

(A Govt. of Maharashtra Undertaking)

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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/143/31

Date:28.04.2017

Case No. 143/2017

Hearing DT 07/04/2017

In the matter of wrong recovery bill and application of proper tariff under IT/ITES category

M/s. Yash Pharma Laboratories Pvt Ltd.

- **Applicant**

Vs.

M.S.E.D.C.Ltd., Wagle 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. Dinesh K . Mehetre - Consumer Representative

C - On behalf of Respondent

Shri. M.V.Surytade Addl. Executive Engineer, wagle sub division.

Consumer No.000010852030

1. Above named consumer received original connection in the name of M/s. Dosti Corporation at given site date of connection 07.09.2012. Connected Load 107KW contract demand 107KVA category LT commercial 36 LT V (B) II. Above named consumer received supplementary bill which is issued by respondent utility on 19.10.2016 charging tariff difference of LT II commercial from June 2015 to Oct.2016 for amounting Rs. 5,64,940/- along with notice of disconnection. After receiving the said bill consumer firstly approach to Executive Engineer and filed complaint under form 'X' stating that wrong recovery bill issued for amounting Rs. 5,64,940/- for the period June 2015 to Sep. 2016 .Consumer claim that he has all permanent NOC and permanent IT/ITES certificate issued by competent authority. Therefore consumer ought to have been charge industrial tariff but respondent utility calculated wrong recovery bill charging LT II commercial tariff and accumulated bill issued which is wrong and illegal.

Consumer prays that appropriate recovery bill should be revised and corrected charging the IT/ITES tariff from the date of inspection. Consumer also pray that charging bill form June 2015 to Sep. 2016 is wrong and incorrect in view of 56(2) of I.E.A.2003. Consumer also pray that no retrospective recovery bill can be recover from the respondent utility and therefore the supplementary bill is wrong illegal and liable to be set aside . Consumer relied APTEL decision 131/2013 dated. 07.08.2014 in case of *Vinnay Enterprises Vs Kerala State Electricity Regulatory Commission* .Consumer pray refunds of the said bill with 9% interest in view of section 62(6) I.E.A. 2003 and cost of litigation. Thereafter IGRC registered the Case No.44/2016 on dated. 21.01.2017 IGRC gave opportunity for hearing to both the parties. On dated. 31.01.2017 IGRC gave the order directing respondent utility contention accepted and consumer was directed to pay the bill as per commercial rate along with interest and DPC for the period June 2015 to Sep. 2016 amounting Rs. 564,940/-. IGRC also gave finding that IT/ITES certificate field by consumer to the month of Oct.2016 and therefore bill issued to the consumer in the month of Nov2016 as per industrial tariff. Being aggrieved by the said order of IGRC consumer approach to this Forum and filed complaint in Schedule 'A' directing respondent utility to revise the bill charging industrial tariff and also refund of already deposited amount 9% interest in view of 62(6) of E.A.2003.

2. After filing the said grievance before this Forum on 14.02.2017. Forum issued notice to the respondent utility and after service of notice respondent utility appeared and filed reply on 05.03.2017. It is contention of respondent utility that connection is provided to the consumer in the name of M/s. Dosti Corporation (Pinnacle) since 07.09.2012. On 27.09.2016 flying squad thane inspected premises and observed the consumer was not having IT permanent registration certificated under IT/ITES purpose issued by competent authority in view of MERC order dated 26.06.2015 in case of 121/2014 page no 331 and commercial circular No. 243 dated 03.06.2015 industrial tariff is applicable to IT/ITES unit as per policy of Govt. of Maharashtra .As the consumer unit does not hold relevant IT permanent registration certificate and in view of the said circular consumer was charge as LT II category and LT VB tariff shall only be applicable to the consumer after the production of IT permanent registration certificate of till the period is valid. Respondent utility attached copy of Circular No. 243 for perusal of this Forum. Respondent utility submitted that the supplementary bill was claiming difference of industrial to commercial unit workout for the period June 2015 to September 2016 and this period is only for 16 months entitled to recover in view of section 56 E.A. 2003 by which respondent utility can recovered the amount of short billing or tariff difference recovery of period of 24 month. In this case the recovery is only for 16 months which is legal and valid as per provision of section 56(2). Respondent utility relied on the judgment on reported on *M/s.*

Rototex polyester Vs. Administration writ petition 7085/2008 order dated 20.08.2009 also MSEDCL Vs Venco Breeding writ petition 6783/2009 order dated 05.03.2010 and MSEDCL Vs. Green Word Magnum writ petition No 2894/20007 dtd.07.09.2007 and Awadesh Pandey V/s Tata Power AIR 2007, BOM -52 Respondent utility submitted that consumer not having IT permanent registration certificate to claim IT/ITES tariff and therefore the supplementary bill period for the month of 16 month in view of section 56 (2) E.A. 2003 in view of judgment of Bombay High Court which is legal valid and proper. Consumer pray for dismissal of complaint and filed copy of IGRC order, supplementary bill, certificate issued by MIDC dated 05.10.2016 and copy of small scale micro medium establishment certificate issued in his favor and permanent registration certificate part I issued on 26.12.2012. I have perused all the documents produced and submitted by consumer. I also perused reply of respondent utility and relied judgments and copy of circular No.243 minutely.

