



**Consumer Grievance Redressal Forum, Kalyan Zone**  
**Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301**  
**Ph: – 2210707 & 2328283 Ext: - 122**

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**IN THE MATTER OF GRIEVANCE NO. K/E/235/260 OF 2009-2010 OF**  
**M/S. HARNESS TECHNIQUES PVT. LTD., VASAI REGISTERED WITH**  
**CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN**  
**ABOUT EXCESSIVE BILLING.**

M/s. Harness Techniques Pvt. Ltd.  
Gala No. F-23, Shailash Ind. Estate  
Village – Waliv , Sativali Road,  
Vasai (East), Dist. Thane

(Here-in-after  
referred  
as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited through its  
Dy. Executive Engineer  
Vasai Road (East) Sub-Dn.  
Vasai, Dist. Thane.

(Here-in-after  
referred  
as licensee)

- 1) 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. This regulation has been made by the Maharashtra Electricity 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 consumer is a L.T.-V above 20 KW consumer of the licensee with C. D. 33 KVA. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 27/04/2009 for Excessive Energy Bills and permanent disconnection of single phase connection. The details are as follows: -

Name of the consumer :- M/s. Harness techniques Pvt. Ltd.

Address: - As given in the title

Consumer No : - (1)001840502691 – IP Consumer (for LT-V supply)

(2)001840498570 – Single Phase Comm. supply

Reason of dispute: Excessive Energy Bills and permanent disconnection of single phase supply

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/384 dated 27/04/2009 to Nodal Officer of licensee. The licensee through Dy. Executive Engineer MSEDCL S/Dn. Vasai Road East filed reply vide letter No. DYEE/VSI/(E)/B/4019, dated 16/05/2009 in the form of letter addressed to the consumer with a copy to this Forum.
- 4) The consumer has raised these grievances before the Executive Engineer (O&M) Division, MSEDCL, Vasai Division, on 21/02/2009. The said Internal Redressal Cell did not give any hearing to the consumer & also did not send any reply resolving the said grievances to the consumer.

Therefore, the consumer has registered the present grievance before this forum on 27/04/2009.

- 5). The Member Secretary and Member of the Forum heard both the parties on 16/05/2009 @ 16.00 Hrs. in the meeting hall of the Forum's office. Shri Harshad Sheth, representative of the consumer, Shri B. D. Shidore, AE. and Shri D. A. Apandkar, LDC representatives of the licensee, attended hearing. Minutes of the hearing including the submissions made by the parties are recorded and the same are kept in the record. Submissions made by each party in respect of each grievance shall be referred while deciding each of the grievances to avoid repetition.
- 6). The following grievances raised by the consumer in its letter dated 17/02/09 sent to the concerned Executive Engineer of which copy the consumer has attached with the grievance made before this forum, arise for consideration, and considering the reply dt. 16/05/09 with CPL filed by the licensee, record produced by the parties, and submissions made by the parties, the finding or resolution on each of such grievance is given against it, for the given reasons.
- 7). As grievance No. (1) – Regarding refund of excess amount recovered by applying MD based tariff, PF penalty etc. - The Consumer Representative (CR) submits that the licensee has charged MD based tariff to the consumer without 100% metering and its such action is illegal. He relies on zerox copy of operative order dtd. 20.6.08 of MERC in case No.72 of 2007, MSEDCL circular No.81 dt.7.7.08 in support of his such contention. He further submit that as per order dated 12.9.08 of MERC in case 44 of 2008, the licensee can not impose MD based fixed charges, PF penalty and demand penalty/incentive without MD based tariff being made

applicable to the concerned consumer but in the instant case, the licensee has applied the above charges or penalties without MD based tariff being applicable to it and hence such action of licensee is illegal. He further submit that thus the licensee has violated the Act, rules and orders of MERC and hence is liable for action under section 142 and 146 of the Electricity Act 2003. He further submits that therefore the licensee be directed to refund the amounts of such illegally recovered charges together with interest at the rate which it applies to the defaulting consumer. The CR submits that the consumer claims refund of an amount of Rs.1100/- towards the difference in between the fixed charges as per MD based tariff and HP based tariff and refund of PF penalty of Rs. 09,309.89 on this count.

