execute the work including both the work of Service line charges and Service connection charges.

14. Perusal of the Circular No. 221976 of 20th May, 2008 circular indicates that it is still the responsibility of the MSEDCL to provide infrastructure for supply of electricity. It has nowhere disowned this position. This circular only facilitates the consumer or group of consumers who wants supply earlier than the time limit stipulated in the Regulations and opts to execute the work and bears the cost of infrastructure. Then, in such cases, refund of cost of infrastructure, will be given by way of adjustment through energy bills. It is not mandatory for the consumers to carry out the works at their cost. Option given under this circular should not be

confused with the situation when the consumer carried out works under ORC or by paying SLC even after approval of Schedule of Charges, on 8th September, 2006.

15. In any case, the Applicant had volunteered or opted to carry out the works in the consent letter has not been accepted by non-applicant on the conditions like ones envisaged in the circular, that the Respondent would refund the cost by adjustment in the bills, as is contemplated in the said circular. Therefore, the Applicant argument that cost incurred should be refunded on the basis of the said circular is incorrect.

16. From above discussion it is clear that the matter of refund of infrastructure is dismissed by Hon'ble Apex Court of the land. But as consent for carrying out the work to the Licensed Electrical Contractor was given by the applicant being the supervision charges. In the consent applicant has stated that he is ready to bear the infrastructure cost incurred for electrification of the above work. Therefore, now applicant is estopped from claiming the charges. Therefore on merit applicant is not entitled to claim amount of Rs.9, 04,220/- with [interest@9.5](#) % per annum from the Non-applicant.

Therefore on merit grievance application is rejected, the applicant is not entitled to other claims from Non-applicant,

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

Dissent note By Member (CPO) Mr. Naresh Bansod Dated 29.07.2017 in case No. 61/2017

1. The Grievance of the applicant is that IGRC's order is without specific reasons Applicant denied the contention of Non applicant that in Case of connected load of 924 KW and contract of demand 450 KVA and safety matter, underground

connection was found more feasible & same is sanctioned and MESDCL denied overload connection even though more feasible, which cannot be forced by the MSEDCL. The metering Regulations specifies that meter can be either inside or outside the premises of the consumer, if it's outside, display is to be given inside the premises. The space of about 16 sq meters is unnecessarily occupied by MSEDCL in premises for their meter and demanded lease agreement which is perfectly in order and demanded refund of cost of infrastructure Rs. 397220/- & cost of premises Rs. 322000/- as forced by MSEDCL to create the same and also demanded refund of difference between the cost of overhead and underground connection i.e. Rs. 185000/- with 9.5% PA interest from date of connection 29.1.2015.

2. “Before I proceed with the facts of case, wish to mention below the view / Ratio laid by Supreme Court of India – reported in 2005 CTJ 1077- P.S.E.B v/s Zorasing –State Electricity Board - for the guidance of Non-applicant, Officers & Engineers.

“MSEDCL – A state within Article 12 of the constitution must Act fairly and bonafide. It cannot act for a purpose which is wholly unauthorise not germane for achieving the object it professes whether under a statute or otherwise.

The electricity Board is a statutory authority and A state, it is expected to discharge its statutory function within a reasonable time having regard to the fact that undertakes an important public utility service.”

Its inaction besides being governed by the electricity (supply) Act & Regulations framed there under, it must also fulfill the tests of reasonableness as envisioned under the article 14 of the constitution of India.”

3. We heard the arguments of both the parties & perused the papers on record, Judgments filed by parties and MERC regulations, Electricity supply code other conditions of supply etc.

On plane reading of the IGRC order dated order 14.12.2016 is without specific reasoning , it deserves to be set aside on this count itself.

