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Consumer Grievance Redressal Forum  
"Vidyut Bhavan", Gr. Floor,  
L.B.S.Marg,Bhandup (W),  
Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/ 85/869

Date: 18.12.2018

**Hearing Date: 05/06/2018**

CASE NO.85/2018

**In the matter of Retrospective Recovery regarding IT/ITES Consumer**

M/S PAN India Network Infravest Ltd.,  
T-241, Tower No.2, 4<sup>th</sup> Floor,  
Vashi Railway Station Complex,  
Sector-30, Vashi,  
Navi Mumbai.

(CONSUMER NO.000489035690)

..... (Hereinafter referred as Applicant)

Vs

Maharashtra state Electricity Distribution Company Ltd  
Through its Nodal Officer,

Vashi Circle, Vashi ..... (Hereinafter referred as Respondent)

Appearance

For Consumer: - Pravin Thakkar.

Representative for Respondent :- D.B.Pawar, Executive Engineer,Vashi Circle, Vashi

{Coram- Dr. Santoshkumar Jaiswal- Chairperson, Shri. R.S.Avhad -Member Secretary and Sharmila Ranade - Member (CPO)}.

1. Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra

Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with subsection 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. ) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience.’

2. The applicant has submitted that M/S PAN India Network Infravest Ltd. is HT Consumer under Vashi Circle. The supply sanctioned for IT/ ITES Purpose and consumer using the supply for sanctioned IT Purpose. The Supplementary bill issued by Vashi Circle on dtd.04/08/2017 amounting Rs.1,53,73,928/- for the period of June-2015 to Oct-2016 for non submission permanent registration certificate for IT /ITES Purpose. The Applicant consumer has filed the grievance on dtd. 21/08/2017 before IGRC, Vashi Circle against the retrospective recovery. However, the IGRC not entertained the grievance within stipulated period, hence, consumer approached this Forum.
  
3. The applicant submits that it is Registered IT Unit and duly registered with the Govt. of India, Dept. of Telecommunications. The Registration Certificate issued by Asst. Director (TERM), Ministry of Communications dtd.13/05/2003, and the said certificate is valid for 20 years period. The said certificate is issued on earlier name M/S Cyquator Technologies Ltd and the name is changed as M/S PAN India Network Infravest Ltd. The Applicant’s Unit also registered with STPI and STPI issued Order regarding Change of Name on dtd.12/03/2007 and also having ISP License Agreement with Govt. of India for the period of year2004 to year 2019.The Ministry of Commerce also issued the Industrial Entrepreneur Memorandum on dtd. 17/10/2010 for

Data Centre. The Chief Engineer PWD issued ED Exemption order vide letter dtd.04/08/09 mentioning both names. The Change of Name Order issued Ministry of Communications, Govt. of India on dtd.02/04/2007. Hon'ble High Court issued its order dtd.15/09/2006 in Company Petition no. 501 of 2006 regarding merger of companies and change of name. The Chief Engineer (Electrical) PWD Dept. already issued permission for exemption in electricity duty on dtd.04/08/2009. The DIC Thane, Competent Authority registered our unit as an IT Unit and issued a detail clarification letter on dated 02/04/2018 certifying the applicant as an IT Unit. The applicant prays to withdraw the Supplementary bill dtd.04/08/17 and to refund the excess amount collected as per Commercial Tariff in Nov-16 and –Dec-16 bills with applicable interest as per section 62 (6) of Electricity Act-2003.

