

(A Govt. of Maharashtra Undertaking)

CIN : U40109MH2005SGC153645

PHONE NO. : 25664314/25664316

FAX NO. 26470953

Email: cgrfbhandupz@gmail.com

Website: www.mahadiscom.in

Consumer Grievance Redressal Forum

“Vidyut Bhavan”, Gr. Floor,

L.B.S.Marg,Bhandup (W),

Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/123/ 0065

Date: 31.05.2017

Case No. 123/2017

Hearing DT: 22.03.2017

In the matter of application of proper tariff under category of IT/ ITES

M/s. Aarsh Info service Pvt. Ltd.,

Unit no 103, 1st Floor

Plot No 16, Wagale Esate, Thane

- Applicant

Vs.

M.S.E.D.C.Ltd., Kisan Nagar Sub Division

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.

2) Shri. R.S.Avhad, Member Secretary, CGRF, Bhandup.

3) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

Shri. Prakash Deshmukh -

Consumer Representative

C - On behalf of Respondent

Mrs. .Gauri J. Brahmane, Addl. Executive Engineer, Kisan Nagar Sub Division.

Consumer No.0000117114919

1. Above named consumer obtained connection to the premises situated at on give address Sanction Load 107HP Connected Load-107HP. Above said consumer using the said connection for Data collection Centre under IT/ITES since date of connection in 2012. Consumer received provisional assessment order and bill issued by respondent utility for amounting Rs. 95, 000, 00/- after flying squad Thane III inspected the premises on 11.07.2016. Initially the consumer was charge and initiated proceeding

under section 126 of I.E.A.2003. Thereafter the consumer protested the said proceeding by filing the relevant document before respondent utility office. According to consumer thereafter he received plain recovery bill amounting Rs.34, 0782,540/- along with notice. Consumer challenge the said bill issued by Utility before appropriate authority. Thereafter the consumer filed grievance initially before IGRC in Schedule 'X' on dated 7.12.2016. IGRC not decided the said dispute within the period of 2 months though the notice was given for hearing on 03.11.2016. consumer filed all relevant document as per list of document 1) Spot Inspection report dt 18-07-2016 2) Notice issued by Add. Exe. Engineer Kisan Nagar Subdivision bearing no Add.EE/KN/2016-17/T-18/716 Dt. 19-07-2016 3) Notice issued by Additional Executive Engineer Flying Squad Thane 4) Final Assessment order u/s 126 of I.E.A.2003 and other correspondence with MSEDCL. Consumer also filed legal notice issued by respondent utility, consumer filed reply of this notice along with notice issued by respondent utility on 17.12.2016. According to consumer since the date of connection consumer was paying regular bill issued to him under category of industrial supply. Consumer relied and filed all necessary documents which was produce at the time of connection including quotation Form No 'A1' and all other relevant document. In view of the demand of supplementary bill and the notice received to the consumer demanding LT II commercial tariff difference. The provisional bill prepared and issued to the consumer

Consumer raised the grievance on following point.

2. As per circular 243 dated 03.07.2015 non providing mandatory certificate and IT industries respondent utility issued bill claiming 34,82,540/- .Consumer raised grievance that respondent utility not followed proper direction mention in the Circular issued by the Ministry Government of India regulation and policy information and Technology amended time to time. Consumer gave the calculation difference of commercial tariff and industrial tariff unit charge under the circular .Consumer pray that supplementary bill issued by the respondent utility along with notice dated 2/1/2016 demanding amount 34,82,540/- is wrong illegal and not in accordance with Regulation. Consumer pray for withdrawal of the said bill and give direction to respondent utility to calculate appropriate tariff applicable to the unit as per actual activities conducted. Consumer filed all relevant document and necessary certificate issued by Competent Authority to his unit on given address. As there is notice threat of disconnection consumer has a right to approach to the Forum directly and raised the dispute. Accordingly the consumer complaint in Schedule 'A' was filed

