



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

IN THE MATTER OF GRIEVANCE NO. K/ E/ 0161/ 0183 OF 08-09
OF M/S. SHREE RUBBERPLAST P. LTD., VASAI REGISTERED
WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN
ZONE, KALYAN ABOUT EXCESSIVE BILLING.

M/s. Shree Rubberplast P. Ltd.
Rainbow Ind. Estate
S. No. 23/1, Village : Gokhiware,
Tal : Vasai, Dist : Thane

(Here in after
referred to
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Superintending Engineer, Vasai Circle
Navghar (East) Vasai Road.

(Here in after
referred to
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under regulation of "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 conformed 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 H.T. consumer of the licensee connected to their 22 KV network. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on dated 21/01/2009 for Excessive Energy Bill. The details are as follows: -
Name of the consumer :- M/s. Shree Rubberplast P. Ltd.
Address: - As above
Consumer No : - 001849024680
Reason of dispute: Excessive Energy Bill.
- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/047 dated 21/01/2009 to Nodal Officer of licensee. They replied vide letter No. SE/VC/Acctts/HTB/1104, dt. 02/03/09.
- 4) The forum heard Shri Harshad Sheth, representative of consumer on 20/02/09, also heard the consumer and representatives/officers of licensee on 03/03/09, and also carefully perused copies of circulars and various orders passed by MERC on the relevant points relied upon by both the parties.
- 5) In this case the hearing was scheduled to be held on 20.02.09 at 15.00 hours. Consumer Representative (CR) Shri Harshan Sheth waited upto 17.00 hours. M/s. Shree Rubberplast Co. P. Ltd. is a HT consumer and billing is being done at Circle level. Therefore, Superintending Engineer of Vasai Circle, Nodel Officer and other billing personals were supposed to attend this hearing. However, none of above Officers was present on behalf of licensee nor was any explanation put-forth for their absence. Hence forum decided to give a

second and final chance for hearing on 03/03/2009 at 16.00 hours in this case and a letter No.EE/CGRF/Kalyan/148 dt. 20.02.09 to that effect has been handed over to the C.R on the same day. The copy of Nodel Officer has been sent by RPAD. However, as per the request of the consumer representative (CR), his say has been heard and recorded. After submission of the licensee on 03.03.09, the case will be decided.

- 6) The Consumer Representative (CR) has already represented his case on 20.02.09 in the first hearing. On 03/03/09 he again narrated his earlier submission shortly as below :- He submits that from Oct.06 the Addl. Security Charges (ASC) started (Benchmark consumption 2005). From May 07 onwards the ASC revised. The consumer challenged BC under various situations (1) MERC Circular dt.24.8.07 (2) MERC Circular Dt.11.9.07 and (3) MSEDCL Circular No.62 dt.10.9.07. It is cleared in these circulars about what amount can be charged on which situation. Shree Rubberplast applied in Nov.07 to consider as new unit and the SE (Comm) referred 3 above orders and circulars to decide which conditions suit best to this unit. CD increased after 6 months or 3rd occasion of 75% of CD and Unit was under maintenance so delete the period and draw the average. In case of unit lockout, P.D, sick unit, closure and reopen, the first 6 month's consumer should be treated as actual and the next 6 months healthy period as average. This is new unit from 1.1.05. 18 months as actual and 13-18 months on average - BC. The basic philosophy is to consider 6 months of healthy period. The S.E. has not replied, no consultation, no queries made and not taken any decision. But the unit replied as new unit based on SSI – MSI, product changed, C. D. changed, fresh agreement made, changed name i.e. new occupier, earlier liability cleared by new unit,