4. In reply the Respondent contends that M/s. Pan India Network Infravest Pvt. Ltd; Consumer No. 000489035690 is a High Tension consumer under Vashi Circle. The consumer is situated at T – 241, Tower No. 2, 4th Floor, Vashi Railway Station Complex, Sector 10, Vashi, Navi Mumbai and consumer's present Contract Demand & Connected Load is 500 kVA & 750 kW respectively. This Office has issued a supplementary bill to the said consumer on 23rd August 2017 amounting to Rs. 1,53,73,928/- on account of change in tariff from Industrial to Commercial for the period June 2015 to October 2016.
5. As provided in Commercial Circular 243 dated 03.07.2015, a consumer engaged in the IT / ITES activities can be categorized as "Industrial" provided the consumer holds a valid Permanent Registration Certificate issued by the designated Competent Authority. During inspection of the installation of the said consumer, M/s. Pan India Network Infravest Pvt. Ltd. could not produce the valid Permanent Registration Certificate issued by the

designated Competent Authority and therefore a Notice dated 4th August 2017 for producing Registration Certificate for continuing to be categorized as “Industrial” was issued. In response, the consumer vide letter dated 23rd August 2017 produced following documents in support of his claim of categorization as “Industrial” Registration Certificate dated 13th May 2003 (having validity of 20 years) issued by Ministry of Communication, Government of India in the name of M/s. Cyquator Technologies Ltd; for operating International Call Centre. Acknowledgement Receipt dated 17th October 2000 issued by Ministry of Commerce & Industry, Government of India confirming operation as “Internet Data Centre”. Letter dated 4th August 2009 from the Chief Engineer (Electrical), Government of Maharashtra confirming the status of the consumer as “Industrial”, based on consumer’s registration with the Ministry of Commerce & Industries, Government of India vide letter no. 2490 / SIA / IMO / 2009 dated 17th October 2000;

6. The applicant has also produced Certificate dated 22nd December 2016 issued by the District Industries Centre, Thane, which is however in the name of M/s. Pan India Network Infravest Pvt. Ltd.
7. The applicant submitted the Registration Certificate dated 13th May 2003 (having validity of 20 years) issued by Ministry of Communication, Government of India being in the name of M/s. Cyquator Technologies Ltd; but the power supply stands in the name of M/s. Pan India Network Infravest Pvt. Ltd; Hence this office has issued the supplementary bill for period June 2015 to October 2016 for change in tariff from “Industrial” to “Commercial” for Rs. 1, 53, 73,923/-.

8. The consumer vide letter dated 20th September 2017 produced a copy of Order dated 15th September 2006 passed by the Hon'ble High Court, Mumbai in Company Petition No. 501 of 2006, whereby the Hon'ble High Court has approved amalgamation scheme of M/s. Cyquator Technologies Ltd. with M/s. Pan India Network Infravest Pvt. Ltd.
9. From documents submitted by consumer, it is noticed that Registration certificate for international call centre is in the name of M/s Cyquator Technologies Ltd issued on date 13.05.2003 having validity for 20 years from date of issue. Hence supplementary bill issued to consumer is correct & consumer has to pay the total supplementary bill. The Respondent prays to dismiss the present grievance application filed by the applicant.
10. Heard both parties, also I have gone through the contents of the grievances application and also gone through the point wise reply submitted by the Respondent. The issue is regarding retrospective recovery of difference in the tariff from industrial to commercial for the period June 2015 to Oct 2016.
11. As provided in commercial circular 243 Dated 03.07.2015( MERC Tariff Order dt. 26/06/2015 in the case No. 121 of 2014). Applicability of Tariff for IT/ITES Units: HT Industrial tariff category shall also be applicable for use of electricity / power supply to IT/ITES units covered under IT Industry and IT enabled Services (as defined in the Policy of Government of Maharashtra as may be prevailing from time to time). Till the establishment doesn't receive permanent registration certificate as may be applicable; Tariff shall be as per HT-II Category and after receipt of permanent registration certificate HT I category shall be applicable till the validity of the Certificate. It is not in dispute that, the appellant consumer is using the supply for IT/ITES Purpose only and regularly paying the bills as

per industrial tariff. The appellant consumer is having is having multiple licenses, permissions and certificates in support of IT/ITES Activity on its earlier name ie. M/s Cyquator Technologies Ltd. The appellant consumer also obtained the permanent registration certificate for IT/ITES Activity from DIC on its existing name ie. M/s. Pan India Network Infravest Pvt. Ltd. The DIC also specifically clarified vide its letter dtd. 02/04/2018 that the industrial tariff is applicable from the date of commencement of IT/ITES Activities, there is specific GR issued by GOM in this regard.