3. After perusing rival contention following points arose to our consideration to which I have recorded my finding to the point further reason given below
 - a. Whether supplementary bill issued by respondent utility on 19.10.2016 is legal valid and proper.
 - b. Whether consumer is entitled application of industrial tariff form June 2015 to Sep.2016.
 - c. Whether consumer is entitled for refund with 9% interest anyhow.
 - d. What order?

Reasoning

4. I have given opportunity to consumer and his representative who appears before the Forum for hearing. I also gave opportunity to Executive Engineer; Nodal officer appeared for respondent utility and the dispute was heard. It appeared that on 27.09.2016 the flying squad inspected the premises copy of inspection and observation is perused. At the time of inspection consumer not produce valid IT/ITES certificate therefore calculation of tariff from June 2015 to Spet.2016 supplementary bill access amounting Rs. 564,940/- which was dispute by consumer firstly before the IGRC and then filed complaint before this Forum. It appears to me that the opportunity should have been given to consumer to file appropriate certificate for IT/ITES registration which is not given at the time of hearing and IGRC come to conclusion assessment of bill as per commercial tariff in view of circular is proper. I disagreed with the view of IGRC and found that when initial establishment was admittedly doing the activity cover IT/ITES certificate mention software support services and to support his contention to consumer filed authenticating proper certificate issued by DIC which cover the period from 26.12.2012 and this certificate was valid for 3 years. Thereafter certificate issued from the competent authority DIC on 05.10.2016 was produced by the consumer. It revealed that the establishment under taken

the activity falls under IT/ITES category and therefore the supplementary bill calculated from June 2015 to Sep. 2016 charging commercial tariff difference for amounting Rs. 5,64,940/- and cannot say to be legal valid and proper and therefore the said supplementary bill liable to be quash and set aside. I also found the recent judgment pronounce by Hon'ble Ombudsman and the supreme court decision in Reliance InfoTech services directed MSEDCL to apply industrial tariff for earlier period and therefore charging as per the commercial tariff absolutely illegal and not maintainable and therefore I found there is substance in the contention consumer raising the dispute but not considered in proper aspect by IGRC nor respondent utility authority giving proper consideration and therefore the decision of IGRC and the action of issuing supplementary bill is call back and set aside. I am inclined to allow the complaint of consumer and giving direction of respondent utility to revise and reissue the supplementary bill from the date of inspection 18.10.2016 charging industrial tariff for the earlier period. The bill which is claim commercial tariff the already deposited amount shall be adjusted in equal month in future bill and prayer of refund of 9% interest amount to the consumer cannot be allow as no change of name or complaint is made earlier to the said period by consumer. Hence, I am inclined to allow the complaint of consumer and proceed to pass following order.

ORDER

1. The consumer complaint 143/2017 is allowed.
2. The supplementary bill dtd.19.10.2016 is stands quash and set aside. Respondent utility directed to revise and reissue the bill form June 2015 to Sep. 2016 charging industrial tariff rate.
3. The consumer entitled for IT/ITES tariff form the date of commencement of certificate also necessary change in the category is made immediately.

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 Dosti Co-operation(Pinnacle) User M/s Yash Pharama Lab Pvt Ltd is LT consumer having LT Consumer no 000010852030 located at Unit no 1001,Dosti Co-operation Plot No E-7Rd.No.22 and the Sanction Load 107 HP.

Respondent Utility representative Shri.V.L Deshmuk Additional Executive Engineer Flying Squad Thane visited above premises on 18.10.2016 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 Dosti Co-operation(Pinnacle) User M/s Yash Pharama Lab Pvt Ltd to produce valid permanent Registration certificate for IT/ITES and also informed regarding Change of Tariff applicable from existing LT Industrial to LT commercial & recovery of Tariff difference From June 2015 to September 2016 i.e 16 Monts .Applicant M/s Yash Pharama Lab Pvt Ltd not produce Valid IT/ITES Permanent Registration certificate for above said period

So in my view as per provisions in circular no 243 refereed 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)for period 01.06.2015 to September 2016 of Rs. 5,64,940/- is legal and valid .

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