consent letter of earlier firm etc. The interpretation of change of name as per Section 10 MERC Regulations 2005 (Electricity supply code and OCS) a). Section 10.1 – A connection may be transferred in case of transfer of ownership or occupancy by new owner, b). Section 10.3 – procedure for change of name (consent letter from transferor) c) Section 10.4 – The D.L. shall communicate decision (Dt.24.8.05) and d) Section 10.5 – Any change of electricity unpaid shall be recoverable from new owner – MSEDCL put this clause and change of name approved w.e.f. next billing cycle i.e. Sept.05. The orders/circulars/procedures of the MERC clarificatory order dt.24.08.07 and MERC clarificatory order dt.11.09 and MSEDCL Comm. circular No.62 dt.10.09.2007- indicate undoubtedly New Unit, but S.E. kept the matter lingering by giving wrong reference as company was existing and live to C.E.(comm.) causing irreparable losses and short of cash flow to unit. The tabulated statement of each demand is perfectly drawn as per the above circulars and the licensee has to refund Rs.7 lakhs to the unit. They have taken bench mark of somewhere consumer of 5000 units and charged Rs.15,000/- extra every month which is not justified.

- 7) The CR further submits that the main issue is Benchmark consideration as per definition of New Unit. The (CR) submits that the unit was sold to other party. The consumer processed for change of name alongwith change of ownership, change of load, change of products, manufacturing etc. and a fresh agreement with MSEDCL was executed by us on 24.08.05 and all liabilities of earlier owner are cleared by us. The licensee effected change of name on same consumer No. and meter No. but not treated as new consumer. Therefore all the grievances created. CR submits that they made series of

representations to SE Office, Head office. After this, they have not received any correspondence from SE. So they taken as their stand is valid and they are treated as New Consumer irrespective of simply consumer no. remains same. Thereafter refund is not received from SE office and therefore they approached IGRC with a request to refund their various claims with respect to :

- ASC refund due to consideration of Bench mark consumption as per MSEDCL circular No.62 - a). for period from Oct.06 to Apr 07 (b) for May 07 to May 08 (from Jun 08 ASC is abolished).
 - Incremental ASC refund for period from Oct.06 to Apr 07 period as per MERC order in case of 45 of 2007 dt.17.9.08
 - Electricity duty refund on the proportionate amount of refund.
 - Interest unpaid for respective months as per I. E. Act 2003
 - Section 62(6).
- (a). The C. R. further submits that MSEDCL Com. circular No.62 letter No.PR-3/Tariff/34883 dt.10.09.07 on the basis of clarificatory order dt.24.8.07 point No.6 section iii read as “The reference period in case of consumers who become consumers after the reference period of Jan.05 to Dec.05 is specified as under by the Order dt.18.5.07. “In case of new consumers, who were not MSEDCL’s consumers during the above reference period, the reference period for comparison of consumption may be taken as the last bill period” The Commission has directed to work out the ASC as per method given below instead of above that 1). This method will be applicable for all new consumers who have become MSEDCL’s consumers at any time after 1.1.05. (2). For the first 18 months of

- operation, there will be no Bench Mark/reference consumption, and ASC will be levied at the stipulated proportion of 11% and 24% as the case may be. Thereafter, from the 19 month onwards, the reference consumption will be the average monthly consumption in the Six Month period after completion of development period of one year i.e. average monthly consumption during 13th to 18th month” and their chart based on above giving benchmark consumption per ;month as 34,277 units per month.(G, H, I)
- (b). The C. R. further submits that on above, they have enclosed statement for ASC refund for Oct.2006 to Apr 07 wherein this area, 25% of the consumption based on benchmark and proportionate concession in percentage if consumption is less then benchmark consumption at the rate of 6.15 per unit for costly power.
- (c). The C. R. further submits that Incremental ASC charged during the period is to be refunded as per the MERC order in case of No.45 of 2007 dt.17.9.08 as per statement enclosed by consumer.(J, K, L). This is essential for the tariff applicability in respect of additional supply charge started from (a) Oct.06 – for HT consumer, 25% of consumption based on B.C. of 2005 charged on ASC rate Rs.5.15. If consumption is increased compared to B.C. then at 25% and if reduced, then as per proportionate percentage reduction based on B.C. (b) Revised in May 07 upto May 08 – 89% of B.C. to be charged at cheap power rate and balance units as ASC i.e. Rs.5.36 per unit.
- (d). The C. R. further submits that a statement for the ASC refund for the period from May ;07 to May 08 is enclosed

considering the B.C.as 34,277 units per ;month wherein 89% of the B.C.units to be charged with cheap power rate and balance units with ASC rates Rs.5.36 (M.N).