A] IGRC in their order in Para 'c' and Non Applicant's reply Para 3 repeated the same contention that in case of refund of cost of infrastructure, the subject matter is pending before Hon'ble supreme court in civil appeal No. 4305 of 2007 (D. No. 20340 of 2007) and supreme court had stayed the refund vide its order dated 31.8.2007 and same is continued vide its order dated 18.9.2009. Challenging order of Hon'ble APTEL order dated 14.5.2007 passed in Appeal No. 22/2007, challenging order the Hon'ble MERC order dated 8.9.2016 passed in case No. 70/2005.

B] Applicant filed the copy of order of the Supreme court of India in civil Appeal No. 4305 (above) of 2007 between MSEDCL V/s MERC & An dated 10.11.2016 and The civil Appeal is dismissed. Even after dismissal of civil Appeal filed by MSEDCL way back in Nov 2016; Applicant said it is difficult to digest that MSEDCL authorities are not aware of it Applicant say that MSEDCL is trying to mislead every one and On account of dismissal of civil appeal, the order of MERC in case 70 of 2005 holds now and the cost of intra structure becomes very much refundable.

In my opinion, this is a deliberate attempt on part of Non applicant to conceal the fact of dismissal of civil appeal No. 4305 of 2007 on 10.11.2016 and adverse inference is necessary to be drawn against honesty & integrity of MSEDCL officials.

2] Whether the complaint is bar by limitation? No

IGRC is silent on the point of limitation. Non applicant in Para (b) of reply (Page 69) raised preliminary objection that Application is not filed within 2 years from the cause of action and treated as bar by limitation under Regulation 6.6 of the MERC (CGRF & EO) Regulations 2006 and same be deserve to be dismissed.

A] Non applicant did not mention the date of cause of action and concluded as time bar which is not permissible under law. The cause of action has no relation whatever the defense may be set up by the defendant nor does it depend upon the character of the relief prayed for the plaintiff. It refers entirely to the grounds set forth in the plaint as cause of action or in other words, to the media upon which the plaintiff ask the court to arrive at a conclusion in his favour.

B] Applicant relied on ratio laid down by Hor'ble High Court of Judicature At Bombay in writ petition No 9455 of 2011 between M/s Hindustan Petroleum Corporation Ltd V/s MSEDCL Ltd dated 19.1.2012. Hor'ble High Court discussed the entire Regulation of MERC (CGRF & EO) Regulation 2006 and in Para 10 of its order at page 3 & 4 discussed in detail Regulation 2 (c to f) and 6.1,6.2,6.3,6.4,6.5,6.3,6.7 and reach to the conclusion in Para 13 etc has reference as under.

The High Court observed that the term cause of action has not been defined in MERC (CGRF &EO) Regulation 2006 and after referring to several provisions, the H.C. concluded that it is thus clear that the consumer cannot directly approach the forum in timely manner. The High court further concluded that the cause of action

for submitting grievance arises when IGRC does not redress the grievance Hon'ble Electricity Ombudsman, Nagpur has applied the same ratio as above in case of M/s shilpa steel & power ltd V/s S.E, Nagpur Urban Circle MSEDCL & vice President S.N.D.L Nagpur.

It is reveal from the record that, Applicant is consumer of Non Applicant of MSEDCL having a sanctioned demand of 450 KVA & same was sanctioned vide order no. SE/NRC/T/LS/Shri Mahamaya Agro Industries/3214 dated 30.7.2014 and the connection was charged on 22/1/2015 (IGRC Observation in Para2.

Applicant filed grievance in I.G.R.C on 27.10.2016 and IGRC passed the order on 14.12.2016 and the present case is filed on 26.5.2017 and hence the complaint filed by Applicant cannot be termed as bar by limitation but it is with limitation as per ration laid by High Court and otherwise also.

3] Whether the applicant is entitle for refund of Infrastructure cost illegally imposed by Non Applicant along with interest as per section 62(6) of The Electricity Act 2003"? Yes

A] Applicant stated that non applicant under compulsion asked to construct metering room & infrastructure which has costed Rs 397220/- and the land premises has costed Rs 322000/- and under duress the service connection was given to the applicant on underground basis and as per MERC's order in case No. 19 of 2012 dated 16.8.2012, the charges for overload connection approved by MERC for Supply upto 500 KM is Rs 15000/- where as for underground H.T. connection are Rs.2 lacks and there is provision for over head line and MSEDCL has made us to spend the higher amount on underground service connection.

