

(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/

Date

Case No. 96&97/2016

Hearing Dt. 09/11/2016

In the matter of new service connection pd arrears old consumer due

M/s. Avish Technologies & Desai InfoTech Pvt. Ltd.,

- Applicant

Vs.

M.S.E.D.C.L. Vashi circle

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.
- 2) Shri. Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.

B - On behalf of Appellant

Shri. H.B.Tripati – Consumer Representative

C - On behalf of Respondent

- 1) Mr. D.B.Pawar, Executive Engineer, Vashi Circle.

Old Consumer No. 0000149031470 previous connection in the name of M/s ACE TELEVOICE unit 311 to 313 Millenium Bussiness Park 400710business park 00710 Sanction Load 96 KW and Connected Load 96 KW Category of consumer HT 71 date of connection 07.10.2011 present partly occupier of premises by M/s Avish Technology and M/s Desai InfoTech PVT Ltd disputed premises 308, 306,307 Bldg No. 02, 823 Mahape Navi Mumbai

Above named consumer raised the dispute against the respondent utility alleging that the said premise is taken by the consumer under lease agreement executed by M/s. ACE Televoice Services Pvt. Ltd. to Director in the name of Desai InfoTech and Avish

Technology for the purpose of conducting IT/ITES related manufacturing and services. It is contention of consumer the said premises is obtained from M/s. ACE Televoice Services Pvt. Ltd, under execution of lease deed through MIDC Mahape .At the time execution of document previous occupier M/s. ACE Tele Voice Services Pvt. Ltd declared that all the charges taxes and all dues are already paid over the premises before the handing over the premises and possession is given. Therefore said premised was obtained by consumer free from all encumbrances and liabilities. Their after the above said occupant applied to law full authority for the purpose of obtaining all the necessary permission and no objection certificate form competent authority of MIDC and MPCB road. The said premise is occupied by present occupant in the month of April 2015. Consumer stated that previous occupant M/s. ACE Tele Voice Services Pvt. Ltd issued no objection to get transfer the electricity meter in their name. Therefore the present occupant was applied for change of name in prescribe format before the respondent utility by making application in Form No. 'A1' from dated 31.07.2015. The occupant provide all the information requiring power supply and given bifurcation details of the load required 48 KW to be used in the said premises for the purpose details of load and maximum demand calculation sheet was provided along with NOC letter. After receiving the said document to the respondent utility it is contention of occupant consumer that on 18.06.2016 respondent utility inform to the occupant the change of name is not possible. The letter of communication is attach Annexure B1. Respondent utility also inform on 18.06.2016 that arrears of recovery amount Rs.70,40,000/- is due and payable by the earlier occupant M/s. ACE Tele Voice Services Pvt. Ltd as per supplementary bill which was issued under 126 Electricity Act 2003. Respondent utility is informed that the change of name application can be preceded after payment of entire due only. It is submitted by M/s. Avish Technology to withdraw the said change of name application and gave communication letter to the respondent utility dated 26.05.2015, 18.06.2015 & 28.07.2015. But respondent utility not gave any response. It is contention of respondent utility that new application for connection is made by the occupant which was also not considered and respondent

utility inform the arrears of Rs. 73,24,560/- is payable on due arrears on the premises. Being aggrieved by rejection of application for new connection consumer approach to the IGRC cell on 20.11.2015 and raise the dispute. The IGRC authority after receiving the said application give intimation of hearing on 25.02.2016. The copy of notice of hearing is filed. Thereafter respondent utility disconnected the supply of the premises though message of hearing given on 05.03.2016. Respondent utility attended the hearing on 05.03.2016 which was duly communicated and during pendency of this application on 22.10.2015. The supply was temporary disconnected and then 20.01.2016 the supply was permanently disconnected. In this circumstances consumer approach to the forum raising the dispute that energy bill generated in the month April 2015 in the name of M/s. ACE Tele Voice Services Pvt. Ltd which was due and as per assessment of supplementary bill under 126 already proceeding are initiated against the old occupant. Consumer raised the dispute arrears of supplementary bill under 126 of previous owner for this occupant who applied for new connection not in accordance with law and disconnection for nonpayment of dues was illegal. The respondent utility not followed Regulation No. 10.5 and proper Circulars orders and judgment was also not considered by utility. It is alleged by consumer that in the existence of natural justice and liability of office in penalty due to breach of terms and conditions cannot be transfer in the name present occupant and no liability can be fix. Consumer pray that claiming supplementary bill of old consumer against the new occupier is not legally valid proper and legal and pray for issued the direction to the respondent utility immediately release of power supply in the name of new occupant to the occupied premises. Consumer also prays for compensation Rs.1000/- per week for delay sanction and release of power supply and other suitable cost and taking action against the respondent utility authority.