- (e). The C. R. further submits that MERC clarificatory order dt.11.9.07 in case of 26 of 2207 and 65 of 2006. Para No.3 – ref. period in case of units that were sick during the ref. period are to be treated on par with units under lock out or P.D. category, as clarified on pages 26 and 27 of the clarificatory order dt.24.08.07. All the criteria and mode of situation indicates the same method for reference period of B.C. Page no.6 of above clarificatory order dt.11.9. 07 read as “The basic philosophy is that the reference consumption has to be the average monthly consumption of a period of at least six months of healthy operations”. (O,P)
- (f). The C. R. further submits that Refund on the electricity duty paid in excess due to above ASC and IASC cost and the interest as per E. Act 2004 Section 62(6) is to be refunded. Enclosed statement and supporting decision of Electricity Ombudsman representation No.54 of 2008 dt.27.9.08 page 12 para No.29 & 30.
- 8). The licensee in reply dated 02/03/2009 submits that M/s. Shree Rubberplast Co. Pvt. Ltd. is our HT consumer, has submitted representation in protest of ASC levied to him in the current bills based on Benchmark consumptions in the year 2005. This office record shows that M/s. Safe Pack was out HT consumer who's connection was released on dt.17.9.03. This factory was purchased by M/s.Shri Rubber Plast Co.Pvt.Ltd. and sequent the change of name was effected in his favour after observing all the formalities. As the company was existing and

lives since year 2003, the ASC is levied on the basis of consumption recorded by the consumer during the period Jan.05 to Dec.05. The incoming consumer has to take all liabilities of the outgoing consumer as a condition for change of name which is mentioned in form "Y" which has agreed by incoming consumer. However the consumer is insisting for levy of ASC on the basis of consumption recorded by him after take over/purchase of the unit.

- 9). The representative of licensee submits that as regards refund of ASC, IASC we will discuss the matter with IT and higher officers and action will be taken within one week.
- 10) The forum asked the licensee that whether you can treat this consumer as new on the basis of above circulars. The licensee said as per circular 62 this consumer can not be treated as new consumer. Forum suggested to the licensee that it's detailed reply with full justification and supported documents/circulars should be submitted to this office within seven days.
- 11). The Representative of the licensee expressed his opinion to refer the above point for confirmation to Head Office. Forum expressed that though the consumer is following up the matter with the licensee since two years, forum will give one time for decision. If you want, discuss all above with higher authorities and give reply within 7 days with a copy to consumer.
- 12). As per consumer's submission and as represented by CR the details of amount to be refunded to consumer are as follows:
 - i). Rs. 47,198.00 - ASC for period Oct.06 to Ar.07
 - ii). Rs. 6,13,884.00 - ASC for period May 07 to May 08

iii). Rs. 21,977.00 - I ASC for Octl.06 to April 07

iv). Rs. 39,665.00 - Electricity duty

v). Rs. 52,560.00 - Interest on all above.

Rs. 07,56,806.00

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- 13). Subsequently, the licensee filed additional reply dt. 09/03/09 as per the undertaking given by it's representatives during the hearing. The licensee in the said additional say contended that the consumer is a old consumer by all concept since the change of name only was effected vide letter dt. 21/08/2005 as per the application and consent of outgoing and incoming consumer. The incoming consumer has accepted all the liabilities of the outgoing consumer. The incoming consumer was not charged the service connection charges and has not gone through the process of surveying, load sanction etc. from the competent authority besides submission of documents which were required to be submitted by the new consumer, and enjoyed all the privileges of existing consumer. The payment of fresh/additional security deposit is the fact, changing from time to time depending upon consumption pattern of the consumer. It further reiterates it's earlier stand that the applicant being existing (old)consumer, the benchmark consumption and ASC was changed as per commercial circular No. 62, dt. 20/09/2007. It further claims that as per MERC's clarification order dt. 10/09/2007, sick units are treated as lockout/permanent disconnected category, subject to such consumer provides the documentary evidence to prove such fact. This is not done in this case. It has also annexed the CPL of the consumer with such addition say, for verification.