B] Applicant said as per electricity act, all the infrastructure is to be created by MSEDCL at its cost and recovering it through annual revenue requirement & not from an individual consumer still non applicant forced to create infrastructure at the estimated cost of Rs. 397220/-

C] It is clear that in MERC tariff order in case No. 19/2012 dated 16.8.2012, there is provision for overhead service line connection which is costing Rs. 15000/- against which non applicant on the pretext of feasibility & safety measures, imposed underground service connection cost Rs 200000/- when the H.T. main service line itself is overload line. Hence in the absence of specific report of Electrical inspector, about feasibility the entire submissions of non applicant are baseless and deserves to be discarded.

D] The section 42(1) of the electricity act 2003, is as under, “It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act”.

The Moto of the act is that approach of distribution licensee should be efficient & economical. I am of the opinion that the overload line is economical & efficient to erect than cumbersome, non economical process of underground H.T.line.

E] It is worth to note the direction/ observations in order of MERC dated 16.9.2008 in petition No 56/2007 (Para 9)

“The commission observed that the consumer should not be burden this infrastructure cost which are the liability of MSEDCL. It is further observed that if paucity city of funds is the actual reason behind burdening consumers for distribution

infrastructure, MSEDCL may seek the recovery of the same as an annual Revenue requirement.

F] MERC in order dated 8.9.2006 in case no 70 of 2005 on page 16- 64

Commissions Ruling-

The commission totally reject MSEDCL'S proposal to recover service line charges from progressives consumers except in cases of consumer requiring dedicated Distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of licensee. The commission therefore directs that the cost toward infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL.

G] Applicant specifically stated in Arguments that Indoor cubicles means closed body in which metering is placed with CT's & PT's and outer cubical is pole structure, on which there is no specific reply in written statement as well as during arguments.

H] As per the central Electricity Authority (installation & operation of meters) amendment regulations 2010, Section 2(C) a meter can be inside or outside the premises of a consumer further as per regulations both outdoor and indoor cuticles are permitted and hence the land & room is permanently occupied an area of about 16 sq meters in side premises & MSEDCL forced to spend Rs 397220/- forced to create infrastructure, which is totally unfair trade practice as per provision of the consumer protection Act 1986.

I] As per applicant MSEDCL in Para (b) has given reference of section 9.1 to 9.3 of Electricity supply Code, however, instead of supply code, the matter is taken

from MSEDCL's supply conditions and also cited the reference of agreement executed with consumer. Both the documents are framed by MSEDCL themselves. Applicant further said that these document have legal sanctity only to the extent that any of the conditions or rules framed by MSEDCL do not violate the provisions of the Electricity Act or rules and regulations mentioned their under.

In this case indoor or outdoor systems are permissible and indoor & outdoor meter were also feasible. Hence contention of Non applicant regarding feasibility of indoor meter or cubical as was neither technical requirement nor the consumer's requirement. Hence entire approach of non applicant is without any basis but just to put consumer into heavy expenditure than the economical.

J] Non applicant is totally silent on the submission of applicant that if it is outside, a display is to be given inside the premises and space of about 16 sq meter has been permanently occupied by MSEDCL due to MSEDCL'S meter in side premises which is useless for them. Applicant rightly demanded to enter into lease Agreement for this Area.

Non applicant made reference to the agreement dated 23.1.2015 but could not reply whether copy of agreement is given to applicant as per Regulation 6.3 of the MERC (Electricity Supply Code & Other Conditions Of Supply) regulations 2005 and Applicant again refused that copy of Agreement is not provided which is violation of the above regulation.