12. In this matter, the main issue is about retrospective recovery of prior to the date of inspection. There are several order of APTEL, Ombudsman on this issue . In the order dated 11Th February, 2003 in case no.24 of 2001, The Maharashtra Electricity Regulatory commission (the commission) has held as under:

*“No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict senses of the term to be recovered retrospectively.”*

13. The Appellate Tribunal for Electricity (APTEL) in appeal no 131 of 2013 in the matter of M/s Vinney Enterprises Versus Kerala State Electricity Regulatory commission has also rejected retrospective recovery of the Distribution Company(KSEB). In the said case APTEL has held that the arrears for the difference could be recovered from the date of detection of the error. In view of the above APTEL and several electricity Ombudsman Mumbai Judgements in case no 124,125,126 & 94 of 2014 no

retrospective recovery in such case not allowed , Therefore retrospective recovery for disputed period absolutely illegal and not maintainable and therefore I found there is substance in the contention of consumer . The supplementary bill issued for the period June 2015 to Oct 2016 is not legal, proper and valid. The applicant had submit the valid permanent certificate in Dec 2016 therefore, the Respondent was within right to charge consumer under commercial tariff from date of inspection till the consumer produce valid permanent registration certificate from competent authority. Hence, I proceed to pass following order.

### **ORDER**

1. The consumer complaint 85 / 2018 allowed
2. The Supplementary bills dtd. 04/08/2017 for retrospective recovery for period June 2015 to Oct 2016 is hereby quashed and set aside.
3. The Respondent shall charge commercial tariff prospectively from Nov 2016 till the submission of Permanent Registration certificate by applicant for IT/ITES activity from competent authority.
4. No order as to the cost.

### **I Agree/Disagree**

**MRS. SHARMILA RANADE,  
MEMBER  
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL  
CHAIRPERSON  
CGRF, BHANDUP**

I Ravindra S . Avhad , Member secretary as member of Forum disagree with opinion of other members point wise clarification for that as given below

M/s. Pan India Network Infravest Pvt. Ltd; Consumer No. 000489035690 is a High Tension consumer under Vashi Circle. The consumer is situated at T – 241, Tower No. 2, 4th Floor, Vashi Railway Station Complex, Sector 10, Vashi, Navi Mumbai and consumer's present Contract Demand & Connected Load is 500 kVA & 750 kW respectively. The Respondent Utility representative requested to applicant to produce Permanent Registration certificate

After constant follow up by the Respondent the applicant had not submitted permanent Registration certificate as per MERC Tariff order dated 26th June 2015 in case no 121 of 2014 Page no.331 and MSEDCL Commercial circular No 243-Revision in Electricity Tariff & Implementation Thereof Dated 03.07.2015 the industrial Tariff is applicable to IT/ITES units defined in the applicable IT/ITES policy of Government of Maharashtra where such units as does not hold the relevant IT Permanent Registration Certificate ,The tariff shall be as per the LT-II category and the LT-V(B) tariff shall apply to it after receipt of such IT permanent Registration Certificate and till it is valid.

Also, as per provision of section 56(2) of the Electricity Act 2003, which reproduce as below ***56(2) "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity"***

In above circumstances, the supplementary bill issued on 04/08/2017 for retrospective recovery for period June 2015 to Oct 2016 is proper, legal and valid.



**RAVINDRA S. AVHAD  
MEMBER SECRETARY  
CGRF, BHANDUP**

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

**Note:**

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address. “ Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051”
- b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon’ble Maharashtra electricity Regulatory Commission for non-compliance, part compliance or
- c) Delay in compliance of this decision issued under” Maharashtra Electricity Regulatory Commission ( consumer Redressed Forum and Ombudsman) Regulation 2003” at the following address:-  
  
“Maharashtra Electricity Regulatory Commission, 13<sup>th</sup> floor,world Trade Center, Cuffe Parade, Colaba, Mumbai 05”
- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