before this Forum which was registered case No.123/2017. Thereafter notice was issued to the respondent utility. After service of notice respondent utility appeared and filed reply on dated 23.01.2017. Respondent utility submitted that consumer M/s. Aarsh Info services consumer No.000011714919 situated at Kisan Nagar Sub Division inspected by Flying squad team Thane on date 18.7.2016. During the inspection prima-facie consumer was booked under section 126 subsequently for the letter dated 17.06.2016 submission of valid IT/ITES certificate from competent authority but consumer refused to accept the said letter which was also send to the consumer by mail on 30.07.2016. Respondent utility attach the copy of mail and copy of letter. Consumer not replied the said E-mail and not also submitted any document as directed by officer of utility for the period of six month. Respondent utility submitted that consumer filed copy address to Hon'ble Energy minister which is time for six month submission registration certificate. After visit of assessing officer and discussion with consumer the officer found the consumer was not having valid IT/ITES registration certificate. Therefore final assessment order for provisional bill as per flying squad inspection visit 33,07,940/- was issued to the consumer but consumer refuses to pay the said final bill. Respondent utility submitted that final assessment order and difference of tariff from industrial LT V(B) to LT II commercial was finalize by assessing officer in absence of valid LOI and IT/ITES registration certificate and therefore commercial tariff was applied to the consumer since 01.10.2013. According to utility till the consumers filed and supply valid IT/ITES certificate valid issued by competent authority consumer is liable to pay and assessment of the bill under commercial tariff in view of circular and direction given by competent authority of respondent utility of MSEDCL. Consumer issued notice to advocate and challenge all this proceedings in along with the said notice no objection certificate issued by DIC, Thane was produce .As recovery bill was prepared by assistant officer of recovery charge consumer since the date of inspection Oct. 2016 change the tariff from industrial to commercial in absence of valid IT/ITES registration certificate as per direction given by Hon'ble MERC order in 121/2015 and Circular No.243 dated. 03.07.2015. According to respondent utility tariff difference calculated by assessing officer is legal valid and consumer is liable to pay the same since case of nonpayment of the said bill disconnection notice was issued on 09.12.2016 is as per rules and regulation. Respondent utility claim of dismissal of the complaint give direction to the consumer to pay the said bill. However, after service of notice on dated 04.01.2017 consumer already paid amount of Rs. 3400000/- on 19.01.2017. According

to respondent utility consumer is required to produce IT/ITES registration certificate issued by competent authority enabling to take proper action and applying appropriate tariff. Respondent utility also filed corresponding letter and order dated 11.07.2016, final assessment order 07.12.2016 final assessment bill, copy of commercial circular 212 and 243. I have perused all the document filed by consumer and carefully gone through the point of dispute raised by the consumer. I have also perused reply and document spot inspection report, final assessment bill, supplementary bill and provisional assessment bill issued to the consumer by respondent utility time to time.

After perusing the rival contention of consumer and respondent utility following point arose to our consideration to which I have recorded my finding to the point further reason given below

- I. Whether supplementary bill issued by the respondent utility claiming LT -V to LT II commercial rate difference from the date of inspection is legal valid and proper.
- II. Whether consumer is entitled for IT/ITES tariff.
- III. Whether amount already deposited by the consumer is required to be refund and adjusted.
- IV. What order?

3. Reasoning

4. I have given opportunity to consumer and his representative to appear before the Forum for hearing time to time. I also gave equal and fair opportunities to Nodal officer Executive Engineer appear for respondent utility and the dispute was heard. This Forum considered all the relevant point for determination of dispute.
5. It appears that the flying squad visit to the premises on 18.07.2016 observation made by said flying squad report has already mention that consumer failed to produce valid and appropriate certificate under valid registration certificate for IT/ITES category at the time of inspection and given reasonable opportunity consumer failed to produce the said valid certificate and registered the claim as earlier stage even no LOI issued by

competent authority is produced within reasonable time of 3 days and therefore the recovery steps was taken by competent authority in accordance with law. However after the preliminary dispute raised by to consumer was considered by respondent utility office the claim recovery final assessment bill issued to the consumer claiming amounting Rs. 33,07,940/- admittedly which was paid by the consumer on 19.01.2017. It appears from the record that consumer having valid registration certificate which was produce subsequently during the hearing of this proceeding. The said certificate which was annexure and mark considered by the Forum validity of the said certificate which was relies and produce by the consumer issued by central government authority much prior to the date of inspection. In view of the validity period an competent authority of central Government who issued the certificate in favor of consumer which was minutely perused and verified by this Forum commencement certificate issued for the category for BPO service and data processing the date of issue 21.12.2011. Subsequent correspondence made by consumer before the respondent utility office it is necessary and incumbent on the part of responsible officer of MSEDCL authority to verify the said certificate as per procedure. Objection raised by respondent utility that valid registration certificate issued by competent authority category of IT/ITES policy as circular only could have been considered. However the certificate relied and filed by the consumer issued by software technology Park India dated 20.04.2009 issued by Central Government authority. Therefore validity of the said certificate which was objected by respondent utility question does not arise. To my view when central Government authority issued proper and valid certificate it is not incumbents and necessary on the part of consumer to produced required routine certificate issued by Government of Maharashtra as defined in direction circular time to time. In result preliminary question of legality and validity issuing provisional bill charging commercial rate LT II commercial category is absolutely illegal wrong and not mentionable. Hence, the provisional supplement bill issued by respondent utility is liable to be quash and set aside. During the course of argument the Forum already considered validity of certificate issued by central government authority as in recent judgment pronounce by Hon'ble Ombudsman considered this issue and gave finding that the certificate issued by central government authority is sufficient and respondent utility cannot charge changing category from industrial to commercial during the said period and therefore supplementary bill assessment and charge against the consumer is illegal and order to be stands quash and set aside.

6. It appeared from the record from reply given by respondent utility also submitted that consumer already deposited amount Rs. 34,000,00/- on 19.01.2017 and therefore difference of the said bill required to be refunded with 9% interest to the consumer. The respondent utility should be charge and assess and applied proper tariff to the consumer under IT/ITES category from the date of inspection onwards and accordingly the change to the category and affected should be carry forward in next bill. Hence I am inclined to allow the complaint of consumer in case No.123/2017 and proceed to pass following order.

ORDER

1. The consumer complaint 123/2017 is allowed.
2. The provisional and supplementary bill is issued to the consumer for amounting Rs.33,79, 000/- quash and set aside. The consumer is entitled and apply the proper tariff under IT/ITES certificate category in view of central Government certificate produced is legal valid and proper.

No order is the cost.

Both the parties should be informed accordingly.

Proceeding close.

The compliance should be reported within 45 days.

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

Note:

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

Address of the Ombudsman

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

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

(I Agree/Disagree)

(I Agree/Disagree)

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP

ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP

RAVINDRA S. AVHAD
MEMBER SECRETARY
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. Aarsh Info service Pvt. Ltd., is LT consumer having LT Consumer no Consumer No.0000117114919 ,Unit No.-102,Ist Floor, Plot No A-16,Road No.08,Wagale Estate, Thane (W) Plot No, A-1, 3rd floor ,Ashar IT Park,Road No.16Z, Wagale Esatate Thane and the Sanction Load 107HP and contract Load 107 HP .

Respondent Utility representative Shri.V.L Deshmuk Additional Executive Engineer Flying Squad Thane visited above premises on 11.07.2016 found that supply used purpose other than which the usage of electricity was authorized and IT/ITES activities carried out there

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

Respondent utility was informed applicant consumer M/s Aarsh Info service Pvt Ltd., to produce valid permanent Registration certificate for IT/ITES within 3 days and also informed regarding Change of Tariff applicable from existing LT Industrial to LT commercial & recovery of Tariff difference From date

of inspection to date of inspection. Applicant M/s not produce Valid IT/ITES Permanent Registration certificate for above said period

So in my view as per provisions in circular no 243 referred above and MERC Tariff order dated 26th June 2015 in case no 121 of 2014 Page no.331 supplementary bill (From LT Industrial to LT commercial) From date of inspection to date of inspection of Rs. 3307940/- is legal ,proper and valid .

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