- 14). Considering the grievances of and reliefs prayed by the applicant/consumer, say of the licensee, the following points arise the determination, and taking into consideration various contentions raised by both parties and the documents/orders/circulars relied upon by them, the findings thereon are given against each of it, for the following reasons.

Points	Findings
(1)Whether the consumer is entitle for the refund of ASC changed by the MSEDCL (licensee) during the period from October 06 to April 07 as claimed?	No
(2) Whether the consumer is entitle for the refund of ASC changed by the MSEDCL (licensee) During the period from May 07 to May 08 as claimed?	No
(3)Whether the consumer is entitle for refund of incremental ASC for the period from Oct. 2006 to April 2007 as per the MERC's order dt. 17/09/08 in case No. 45/2007 as claimed ?	Entitle for the adjustment of the actual IASC recovered during the concerned period in future bills.
(4) Whether the consumer is entitle for refund of Electricity Duty on the proportionate amount of refund of ASC as claimed ?	No
(5) Whether the consumer is entitle for interest on such amounts of refund if any ? If so, at what rate ?	(1)Entitle for interest at the rate in Saving Account of R.B.I. (2)Does not survive as far as other amounts are concerned.
(6). Whether the consumer is entitle for compensation for harassment, for not following high command hints and reference, circulars, MERC orders and financial loss etc.?	"NO"
(7). What Order ?	As per final order.

Reasons :

15) As to point Nos 1 & 2 : In order to appreciate the applicant's prayer in this behalf, it would be worthwhile to recall & refresh the concept of "Additional Supply Charges" as stipulated by the Commission. The concept of "Additional Supply Charges" first came in to existence through the tariff order (case No. 54/2005) dt. 20th Oct. 2006, which was effective from 1st Oct. 2006. The Commission had observed that the benefit of reduction in Load Shedding hours is only possible by MSEDCL making purchase from costly sources to supply to such consumers. In cases where the consumers are receiving benefit of reduced Load Shedding hours, the commission was of the view that consumers have to pay for costly power separately through the "Additional Supply Charges". As regards levy of Additional Supply Charges, the commission had observed:

"Chapter 8 :

- (1).
- (2).
- (3).
- (4) Implementation of "Additional Supply Charges"

The commission is of the opinion that consumers should be incentivised to respond to the "Additional Supply Charges". Therefore, the commission directs MSEDCL to assess the consumption of the consumer as against the monthly average of previous year's consumption (January 2005 to December 2005) while billing the consumer for "Additional Supply Charges. For instance, if a commercial consumer located in Industrial and Urban

agglomeration reduces the consumption by 5% as against the average of previous year's consumption, then only 14% (19% - 5%) of his current consumption should be billed at "Additional Supply Charges. This shall not only incentivise the consumers to conserve energy and eventually procurement by MSEDCL from costly sources but also reduces the tariff impact on the bills of consumers. For computation of previous year's average, the clarification issued by the commission through its clarificatory orders dt. January 13, 2006 and February 21, 2006, in case No. 35/2005, shall apply. In addition, in case of closure of any industrial unit for a period greater than one month during the period January 2005 to December 2005 for maintenance or other purposes, and documentary evidence of the same is provided to the MSEDCL, then MSEDCL will exclude the period of closure, while computing the monthly average for the purposes of levy of "Additional Supply Charges".