After filing the said dispute in Schedule 'A' on 22.09.2016 notice to the respondent utility was issued. After service of notice respondent utility appeared and filed reply. The respondent utility also filed additional reply on 20.10.2016 and relied on 96&97of2016

Omdurman Case 34/2013 and MERC CGRF Regulation 2006 referring to provisional of 6.10 .According to respondent utility in the case of 96 & 97 M/s. Desai InfoTech and Avish Technology acquired the premises having consumer No. 000149031470 the area of the premises admeasuring 3671.86sqft. New connection application filed by both the occupant new LT connection to the subdivision office which was rejected of pending recovery against M/s Avish Technology the connection is permanently disconnected over the premises. The brief history of the case against M/s. ACE Tele Voice Services Pvt. Ltd about HT consumer having same connection situated in same premises was given. According to utility on 29.03.2014 Flying Squad Vashi inspected the premises and found the above mention consumer use the HT power supply sanction and release as IT industries was actually found utilities by M/s. Himachal Furniture Ltd., the occupant is used for commercial purpose and on the basis the said inspection report tariff recovery from industrial to commercial was raised against previous occupant M/s. ACE Tele Voice Services Pvt. Ltd by letter dated 10.02.2015 and recovery of amount Rs.89,43,350/- was claim. Finally assessment officer after conducting the hearing was asses and fix the liability of 70, 40,000/- against M/s. ACE Tele Voice Services Pvt. Ltd payable and for nonpayment of due the supply was disconnection on 20.01.2016.In the mean time present occupants who made application for new connection on 07.03.2015 earlier the application of change of name was submitted and due to arrears bill on the premises against old occupant final assessment bill was issue for recovery under section 126 of 2003 E.A. Instated of proceeding with the change of name application both the occupant applying for the new connection for demand of load extent to 48 KW and 60KW which was also rejected for nonpayment of dues against assessment dues under 126 E.A. 2003. Respondent utility submitted that placing reliance representation No. 34/2013 decided by Hon'ble Ombudsman Mumbai in Eternity co-operative society Vs MSEDCL dated 24.05.2013 permitted to transfer the outstanding arrears and recovery against occupants of the premises. However separate proceeding by way of Civil Suit against M/s.Avish Technology and Desai InfoTech Pvt Ltd. steps are under process respondent utility also submitted that in

view of provisions of 6.8 Maharashtra Electricity Regulation Consumer Grievance Redressed Forum Ombudsman Regulation 2006 clause 6.8 reads as under *6.8 If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:*

(a) unauthorized use of electricity as provided under section 126 of the Act;

(b) offences and penalties as provided under sections 135 to 139 of the Act;

(c) accident in the distribution, supply or use of electricity as provided under section 161 of the Act; and

(d) recovery of arrears where the bill amount is not disputed. And therefore the therefore the grievance is raised outside id the jurisdiction of this Forum and therefore the utility pray for the dismissal of the application with cost.

After perusing of rival contention of consumer and the respondent utility following point arose for my consideration to which I have recorded by findings to the point for the reason given below.

1. Whether supplementary bills of arrears under section 126 issued against M/s. M/s. ACE Tele Voice Services Pvt. Ltd for amounting Rs.70,40000/- would be recoverable against this consume
2. Whether consumer is entitled for new connection?.
3. Whether consumer is liable to pay any amount towards arrears of bill due found on premise?.
4. Whether consumer is entitled for any relief?
5. What order?

Reasoning

I give opportunity to the consumer and his representative who appeared and submitted their grievance para wise. The respondent utility was also given reasonable and proper

