

Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
Ph- 2210707, Fax – 2210707, E-mail : cgrfkalyan@mahadiscom.in

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Date of Grievance : 02/09/2013  
Date of Order : 20/12/2013  
Period Taken : 109 days.

**IN THE MATTER OF GRIEVANCE NO. K/N/108/864 OF 2013-14 OF  
M/S. SUBHASH RASIKLAL INDUSTRIAL ESTATE PVT. LTD. OF MIDC  
AREA, MURBAD-421 401, DIST-THANE REGISTERED WITH CONSUMER  
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT  
NEW CONNECTION**

M/s. Subhash Rasiklal Industrial Estate Pvt Ltd.,  
Plot No. B-38/211, MIDC Area,  
Murbad-421 401, Dist-Thane  
Consumer No. of previous Owner : 018019020380  
in the name of M/s. Elegant Alloy Pvt. Ltd.

} (Here-in-after  
referred  
as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited through its  
Superintending Engineer (O&M), Kalyan Circle-II,  
Kalyan

} (Here-in-after  
referred  
as Licensee)

Appearance :- For Consumer - Shri Vijay Rasiklal Shah, Consumer's Director  
For Licensee - Shri A.N. Khan, Executive Engineer cum Nodal  
Officer

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

1. This Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers. The regulation has been made by the Maharashtra Electricity

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Regulatory Commission vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

2. The Applicant is a prospective Consumer, hereinafter referred to as “Consumer” for the sake of convenience. This Consumer is a purchaser of premises wherein previous H.T. supply was available to the previous owner, i.e. M/s. Elegant Alloy Pvt. Ltd. Said supply was bearing Consumer No. 018019020380, resulted in T.D. in Jan. 2003 and as the present Consumer purchased the premises in a public auction on 30/7/2003, sought reconnection from the Consumer on 20/3/2013.
3. Consumer registered grievance with the Forum as supply was not given to him within the prescribed time on 2/9/2013.
4. The papers containing above grievance were sent by Forum vide letter No. EE/CGRF/Kalyan/0407 dated 3/9/2013 to Nodal Officer of Licensee. The Licensee filed its reply on 22/10/2013.
5. This matter is heard and Consumer’s Director, Shri Vijay Rasiklal Shah made submissions and for the Licensee, Nodal Officer, Shri N.A. Khan argued. On reading the contentions of both sides in the application and reply and on the basis of arguments advanced, following factual aspects are disclosed:-
  - a) Consumer is an auction purchaser of the premises from M/s. Elegant Alloy Pvt. Ltd. on 30/7/2003 in Recovery Proceeding No.113 of 2001 of DRT Mumbai.
  - b) After purchasing the property, Applicant sought supply to the premises on 20/3/2013. It seems that Consumer has addressed letter to the Officers of Licensee on 30/12/2012 which is replied on 29/6/2013 and therein, six months arrears for the supply which resulted P.D. in the premises, quantified to the tune of Rs.1,21,77,672/-. Consumer had even approached

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IGRC on 27/6/2013 but as there was no any response, the Consumer approached this Forum on 2/9/2003.

- c) Notice of this proceeding given to the Nodal Officer and matter was fixed on 30/9/2013 and on that day, reply is submitted but it was found not clear and applicable to the present matter, hence adjournment was sought. Accordingly, matter was adjourned to 22/10/2013 and appropriate reply is submitted on that day. Thereafter, this matter heard on 18/11/2013 & 26/11/2013.
6. There is no dispute, as reflected from the reply of the Licensee that present Consumer had purchased the property in a public auction dated 30/7/2003 in a Recovery Proceeding of DRT, Mumbai and the said property was of M/s. Elegant Alloy Pvt. Ltd. The said M/s. Elegant Alloy Pvt. Ltd. had a supply from the Licensee bearing the Consumer Number stated above and it was T.D. in January 2003. It is submitted on behalf of Licensee that as per MERC Supply Code clause 10.5, for availing new connection, Consumer has to pay previous six months arrears of said connection and accordingly, it is contended that Consumer is liable to pay that sum. The sum worked out to the tune of Rs. 1,21,77,672/- which is communicated to Exe. Engineer by Superintending Engineer on 29/7/2013. Accordingly, short contention of the Licensee is that if this Consumer intends to have a supply he is required to pay amount as per MERC Supply Code clause 10.5 of six months arrears due.
7. As against it, the Consumer contended that as he had purchased the property of erstwhile Consumer on 30/7/2003, he is not liable to pay any amount due against the said Consumer. It is contended that Licensee had not brought to the notice during the Recovery proceedings of DRT and not objected for public auction staking its claim. It is contended that Licensee is at fault for not following its dues from previous Consumer and now those cannot be thrust