- 16) As far as the present case is concerned, MERC's clarificatory order dt. 24/08/07 in respect of the detailed Tariff order dt. 18/05/07 in case No. 65/2006, MERC's clarificatory order dt. 11/09/07 in case Nos 26/2007 and 65/2006 & MSEDCL's commercial circular No. 62, dt. 10/09/07, are most relevant and therefore the same will have to be considered carefully and therefore it would be worthwhile to reproduce its relevant extracts.
- 17) The provision regarding the reference period, while considering the question regarding the Bench Mark consumption for levy of "Additional Supply Charges" in case of new consumer, as per Tariff order of MERC dt. 18th May 2007 in case No. 65/2006, as

mentioned in Commercial Circular No. 62, dt. 10/09/2007 issued by MSEDCL, is as under :

“(iii) Bench Mark Consumption for levy of ASC in case of new consumers :

The reference period in case of consumers who become consumers after the reference period of January, 2005 to December, 2005 is specified as under by the Order dated 18th May, 2007.

“In case of new consumers, who were not MSEDCL’s consumers during the above reference period, the reference period for comparison of consumption may be taken as the last bill period”.

The Commission has directed to work out the ASC as per method given below instead of above.

1. This method will be applicable for all new consumers who have become MSEDCL’s consumers at any time after 1st January 2005.

2. For the first 18 months of operation, there will be no Bench Mark / Reference Consumption, and ASC will be levied at the stipulated proportion of 11% and 24%, as the case may be. Thereafter, from the 19 month onwards, the reference consumption will be the average monthly consumption in the Six Month period after completion of development period of one year i.e. average monthly consumption during 13th to the 18th month”.

18) It is submitted by Shri Sheth, CR that the consumer has purchased the concerned unit from the earlier owner M/s. Safe Pack in August 2005 and there after on the application made by consumer & earlier owner, the name of the unit has been changed to M/s.

Shree Rubberplast Co. Pvt. Ltd. and the MSEDCL/licensee got fresh agreement dt. 17/08/2005 executed from it and the connected load was changed to 510 KW and the contract demand was reduced to 225 KVA. He further submits that the consumer was not consumer earlier to the purchase of the said unit in August 2005. He further submits that considering the above facts, the licensee ought to have treated the consumer as new consumer, and thereafter should have assessed the "Additional Supply Charges" (In short ASC) levied on the consumer, without any Bench Mark/Reference consumption for the first 18 months, and thereafter from 18th month onwards, taking average monthly consumption in the six month period after completion of Development period of one year i.e. average monthly consumption during 13th to 18th month as reference period. He further submits that however, the licensee wrongly assessed the ASC from the consumer by taking it as a old consumer and hence taking average monthly consumption during the period January 2005 to December 2005. He further submits that such an action of licensee be held to be illegal & it be directed to refund the excess ASC recovered by it from the consumer as prayed by it.

- 19) As against it, the representative of the licensee submits that there was already electric connection in the said unit during the period Jan. 2005 to Dec. 2005 and there has been only change in the name of consumer after the consumer purchased the said unit in Aug. 2005 on the application made by it and the previous owner as per the Clause No. 10 of MERC (ECS & OCS) Regulations 2005 & therefore the consumer cannot be treated as new consumer. He further submits that by getting the said electric connection

transferred in it's name, the consumer has accepted all liabilities of the said old connection from it's earlier owner. He therefore submits that the licensee has rightly assessed the ASC for consumer as old customer and therefore consumer is not entitle for any refund of ASC paid by it.

20). At this stage, the views of both members i.e. Sau.V.V.Kelkar and Shri R.V.Shivdas, Member Secretary, are ascertained. So Sau V.V.Kelkar, says that in her opinion, the consumer has to be treated as new consumer whereas Shri Shivdas says that the consumer has to be treated as old consumer. In view of such different opinion, such different views and the reasons given by them for the same are recorded as under:

21). View of Sau. V.V.Kelkar, Member :- **The point regarding Bench Mark consumption consideration as per the definition of new unit she expressed her view in following manner.**

22) For coming to a conclusion in this case about the status of the consumer, following events are important :

- i) On 01/07/2005 M/s. Safe Pak informed to the licensee vide letter dated 01/07/2005 stated about the sick condition of the Company & expressed his desire for the sale of the Company. (Annexure 'A')
- ii) Licensee's S.E. vide Lr. No. (Ann.B) dt. 24/08/05 confirms that the process of change of name from Safe Pak to Shree Rubberplast is completed. Subsequently the fresh agreement between Shree Rubberplast & Licensee on 17/08/05 for a connected load of 510 KW & new contract demand of 225 KVA for the purpose of manufacturing of plastic packing material. S. E. Vasai Circle vide Lr. No. 2170, dt.