---As against above contention, the LR submits that the licensee has applied MD based tariff from Aug.08 on completion of 100% TOD metering and as per directives given in Clause 10.5 of Com. Circular No.81 dt.7.7.08. He therefore submits that whatever charges based on MD based tariff, are recovered by the licensee from the consumer are correct and legal and therefore the question of refunding the same to the consumer does not arise.

- 8). While deciding the question regarding the applicability of MD based tariff to the LT above 20 KW industrial units, the Hon. Electricity Ombudsman vide order dated 6.5.09 in representation No.33 of 2009, M/s. Crystal Industries V/S MSEDCL, relying on the MSEDCL's circulars dtd. 05.02.09 held that the MSEDCL has suo moto decided to start MD based tariff for LT V consumers from April 09 inspite of 100% installations of MD meters completed in Aug.08 and therefore the MSEDCL is liable to

refund the excess fixed charges and PF penalty recovered from such consumer. Therefore following the above referred decision, the licensee is directed to refund the amount of MD charges collected over and above the fixed charges recoverable as per HP based tariff and the PF penalty recovered from the consumer in the period prior to April 09, together with interest at the Bank rate of RBI within 30 days from the date of this decision.

- 9) As to grievance (2) – Regarding refund of Excess SD & interest on SD :  
The consumer claims that he has paid SD of Rs. 9,600/- + Rs. 3,000/- = Rs. 12,600/-- at the time of taking new connection in Nov. 1994. However, bills are not showing SD amounts. So licensee be directed to refund SD of Rs. 12,600 with interest i.e. Rs. 9707 (till March 09). As against this, the licensee claims that the connection has been given on 26/11/1994. The Security Deposit paid at the time of connection for Rs. 9,600/- and Rs. 3,000 and same has not been displayed on bill. The interest will be paid as per rules. The SD receipt may be submitted for quick disposal of case. In view of the above contentions of the parties, the licensee is directed to verify the correct amounts of SD from time to time from its record and the record with consumer, display the correct amounts of SD, calculate the proper SD at this stage & refund the excess amount of SD & the interest at Bank rate of RBI on such amounts of SD at the prevailing rate, by giving it's credit to the consumer, in the ensuing bill after a period 30 days.
- 10) As to grievance No. (3) - Regarding refund of IASC for Feb. 07, Mar 07 and May 07 : The consumer claims that the licensee is to refund IASC charges of Rs. 103.50 recovered for Feb. 07, Rs. 1261.92 recovered for March. 07, and Rs. 408.10 recovered for May 07 i.e. total Rs. 1773.52 as per order

dated 15.9.08 passed by MERC in case No.45 of 2005, and therefore licensee be directed to refund the said amount of Rs. 1773.52 to the consumer. The licensee claims that the matter is referred to higher authority for directions regarding refund of IASC charges and action will be taken accordingly. It is clear from the above referred order passed by MERC in case No.45 dt.17.9.08 that the MERC directed the licensee to refund the incremental ASC recovered during the period Oct.06 to Apr 07 to all the consumers who have contributed towards ASC. Therefore licensee is directed to refund the IASC if collected for the month of Feb. 07, Mar 07 and May 07 from the consumer as per directions given in the above referred order of MERC to the consumer, by giving credit of such amount together with interest at the Bank rate of RBI to the consumer in the ensuing bill after 30 days from the date of this decision.

- 11) As to grievance No. (4) - Regarding refund of difference of MD based charges and HP based charges from Oct. 06 to Mar 07 : The consumer has claimed refund of an amount of Rs. 02,165.72 out of total amount of such difference amounting to Rs. 07,123.96 after deducting the amount of Rs. 04,958.24 which the licensee claims to have refunded as per it's say in the case of Crystal Industries, on this count as the charges of the relevant period were reverted back to the HP based tariff from MD based fix charges, due to non completion of installation of MD meters in entire Maharashtra. The licensee claims that it has refunded an amount of Rs. 4958.24 in the month of May 07 and some amount in other month which will be intimated after confirmation from the higher authority. The licensee has also not made clear as to in which other month it has given credit of any other amount on this count to the consumer. Therefore, the licensee is

directed to verify the total amount of such difference to which the consumer is entitled and the amount if any refunded by it to the consumer and inform about it in writing to the consumer within 30 days and refund excess amount if any, together with interest at the Bank rate of RBI, to the consumer by giving it's credit to the consumer in the ensuing bill after 30 days from the date of decision in this case.

- 12) As to Grievance No. (5) main application & also referred in rejoinder dated 16/05/09 – Regarding refund of excess ASC allegedly recovered from June 07 to June 08 with interest : The consumer claims that the licensee has recovered ASC charges from the consumer during the period June 07 to June 08 considering the average consumption per month from Jan. 05 to Dec. 05 i.e. 773 units as it's Benchmark consumption (BC). However, it's unit was sick for nearly two years i.e. entire 2005 and in 2006 upto the month of Oct. 06. It's unit's health regained the health during the period Oct. 06 to March 07 and therefore, as per the directions of MERC in para 3 of the clarificatory order dt. 11<sup>th</sup> Sept. 07 in case Nos. 26 of 2007 and 65 of 2006 read with clarification given on page Nos. 26 and 27 in MERC's clarificatory order dt. 24/08/07 in the above cases, the licensee should have taken average consumption during the period from April 07 to Sept. 07 as the BC for the consumer and according to the consumer it's such average consumption during the said period was 7444 units and if the ASC charges which could be charged to the consumer during the period June 07 to June 08 are calculated taking 7444 units as it's BC, it comes that the licensee has recovered Rs. 01,08,794.55 in excess and therefore, the licensee be directed to refund the said excess ASC together with interest at 6% amounting to Rs. 07,169.17 i.e. total Rs. 01,15,963.72 to the consumer.

As against this the licensee claims that the consumer may submit documentary evidence as to whether application was submitted for no use or otherwise and in case such documentary evidence is submitted, further action will be taken.

- 13) Shri Harshad Sheth, the representative of consumer (CR) reiterates the above contention of consumer made in the grievance application and further submits that the licensee started charging Additional Supply charges (ASC) from Oct. 06. The monthly average consumption of the period from Jan. 05 to Dec. 05 was being taken as BC to assess the consumers for ASC on the consumption in the further period. The tariff was revised from May 07 and according to the said revised tariff, 89% BC was treated as cheap power and remaining portion was considered as expensive power of which rate was Rs. 5.36 per unit. This created so many problematic situations and therefore, the consumers approach MERC and during the next eight months, MERC has passed four clarificatory orders giving practical solutions to such problems. The consumer relies on the following clarificatory directions given by the MERC in its orders dated 24/08/07 and 11/09/07.

Relevant portion in the clarificatory order dt. 24/08/07 in case Nos. 26 of 07 and 65 of 06.

“Para 14 : Reference period in cases of units under lock out or under permanent disconnection (PD) category during reference period. – In case of units that were under lock out or were permanently disconnected (PD) consumers for more than eleven months of the period from Jan. 01,2005 to Dec. 31, 2005 and who have commenced operation subsequently, the ASC will be levied at the stipulated proportion of 11% and 24%, as the case may



be, for the first six months after recommencement of operations. Thereafter, the average monthly consumption during the first six months after recommencement of operations, will be considered as the reference, and the ASC on the increased / decreased in consumption vis a vis the reference consumption will be charged in accordance with the commissions orders in this regard”.

Relevant portion in the clarificatory order dt. 11/09/07 in case Nos. 26 of 07 and 65 of 06.

“3. Reference period in cases of units that were sick during the reference period. : Sick units, able to submit documentary evidence for the same, will be treated on par with units under lock out or under permanent disconnection (PD category), as clarified on pages 26 and 27 of the clarificatory order dt. Aug. 24, 2007.

The basic philosophy is that the reference consumption has to be the average monthly consumption of a period of atleast six months of healthy operations. Accordingly, if the unit has been sick for less than six months during the reference period of Jan. to Dec. 05, the average monthly consumption during the period of healthy operation in the reference period of Jan. to Dec. 05, would be considered as reference consumption, for the purposes of billing increase/decrease in ASC units. However, in case of units that were sick for more than six months of the period from Jan. 01, 2005 to Dec. 31, 2005, and whose operations have become healthy again, the ASC will be levied at the stipulated proportion of 11% and 24%, as the case may be, for the first six months after regaining their financial health. There after, the average monthly consumption during the first six months after regaining their financial health will be considered as the reference,

and the ASC on the increase/decrease in consumption vis a vis the reference consumption will be charged in according with the commission's orders in this regard".

The CR further submits that considering the above clarificatory orders of MERC, it be held that the consumer's unit was sick during the year 2005 and upto Oct. 06 and therefore, it's average monthly consumption of 7444 units during the period April 07 to Sept. 07 be treated as it's BC and the licensee be directed to refund excess recovered ASC together with interest as mentioned in detail in annexure 10.

- 14) As against the above submissions, the representatives of the licensee submits that the consumer has not produced any documentary evidence about it's unit's sickness during the year 2005 and upto Oct. 06 and therefore, the unit of consumer cannot be said to be sick during the year of reference i.e. 2005 and therefore, the BC of consumer cannot be calculated on the basis of average monthly consumption of any period beyond 2005 much less April 07 to Sept. 07 as contended by the consumer and therefore, the consumer is not entitle for any refund on this count.
- 15) Thus the above referred directions regarding calculation of BC in respect of the units which were sick, under lock out or under PD category are admitted facts and therefore, it cannot be disputed that the same applies for calculating BC of unit which was sick during the year of reference i.e. 2005. Various observations made by Hon. Ombudsman in the order dt. 06/05/2009 in representation No. 34 of 2009, by Hon. MERC in para 8 on page No. 20 in it's order dt. 24/08/07 and also order dt. 11/09/07 in case Nos. 65 of 2006 and 26 of 2007 and Hon. Ombudsman in order dt. 30/09/08 in representation No. 57 of 2008, reproduced by the consumer in it's

rejoinder dated 16/05/09 are matter of record and cannot be disputed. However, the consumer in this case, has not produced on record any documentary evidence in support of it's contention that it's unit was sick during the reference year i.e. 2005 and then upto Oct. 06 as claimed by it, as required by the above referred direction No. 3 on page No. 5 in the MERC's clarificatory order dt. 11/09/2007. Moreover, if we consider the consumption of the consumer during the year prior to the year of reference, i.e. from Jan. 04 to Dec. 04, the same was 735.5 units per month. Therefore, considering the said monthly average consumption of 735.5 units in the year 2004, from the monthly average consumption of 773 units in the year 2005 (which has been treated as BC for calculating ASC for the consumer during the relevant period) it can only be inferred that the said unit was functioning normally in the year 2005 and it was not sick in the said year and upto Oct. 06 as contended by the consumer. Therefore, we hold that the consumer failed to show that it's unit was sick during the year of reference i.e. 2005 and therefore, it is not entitle for calculating it's BC as per the above referred orders of MERC and therefore, it cannot be said that the licensee has charged excess ASC to the consumer during the period from June 07 to June 08 as contended by it and therefore, it is not entitle for any refund on this count. Hence it's grievance about it is rejected.

- 16) As to Grievance No. (6) -- Regarding disconnection of single phase commercial 0.40 KW supply having consumer No. 001840498570 : The consumer claims that it has demanded disconnection of the said single phase commercial supply since according to it in view of the clause 19.1 of MERC (ESC & OCS) Regulation 2005 implemented from 20<sup>th</sup> Jan. 2005, all irrational circulars & orders of MSEDCL are invalid, & tariff booklet

definition & MERC operative order says that supply at low voltage except use of agricultural pump is allowed under LT-V & therefore, it does not need separate single phase commercial supply. It has also mentioned the same reason in support of his request/demand for disconnection in it's letter dated 17/02/09 about it to the Executive Engineer Vasai Division. On this licensee claims that regarding disconnection of single phase supply, the matter is referred to higher authority for direction, on receipt of reply action will be taken.

Clause 19.1 of above referred Regulations 2005, on which the consumer relies, reads as under :

“19.1 : Any terms or conditions of the Distribution Licensee, whether contained in the terms & conditions of supply & / or in any circular, order, notification or any other document or communication, which are inconsistent with these regulations shall be deemed to be invalid from the date on which these regulations come into force.”

The consumer has not made clear in his grievance as to exactly what type of activities it is carrying on in the premises for which it has earlier taken the said supply for commercial purpose. The CR also could not show any recent circular or order by which at present the supply given for Industrial purposes can also be used for commercial purpose also. Therefore, earlier restrictions if any, about it, cannot be said to be invalid on the basis of above referred Clause 19.1. However, it is a matter of commensence that, a person cannot be forced to continue to have particular type of supply against it's wishes. Therefore, the licensee is directed to disconnect the said supply of consumer No. 001840498570 to the consumer at the risk of consumer within 30 days from the date of decision in this case, & there

after transfer the SD amount together with interest till the date of such PD & all other credits including the amount of RLC as per MERC operative order 77 of 2007 if any, of the consumer in the said connection, to it's other industrial connection within a period of 30 days.

- 17) As to Grievance No. (1) in rejoinder dt. 16/05/09 – Regarding refund of excess DPC interest charged due to appropriation of the amount of regular bill towards SD : The consumer claims that the licensee collected Rs. 41,000 as Security Deposit (SD) in June 08 by appropriating amount from the amount of monthly bill paid by it. The licensee has collected DPC and interest of Rs. 2148.31 while recovering the arrears of earlier bill resulted due to the appropriation of amount of bill of earlier month paid by the consumer and consumer also suffered loss by loosing PPD (prompt payment discount) of Rs. 535 and therefore, as per the order dated 23/03/09 passed by Hon. Ombudsman in representation No. 23 of 2009, licensee be directed to refund the said amounts of DPC, interest and loss on account loosing PPD i.e. total amount of Rs. 2148.31 (+) Rs. 535. The licensee could not file any reply to the rejoinder dt. 16/05/09 since the consumer submitted the said rejoinder on 18/05/09 i. e. after the hearing. The CPL for the month of April 2008 shows Rs. 00.00 as SD, Rs. 39,100 as SD arrears and Rs. 39,100 as SD demand. CPL for the month of May 08 shows that the said bill was issued for net amount of Rs. 59,224.34, SD was Rs. 00.00, SD arrears was Rs. 39,100 and SD demand was Rs. 00.00. The CPL for the month of June 08 shows that the net bill amount was Rs. 104606.82, SD amount was Rs. 39,100 and SD arrears were Rs. Zero. The bill for the month of May 08 shows that the consumer was suppose to pay an amount of Rs. 58,670 if paid on or before 20/05/08. The CPL for

the month of June 08 shows that the consumer has paid an amount of Rs. 19,570 of the said bill on 20/05/08. The said CPL further shows Rs. 39,100 as the amount of SD and it means that the licensee has recovered the SD arrears of Rs. 39,100 out of the amount, the consumer has paid in the said month. If we add Rs. 19,570 and Rs. 39,100 the same comes to Rs. 58,670. It meant that though the consumer has paid entire amount of the said bill, the licensee has appropriated an amount of Rs. 39,100 towards SD and it resulted into the arrears of Rs. 104606.82 duly shown in the CPL for June 08. It means that due to such appropriation of some amount from the amount paid as per bill, as SD, the consumer must have been required to pay the interest on the arrears, DPC and must have also lost the amount of concession on account of prompt payment of the bill. Therefore, the licensee is directed to verify as to whether it has charged Rs. 2148.31 as DPC and interest and the consumer lost PPD of Rs. 535 due to such appropriation of Rs. 41,000 as SD from the amount deposited by the consumer in pursuance to the bill for electric charges for the month May 08 and if so, refund the said amounts of DPC and interest and also the amount of prompt payment discount which the consumer may have lost due to such appropriation, to the consumer as observed by Hon. Ombudsman in order dated 26/03/09 in representation No. 23 of 2009 by giving it's credit to the consumer in the ensuing bill after 30 days from the date of this decision.

- 18) In view of the findings on the grievances of the consumer as above, the forum unanimously passes the following order.

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

- 1) The grievance application is partly allowed.

- 2) The licensee to comply the directions given in above para Nos. 08 to 11, 16 and 17.
- 3) Grievance No. (5) in main grievance application is rejected as observed in para 15.
- 4) The Compliance should be reported to the forum within 90 days from the date of decision.
- 5) The Consumer can file representation against this decision with the Ombudsman at the following address.

*“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Building, Bandra Kurla Complex, Mumbai 51”*

Representation can be filed within 60 days from the date of this order.

- 5). Consumer, as per section 142 of the Electricity Act, 003, can approach Maharashtra Electricity Regulatory Commission at the following address:-  
*“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”*

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”

Date : 12/06/2009

(Sau V. V. Kelkar)  
Member  
CGRF Kalyan

(R.V.Shivdas)  
Member Secretary  
CGRF Kalyan