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on the present Consumer. Consumer further relied on judgment dated 3/2/1995 of Apex Court – *M/s. Isha Marbles v/s Bihar State Electricity Board 1995 SCC (2) 648* and contended that no arrears of previous Consumer can be recovered from subsequent purchaser of the premises in auction.

8. On the other hand, on behalf of Licensee heavy reliance is placed on the internal circular No. 53 issued by Chief Engineer (Commercial) dated 7/5/2007 which is modified vide Commercial Circular No.97 dated 28/7/2009 and Commercial Circular No.160 dated 29/3/2012 and contended that matters pertaining to the Licensee were pending in the Hon'ble Supreme Court but referred to Bench of three Judges there. Further it is contended that as per section 50 of EA and notification issued about Supply Code, the Consumer is to pay arrears of six months in case he is a transferee from previous owner. It is vehemently contended that as per MERC Supply Code clause 10.5, previous arrears of six months are to be paid if connection is to be taken therein.
9. During discussion both sides referred to the legal position as well as the precedents. It is necessary to cite the legal position existing prior to the Electricity Act, 2003 brought into force on 26/5/2003. Prior to 26/5/2003 there were three Acts in force, i.e. Electricity Act, 1910, Electricity (Supply) Act, 1948 and Electricity Regulatory Commission Act, 1998. In Electricity Act, 2003, as per Section 50, there is a provision for introducing Supply Code by State Commissions. Accordingly, for the first time, Maharashtra Electricity Regulatory Commission framed Supply Code and notified on 20/1/2005 and in clause 10.5 of the Supply Code provisions is made towards recovery of dues of a previous Consumer from the transferee, i.e. the person who purchased the premises wherein supply was there and it is the charge on the premises. In the aforesaid *Isha Marbles* (supra) case, legal position is dealt by the Hon'ble Supreme Court. However, there is a subsequent development in the legal position dealt by Hon'ble Supreme Court in the following judgments:-

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- (i) Dakshin Haryana Bijli Vitran Nigam Ltd. vb. M/s. Paramount Polymers Pvt. Ltd. – AIR 2007 SC 2;
- (ii) Paschimanchal Vidyut Vitran Nigam Limited v. DVS Steels, and Alloys Private Limited - (2009) 1 SCC 210 and ;
- (iii) Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri - (2010) 9 SCC 145

Even Bombay High Court in *Akanksha International v/s MSEDCL dated 5/9/2007, 2008 (1) Mah LJ page no.753*, dealt this aspect.

On this basis, the spirit of case of *Isha Marbles (supra)* and above referred further judgments of Hon'ble Supreme Court, position is aptly summarized by our Bombay High Court in the judgment delivered on 16/9/2011 in *Writ Petition No.9906 of 2010 – M/s. Namco Industries Pvt Ltd v/s The State of Maharashtra & Ors.* in para no.12. In that matter their Lordships were dealing with the factual aspect wherein supply was disconnected on 7/12/1993. Thereafter, previous Consumers' property was to be dealt and hence recovery certificate was issued on 22/5/2005. Sale was conducted on 7/5/2008, sale was ultimately certified on 23/3/2009 and on 19/9/2009. Thereafter the said purchaser sold it to another person who was the Petitioner before the Hon'ble High Court, on 30/3/2010, and the said Petitioner before the High Court had sought supply on 28/10/2010. Our Lordships while dealing the said matter, noted the position of law prior to the Act of 2003 and Regulations, present position of law and considered facts brought before the High Court, hence those aspects clarified in para nos. 12, 13, 18 & 19, and those paras are reproduced as under:-