24/08/08 requested for guidance from C. E. Commercial “Whether the consumer should be treated as a new connection & levy of ASC accordingly or otherwise as per existing”.

- iii) Vasai S. E. office received reply from C. E.(Com) vide Lr. No. 43207, dt. 10/12/07 (Ann.C) & they were advised to go to the provisions of the i). MERC ‘s clarificatory order dtd. 24.08.2007 (ii). MERC ‘s clarificatory order dtd. 11.09.2007 (iii). Commercial circular No.62 dt.10.09.07.
- iv) From the study of the correspondence, comparative study of two consumers records are as follows :

	Safe Pak	Shree Rubberplast
Connected Load	510 KW	510 KW
Contract Demand	365 KVA	225 KVA
Scale	Small	Medium
Activity	Metal Container	Plastic Process
Meter No. & Consumer No.	Same	Same

From the above technical data, it is clear that even though the consumer Number & Meter Number are the same, the rest of parameters are entirely different & are as follows :

- a) Contract Demand has been changed from 365 KVA to 225 KVA.
- b) The factory scale has changed from small scale sector to medium scale sector.
- c) Manufacturing activity has also changed from Metal Container to Plastic Process.

- v) The licensee has entered to fresh agreement with M/s.Shree Rubberplast on dt. 17/08/05 & bill for the period 25/08/05 to 21/09/05 was issued in the name of Shree Rubberplast on 01/10/2005.
 - vi) By entering into an agreement with M/s. Rubberplast licensee accepts Shree Rubberplast as new consumer in place of Safe Pak.
 - vii)As per Supply Code 10.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & other conditions of supply) Regulation 2005, procedure of change of name was followed and even though the connection is same, the new owner should be treated as a new consumer to the licensee.
 - viii)In this case the new owner Shree Rubberplast became the new consumer of licensee with the signing of the agreement with licensee dated 17/08/2005 (as per letter dated 24.08.05- Exh.-B) written by SE Vasai Circle addressed to M/s.Shree Rubberplast.
 - ix) The Bench mark consumption is based on the power consumption by the consumer. Therefore the licensee should follow the circular 62 for the calculation of Bench Mark consumption.
 - x) As the agreement comes into effect from 17/08/2005, the consumer as per circular No. 62 (iii) become the new consumer to the licensee & his Bench Mark consumption should be calculated as per the guide lines given for the new consumer in the circular No. 62.
 - xi). Being a new consumer, the consumer is entitle to get all benefits from the licensee.
- 23). View of Shri Shivdas, Member Secretary : -
- I have given thoughtful consideration to the above contentions raised by the parties. It is clear from the above referred tariff order dt. 20th Oct. 06 in case No. 54/2005, by which the concept of

“Additional Supply Charges” (ASC) came into existence, that it was possible for MSEDCL (licensee) to give benefit of load shedding to the concerned consumers by making purchase of electricity from costly sources to supply the same to such consumers, and therefore such consumers are liable to pay “Additional Supply Charges” & while considering the point as to on how much excess consumption, such consumers should pay “Additional Supply Charges” it has been directed that the average monthly consumption during the earlier year i.e. during the period Jan. 2005 to Dec. 2005 (to be referred as reference period), should be considered as Bench Mark consumption. Admittedly the concerned unit purchased by the consumer was functioning with electric connection during the said reference period i.e. during Jan. 2005 to Dec. 2005 and the said connection was merely transferred in the name of applicant/consumer on it’s application after it has purchased it, in Aug. 2005, and the data regarding electricity consumption of the said unit during the period Jan. 2005 to Dec. 2005 was available, and therefore in my opinion, the consumer cannot be treated as “New consumer”, and has been rightly considered as old consumer by licensee.