opportunity depend their case. It appears from the dispute place before this Forum that the premises is obtained by present occupant M/s. Desai InfoTech and M/s Avish Technologies under lease agreement Copy of those agreement of relevant consumer produce on record consumer also produce all necessary establishment certificate issued by competent authority It include certificate issued by MIDC in favor of M/s. Desai InfoTech for conducting software devolvment business at the premises along with NOC. Since the execution of both the agreement 10.04.2015 the premises is occupied by both the consumer and they were regularly paying the bill by applying industrial tariff as demanded by respondent utility time to time. Thereafter both the occupant applied to the respondent utility for change of name in prescribe application along with provisional bill and final bill on 26.05.2015. The said application was not considered by respondent utility alleging that the premises previously assign to M/s. ACE Tele Voice Services Pvt. Ltd and there was outstanding bill under the action taken under 126 for unauthorized using and diversion of supply against the previous owner found on the premises as per inspection report. Ultimately the application for change of name was not considered and the supply was disconnected initially for temporally and after that it was made permanent disconnection relevant date 22.10.2015 and 20.01.2016. Therefore the occupant consumer was required to move to apply for new connection relevant document was submitted along with copy of agreement .The respondent utility issued letter that application for new connection cannot be considered as pervious dues under Electricity Act 203 section 126 in the name M/s. ACE Tele Voice Services Pvt. Ltd and the said due was not paid and this recovery against the pervious occupant over the premises. In reply respondent utility submitted that in view of judgment given in representation of 34/2013 by Hon'ble Ombudsman Eternity CHS dated 24.05.2013 the respondent utility was authorized to transfer the due at the premises and in case of transfer of the premises and the arrears are outstanding if the occupant is not legal here the liability to pay the entire arrears lies on occupant. After hearing the said submission I have verified whether recovery under section 126 I.E.A. 2003 shown due against precious occupant M/s. ACE Tele Voice

Services Pvt. Ltd. Being a penalty and civil liability of payment of those dues falls excessively within the jurisdiction of special Court which is defined under the Act and therefore I am of the opinion that amount of **Rs. 70,40000/-** section 126 of I. E.A. 2003 arrears due it is being a personal civil liability cannot be shifted under the head of terms and condition as per regulation for granting of new connection which reads as under **5.30 “If there are any outstanding dues in the applicant’s name or against the premises for which the requisition of supply has been made, new connection shall not be given till the time such dues are paid in keeping with the proviso of Regulation 9.17 of this Code”** the respondent utility seems to take advantage of if the due found on premises arrears not paid the new connection application cannot be considered and was under the impression that personally liability and civil liability recovery dues under 126 of I E.A. also can be shown transfer on the premises.

It is pertaining to note that respondent utility also submitted in their reply that action recovery of those dues under civil suit the procedure is under process. Therefore respondent utility cannot taken both the action for recovery of due and causes restriction to the new consumer by rejecting their new connection application and therefore the term due arrears not recovered on the premises cannot be applied to the recovery under section 126 and 135 as it is personal liability and therefore action of respondent utility cannot be said to be legal valid and proper.

It appears that consumer not paid current bill on the ground that section 126 of IEA 2003 recovery included in current bill and shown in arrears which is dispute by this consumer. On perusal of record produce before this Forum bill issued to the consumer showing arrears of 70,4000/- after long period of 2 years cannot be justified. I have also considered separate action of recovery process against old occupant M/s. ACE Tele Voice Services Pvt. Ltd as appropriate civil and other action is already taken those dues can be recovered in depending proceeding. The consumer who bonafidly enter in to agreement with previous owner and occupied the premises for considerable long

time from April 2015 to till supplementary bill is issued and continued to pay the regular bill under the action of threatening of recovery the supply was disconnected and unnecessary cause inconvenience to the consumer. His both action applying for change of name and further required to apply for new connection both the action by consumer is depend on the circumstances appeared and appropriate time.

To my view the application for new connection in the name of consumer should be accepted by respondent utility after following due process of law. New connection cannot be denied only under the grab of condition recovery arrears due on the premises. Hence I am inclined to allow the complaint of consumer as praima-faice case is made out.

It appears that consumer not deposited current bill it should be recovered as per current bill status. The respondent utility is at liberty to take appropriate and proper legal action against the previous occupant M/s. ACE Tele Voice Services Pvt. Ltd and services under the due process of law and recovered the due. Hence I proceed to pass following order.

ORDER

1. The consumer complaint No.96&97/2016 is allowed.
2. Respondent utility is directed to issue new connection in the name of consumer 1&2 after due process of law.
3. The respondent utility as liberty to take legal action against previous occupant M/s. ACE Tele Voice Services Pvt. Ltd as per law. The new connection be restore subject to payment of current bill within 15 days from the date of receipt of this order.

No order as to the cost.

Both the parties be informed accordingly.

Proceeding close.

Note:

1) If Consumer is not satisfied with the decision, it may proceed within 60 days from 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