#### ***IV***

#### ***The position in law before the Act of 2003 & Regulations***

12. *Prior to the enactment of the Indian Electricity Act, 2003 and statutory regulations of the nature that now exist in Maharashtra, the Supreme Court had occasion to consider whether unpaid electricity dues could be recovered from a subsequent transferee. The Supreme Court was considering a legal regime in which a charge had not been created by statutory regulations or enactment. In **Isha Marbles v. Bihar State Electricity Board** the Supreme Court dealt with the provisions of the Electricity Act of 1910 which was the precursor to the present parliamentary legislation. In the context of the position as it then stood, the Supreme Court held that there was no charge over the property and where the premises devolve upon an auction purchaser who seeks the supply electrical energy, he could not be called upon to clear the past arrears as a condition precedent to the grant of supply. The Supreme Court recognized in paragraph 63 of its judgment that electricity is public property which the law must protect. However, the law as it then stood was inadequate to enforce the liability of a previous contracting party against an auction purchaser who is a third party and who was not connected with the previous owner or occupier. In that context, the Supreme Court held as follows :*

*“But, the law, as it stands,, is inadequate to enforce the liability of the previous contracting party against the auction purchaser who is a third party and is in no way connected with the previous owner / occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.”*

***The present position in law***

13. *The deficiency in the law which was noticed by the Supreme Court in its decision in **Isha Marbles** was evidently rectified when statutory regulations came to be framed upon the enactment of the Indian Electricity Act of 2003. Regulation 10.5 in the State of Maharashtra expressly recognizes that the unpaid electricity dues will be a charge on the property and can be recovered by the distribution licensee from the new owner subject to the qualification in regard to period as noticed earlier.'*

....

....

**VI**

***The present case***

18. *Having regard to the position in law which is now enunciated in Regulation 10.5 of the Regulations, it is evident that the unpaid dues of the Fifth respondent did constitute a charge on the property. These dues could legitimately be recovered by the Second Respondent from the Petitioner, as subsequent transferee. The submission of the Petitioner that the Petitioner is entitled to seek a fresh connection of electricity supply to which the liability to pay the dues of the erstwhile owner will not be attracted is without any substance. The charge attaches to the property and the distribution licensee is entitled to recover the unpaid dues from the new owner. Acceptance of the submission would result in a situation where an owner of the premises could utilize electricity and upon a subsequent transfer, the transferee would not be liable to pay the arrears. The distribution licensee would be left with virtually*

*no recourse whatsoever and this is exactly the situation which the Supreme Court emphasized in its judgment in Paschimanchal Vidyut Vitran Nigam Limited.*

*19. There is no merit in the submission which has been urged that the claim is barred by limitation. Sub section (2) of Section 56 of the Electricity Act 2003 provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under the Section shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of electricity. In the present case the bills which were issued by the distribution licensee did reflect the arrears of electricity charges. In any event, the distribution licensee under Regulation 10.5 is entitled to assert its charge over the property in the hands of the new transferee and to recover unpaid charges subject to the permitted period specified therein. We, therefore, reject the plea that the claim is barred on the ground of limitation.*

The sum and substance of *Isha Marbles* (supra) case is summarized above. The previous legal position, the present legal position applicable to State of Maharashtra pertaining to the Licensee is also clarified. Finding of Our Lordships is clear and it demarcates that MERC Supply Code, 2005 is brought into force on 20/1/2005 and for the first time, as per clause 10.5, charge is created on the property wherein supply is given and hence, if there is any transfer of property by any mode, then payment is to be done in case of heirs, total dues are to be paid but in case of Transferee by Sale, etc. six months arrears are to be paid. Accordingly, demarcating line is a date when these Regulations are brought into force, i.e. 20/1/2005.



Ultimately, in the said matter Our Lordships laid down that in view of Supply Code electricity charges are to be recovered as a charge on the property and subsequent purchaser cannot avoid the liability.

10. In the present matter before us, the factual aspects are peculiar. It is a fact that supply of previous Consumer resulted in T.D. in Jan. 2003. Property was sold in public auction on 30/7/2003, however, the application for supply is submitted by the present Consumer who is a purchaser in auction, on 20/3/2013. Accordingly, application for connection is given after introduction of supply Code on 20/1/2005. It is seen from the copy of application filed by this Consumer with the Licensee for supply, is placed on record and that this Consumer has given a declaration. In the said declaration the Consumer agreed to abide by provisions of Electricity Act, 2003, MERC Regulations, i.e. Supply Code, and further agreed to pay off the previous dues, if any, and he is aware that unless payment is done of previous arrears, new connection will not be available. Accordingly, now it is a fact that MERC Regulations are brought into force, Supply Code is made effective from 20/1/2005, live supply was not there prior to that date; supply is sought after that date and as per Supply Code, there is a condition that intending Consumer is to be pay the previous dues of the then Consumer, however, in case of purchaser it is limited to six months dues prior to disconnection. Accordingly, the judgment of our High Court referred above in *Namco* (supra) case applies in its true spirit.

On this basis we find the present Consumer who has sought supply on 20/3/2013, cannot avoid the liability, to pay the dues to the extent of six months prior to disconnection and that is the only claim of the Licensee. The dues of six months are already crystallized by the Licensee in their reply to the tune of Rs.1,21,77,672/- which is the bill amount for the period from Jan.2002 to June 2002 and it is to be borne by the present Applicant Consumer.

11. It is seen from the contentions of both sides that even Licensee filed Suit against the previous Consumer on 31/12/2004 bearing Spl. Civil Suit No.207 of 2004 which is decreed on 2/2/2006, the Licensee filed Execution Petition before it, i.e. Spl. Darkhast 21 of 2003. It is clear that still amount in the said Decree not yet recovered. We find the recovery now sought from the present Consumer is not affected by the said Decree. Till that decree is not complied by the previous Consumer the present Applicant Consumer cannot avoid the liability to the extent of six months prior to the disconnection as per clause 10.5 of Supply Code. It is an additional remedy available for recovering the amount from the new Consumer seeking supply therein which is limited for six months. This legal position is clarified by our High Court in the case of *Akanksha International v/s MSEDCCL (supra), para no.31*. It reads as under:-

*'31. So far as filing of Special Civil Suit by the Respondent against erstwhile owners, i.e. M/s. Amar Amit Company is concerned, that is an alternate remedy provided by law and that will not come in the way of the Respondent in insisting on clearing of arrears before the power supply is restored or new power connection is given.'*

Even the said judgment is referred in *Namco (supra)* case. We find objection raised on this count is also not tenable.

12. Accordingly we find, no relief can be granted to the Consumer as prayed in this Application and application is to be rejected.
13. Matter could not be decided in time as Licensee failed to file reply in time and both sides were to ascertain the up-to-date legal position.

Hence the order

**O-R-D-E-R**

- a) The grievance of the Consumer is hereby rejected.

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- b) As per clause 10.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 effective from 20/1/2005, the new purchaser is required to pay previous six months arrears of the then Consumer for seeking connection in the premises. Consumer has already in the application agreed to abide by the Electricity Act, 2003, and clause 10.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, hence unless six months arrears as demanded by the Licensee paid, he is not entitled to supply in the premises.

Date :20/12/2013

**I Agree**

**I Agree**

**(Mrs. S.A. Jamdar)**  
**Member**  
**CGRF Kalyan**

**(Chandrashekhar U. Patil)**  
**Member Secretary**  
**CGRF Kalyan**

**(Sadashiv S. Deshmukh)**  
**Chairperson**  
**CGRF Kalyan**

**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, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”.*

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

*“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”*

- c) 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.

Filename: 864-Subhash Rasiklal Ind Est Pvt Ltd  
Directory: C:\Documents and Settings\Admin\My Documents  
Template: C:\Documents and Settings\Admin\Application  
Data\Microsoft\Templates\Normal.dotm  
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