- 24) In Clause 10 of MERC (ECS & OCS) Regulations 2005, provides for the transfer of an electric connection in the name of another person on his application, in case of death of the consumer or in case of transfer of ownership or occupancy of the premises and in the present case the applicant/consumer has admittedly made such an application for transfer of the said electric connection in it’s name. Therefore it cannot be said that the MSEDCL/licensee has

committed any error or mistake in following the said procedure for change of the name regarding the electric connection in question.

- 25) The consumer has naturally taken all the advantages of the old electric connection in the said unit and therefore it can not now run away from the liability of paying ASC taking the average monthly consumption during the period Jan. 2005 to Dec. 2006, as Bench Mark consumption.
- 26) Considering the above facts and circumstances, I come to the conclusion that there is no merit in the contention of the consumer that the licensee should have changed ASC to it, considering it as a "New consumer" and hence I reject it.
- 27) It is further contended by the applicant/consumer that the concerned unit was sick during the period Jan. 05 to Dec. 05, and therefore it should be treated as Unit Under Lockout or Under Permanent Disconnection (PD) category as per clarificatory order dt. 24/08/2007 and therefore the MSEDCL/licensee ought to have assessed the ASC, taking average months consumption of a period of atleast six months of healthy operation, after it purchased it. However, the consumer has not added any documentary evidence to reliably show that concerned unit factory was "Sick" during the period Jan. 2005 to Dec. 2005, except a copy of letter dt. 01/07/2005 allegedly sent by the earlier owner to the Superintending Engineer, MSEDCL., Vasai, Dist : Thane, informing that they had hardly operated the machineries because export orders have cancelled. In my opinion the said letter is not sufficient to prove the fact that the said unit was "Sick" during the period Jan. 05 to Dec. 05. Therefore I am unable to accept the contents of the applicant/consumer that the

MSEDCL/licensee ought to have assessed the ASC to the consumer, considering it as sick unit during the year 2005 and therefore I reject it's such contents.

- 28). Clause 8.1 of the MERC (consumer grievance Redressal forum and electricity Ombudsman) Regulations 2006 reads as under:

“On completion of proceedings conducted under Regulation-6, except where the forum consist of a single member, the forum shall take a decision by majority of votes of the members of the forum and in the event of equality of votes, the Chairperson shall have the second and casting vote.”

It is clear from the above Clause 8.1 of the Regulations 2006 that the Chairperson has been given a second or casting vote, in case of equality of votes, and it clearly means such equality votes is mean to be equality of the votes of other two members.

- 29). In the instant case, there has been different of opinion or views amongst two members on the point as to whether the consumer should be considered as old consumer or new consumer for the purposes of calculating Bench Mark Consumption, as discussed above, and Shri Shivadas, Member Secretary held that the consumer can not be treated as Sick Industry for the purpose of calculating bench mark consumption. In view of such difference of opinion amongst the two members Shri M.N.Patale, as a Chairperson, will have to give second or casting vote and the view out of the different views taken by two members, seconded by Shri M.N.Patale, Chairperson, will become, the view of the majority and hence such view will be the decision of the forum.

- 30). I, Shri M.N.Patale, Chairperson, after giving due consideration to the different views expressed by two members as above and the reasons given by them for the same, approve or support the above view taken by Shri R.V.Shivdas, to the effect that considering the fact that the consumer has consented to take all the liabilities of the earlier owner of the concerned industry and consequently the electric connection, and also taken all the advantages of old consumer, can not be treated as new consumer and will have to be treated as old consumer for the purpose of calculating bench mark consumption for calculating ASC and therefore the ASC calculated and record from the consumer by licensee is correct and legal and therefore the consumer is not entitle for any adjustment of any such amount.
- 31) In view of the above discussion, it is clear that the contention of consumer that the MSEDCL/licensee has incorrectly calculated and charged ASC to it, during the said period & therefore MSEDCL/ Licensee is liable to refund the same i.e. excess ASC as claimed by it, to it, cannot be accepted and hence we reject the same. Hence with the majority view, both these points stand answered in negative as above.
- 32) As to point No. 3 & 5 (part) : Admittedly the consumer has contributed for ASC during the relevant period. It is also clear from the order dt. 17/09/2008 passed by MERC in case No. 45/2007, that the MERC directed the MSEDCL/licensee to refund the incremental ASC for the period from Oct. 2006 to April 2007 to all the consumers who have contributed towards ASC, on a one to one basis in the next billing period (Oct. 08), in accordance with their ASC consumption in the corresponding month from Oct. 2006 to April