K] Hon'ble High Court of Judicative at Bombay- W.P.No 2798/2015 in case of MSEDCL V/s M/s M.R. Scion Agro Processions Pvt Ltd. dated 18.1.2017, has ordered refund of infrastructure cost and rejected the petition of MSEDCL with

following observation at Page 9& 10 (from Judgement)

9} There cannot be a second opinion, that the orders which are passed by the Maharashtra Electricity Regulatory commission would become relevant from the point of view of the consumer's interest. So also the regulations which are framed under the Electricity Act 2003 as noted above and relevant to the facts of this case, are required to be interpreted in a manner which are beneficial to the consumers. Further when it comes to distribution electricity, the petitioners are in a monopolistic or in a dominant position, as no other player is in the field at least in this case. In this situation the consumers,, (respondent No 1 in this case) cannot be said to be in a sound bargaining position in demanding supply of Electricity and its term and conditions. This inequality becomes relevant when such agreements as the MOU in the present case are required to be considered by the court. The applicability of doctrine of inequality to such contracts cannot be ignored. It is in this circumstance that the order passed by the MERC and the statutory regulation play an pivotal role for protection of the consumers interest. Thus in entering into such agreements the petitioners in their public character cannot be oblivious of the statutory regulations and the obligations cast on them under the various orders, which are passed by the authorities under the Act and which become binding on the petitioners as in the present case. Nor can the petitioners enter into such agreements which would defeat the regulations or render nugatory the orders passed by the adjudicating authorities under the act. Thus, the reliance of the petitioners on the decision of the Supreme Court in **Virgo steels Bombay** (supra) would not assist the petitioners and/or is misplaced in the facts of the present case.

10} In the circumstances, in my clear opinion, as the agreement itself being contrary to the requirement of law, the submission of estoppels or for that matter waiver of a legal right by respondent No. 1, as urged on behalf of the petitioners cannot be accepted. It would be an argument contrary to the doctrine of public policy as envisaged under section 23 of the India Contract Act.

Hence the entire submission & conduct of Non applicant is without any basis against the electricity act 2003, Regulations of 2005 as well as orders of MERC from time to time deserves to be discarded as cannot be accepted in legal sense and other contentions and reference to other provisions of Regulation does help non applicant to reject the application i.e. section 9.1 to 9.3 MSEDCL's conditions of supply & others.

In view of the above observation, I am of the firm opinion and direct that Non applicant shall refund difference between cost of overload and underground connection i.e. Rs.185000/- and also refund the cost of meter room of Rs.322000/- as well as refund the cost of infrastructure cost of Rs. 397220/- along with interest @ 7 % PA. from 29.1.2015, as bank rates are reduced till payment. The compliance of this order shall be done within 30 days from the date of order.

Member Secretary claims to be in charge chairperson. As per Reg. 4.1 (c) last proviso 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 5.2 of

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 sahib & Mr. Deepak Lad Saheb sign as member and not any one as chairman as per seniority or Regulations. Hence order of the Technical person or so called member secretary cannot be a "Majority order"

Naresh Bansod
Member (CPO)

17. 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.01.08.2017 due to both the reasons, there is delay in deciding the matter.

18. In view of the majority we hold that, According to Regulation 6.6 of the said Regulation "The Forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen". Cause of action firstly arose on date of sanction i.e.30-07-2014 and lastly on dt of connection which is 22.01.2015 .The applicant ought to have filed grievance before the forum on or before 22.01.17. The Applicant however filed the grievance before this forum on dated 26-05-2017, which is obviously beyond two years from the last date on which

cause of action arose. The Grievance is, therefore barred by Limitation. Therefore Grievance application deserves to be dismissed.

Thus we proceed to pass the following order.

ORDER

1) Grievance application is dismissed.

Sd/-
(Shri.N.V.Bansod)
MEMBER

sd/-
(Mrs.V.N.Parihar),
MEMBER/SECRETARY
& I/C. CHAIRMAN