2007, rather than the month of refund. The MSEDCL/licensee does not claim that it has refunded the concerned incremental ASC to the consumer. On the other hand, the representative of licensee, during the hearing in this case, submitted that they will discuss the matter with I.T. and higher officers and action will be taken within one week. The licensee however, did not file further say informing about any such action taken thereafter. Considering all these facts it is clear that the consumer is entitle for the refund of incremental ASC for the period from Oct. 2006 to April 2007 from the MSEDCL/licensee, and hence we hold accordingly.

- 33) The consumer in the chart (Ann.-J) has shown & accordingly claimed that an amount of Rs. 21,977=45 has been recovered as IASC from it & therefore the licensee be directed to refund that much amount to him. It is, however, difficult to verify the said amounts from copies of electric bills, chart (Ann -J) & CPL as the entries in it, do not tally with each other. Therefore it would be proper to direct the licensee to adjust the amount of such IASC recovered during the concerned period after calculating the same together with interest at the rate of Reserve Bank of India in Saving Accounts on the date of this decision, in the ensuing bill for April 09. Hence point No.3 and point No.5 (Part) stand answered accordingly.
- 34) As to point No. 4 : It has already been held while deciding point Nos. 1 & 2, by a majority view, that the consumer is not entitle for the refund /adjustment of ASC & therefore consequently the consumer is also not entitle for the refund/adjustment of electricity Duty on any such amount of refund of ASC. Hence this point stands answered in negative as above.

- 35) As to point No. 5 (Part) : It is already held while deciding the point Nos. 1 & 2,(by majority view), and 4 that the consumer is not entitle for the refund/adjustment of ASC & electricity duty and therefore the question of payment of any interest on such amounts does not arise as far as the said amounts are concerned. Hence this point stands answered accordingly in negative as far as amounts of ASC and electricity duty are concerned.
- 36). As to point No.6. In view of the majority view on the point No.1 & 2 and unanimous findings on other points, the consumer is not entitle for any compensation for harassment, for not following high command hints and references, circulars, MERC orders and financial losses, as prayed by it , hence the findings on this point in negative as above.
- 37) In view of the findings on point Nos. 1 & 2 (by majority) and on points 3 to 5 unanimously as above, the forum passes the following order:

O-R-D-E-R

- 1). Prayer of consumer for the refund /adjustment of the amount of ASC charged by the licensee for the period from Oct.2006 to May 08 is rejected.
- 2) The licensee to adjust the amount of IASC recovered from the consumer during the period from October 2006 to April 2007 together with interest at the rate in Saving Account of Reserve Bank of India as on today from 1st November 2008 till the date of such adjustment, in the ensuing bill for April 09.
- 3) Prayer of consumer for refund of ASC, electricity duty is rejected.

- 4). The prayer of consumer for compensation of Rs.25,000/- is rejected.
- 5). Compliance should be reported to the forum within 90 days from the date of this decision.
- 6). Consumer can file appeal against this decision with the Ombudsman at the following address.

*“Maharashtra Electricity Regulatory Commission,
606/608,KeshavBuilding,BandraKurlaComplex,Mumbai 51”*

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

- 7). Consumer, as per section 142 of the Electricity Act, 2003, can approach Maharashtra Electricity Regulatory Commission 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 : 20/03/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan