

BEFORE THE CONSUMER GRIEVANCES REDRESSAL FORUM
M. S. ELECTRICITY DISTRIBUTION CO.LTD.
(NAGPUR ZONE – RURAL) NAGPUR.

Application/Case No. CGRF/NZ/Rural/ **48** of 2007

Applicant : M/S. Lloyds Steel Industries Ltd., Bhugaon
Post -Selukate, Tah & Dist - Wardha.
-- VS --

Non-applicants. : 1.Executive Engineer,C.C.O&M Dn., MSEDCL,
Wardha.
2.Executive Engineer/Nodal Officer
Internal Grievance Redressed Cell,
Circle Office, MSEDCL, Wardha.

Present : 1.Shri N.J.Ramteke,Chairman
2.Shri M.G.Deodhar,Member
3.Shri S.J.Bhargava,Member/Secy.

Appearance. : 1. Shri R.B.Goenka , Representative .
2. Shri R. Venkatraman.
For Applicant .
1. Shri Abhijeet Deshpande,C.E.
2. Shri A. S.Tehare,C.E.
3. Shri B.S.Jaiswal, S.E.
For Non-Applicants.

ORDER

(Passed this 26th day of November, 2007)
(Per Shri N.J.Ramteke, CHAIRMAN)

- 1) The Maharashtra State Electricity Distribution Co.Ltd. (for short 'MSEDCL') preferred an appeal before the Hon'ble Supreme Court against the judgement passed by the Appellate Tribunal, New Delhi. The Supreme Court set aside the order dated 18/10/2005 (in the civil appeal No.3551 of 2006 vide judgement dated 14/8/2007) passed by the Maharashtra State Electricity Commission (for Brevity 'MERC') and the order dated 5th April,2006 and 2nd June,2006 passed by the Appellate Tribunal. The Supreme Court remitted the case to the Forum created under section 42(5) of the Electricity Act,2003 (hereinafter called 'ACT') to decide the grievance of M/S. Lloyds Steel Industries Ltd(for short 'LSIL') in accordance with law. The operative part of the Supreme Court judgement (Para 9) is as under.

“Therefore, in the facts and circumstances of the present case, we are of the opinion that the view taken by the Commission as well as the Appellate Authority are unsustainable and they have erred in coming to the conclusion that the Commission has jurisdiction. Consequently, we set aside the order dated 18th October,2005 passed by the Commission and the orders dated 5th April,2006 and 2nd June,2006 passed by the Appellate Authority and remit the matter to the proper Forum created under Section 42(5) of the Act to decide the grievance of the respondent herein in accordance with law. We make it clear that we have not made any observation with regard to the merits of the demand raised by the appellant upon the respondent company and it will be open for the proper Forum to adjudicate the same. The payment, if any, made by the company will not operate as an estoppel against the respondent company. We hope that the Forum will decide the matter expeditiously.”

In view of above judgement of the Supreme Court, the LSIL(Applicant) submitted an application in schedule ‘A’ of the -Maharashtra Electricity Regulatory Commission(CGRF&EO)Regulations,2006 to this Forum on 26/9/2007. On receipt of this application, the Forum gave acknowledgement to Applicant, called parawise comments from non-applicants, on receipt of parawise comments from non-applicants, copy of the same was sent to Applicant alongwith notice for hearing. The Forum issued and served the notices to both the parties for hearing. Shri R.B.Goenka, Representative, appeared for Applicant. Sarvashri Abhijeet Deshpande,C.E., A.S.Tehare, C.E. and B.S.Jaiswal,S.E. appeared for the non-applicants(MSEDECL) on 23/11/2007 for hearing. Shri Goenka argued elaborately on behalf of the Applicant. Shri Abhijeet Deshpande argued at length on behalf of the MSEDCL. Thus the Forum followed the procedure as laid down under Regulation 6.10 to 6.15 of the Regulations in terms of the rule of natural justice. The Forum gave fair and reasonable opportunity of hearing to both the parties.

- 2) Section 42(5) of the Act provides for establishment of the Forum for redressal of the grievances of the consumer in accordance with the guidelines as may be specified by the State Commission. The State Commission (MERC) framed the MERC(CGRF&O) Regulations,2003. These Regulations may be called as old Regulations. These Regulations established a three tier system to redress the

grievances of the consumers in respect of the electricity. At the first stage there is an Internal Grievance Redressal Cell at district level in the office of the Superintending Engineer. The second stage is the Consumer Grievance Redressal Forum to receive an application against the order of the I.G.R.C. At third stage there is an institution of Ombudsman to receive the representation against the order of CGRF. The MERC framed the new Regulations known as MERC(CGRF&EO)Regulations,2006 in super-session of the old Regulations of 2003. The new Regulations provide for elaborate procedure for Redressal of the grievances of the consumer at all the above three stages. As per Regulations 2.1(d) IGRC, as per 2.1(e) the Forum and as per 2.1(f) Electricity Ombudsman are provided for. Thus under the Regulations,2006, the Forum is empowered to redress the grievances of the consumer. The present grievance is in respect of the refunding an amount of Rs. 227.9 lakhs collected from the Applicant against SLC and SCC charges alongwith bank interest. The Regulations also provide for the prescribed forms as an application to the IGRC (Form 'X'), application to Forum (form schedule 'A') and representation before the Electricity Ombudsman (form 'B'). The Applicant submitted an application to the Forum in form schedule 'A' in terms of the directives of the Supreme Court. Hence the present proceedings.

- 3) The Applicant wants the Redressal of its grievances as illegally recovered and collected Rs. 227.9 lakhs by the non-applicants on the grounds that condition No.7 of the Conditions of Supply as framed by the M.S.E.DE.C.L., is contrary to the provisions of Indian Electricity Act,1910 applicable at that time. The present application is restricted only to the extent of correct interpretation of the provisions of Electricity Act,1910. As a matter of fact, the MSEDCL (Then 'Board') should not have collected non-refundable amount from the Applicant in the past also as per the Electricity Act,1910 and Electricity(supply)Act,1948. The MSEDCL had a responsibility to develop infrastructure to give supply to the Applicant at a condition to receive minimum sum from Applicant. Applicant relied upon the section 22 of the Indian Electricity Act,1910. Relying on this section, the Applicant made grounds that the provision of the Act prevailing at that time, it was clear that the infrastructure

was to be created by the Board at its own cost and the Board is empowered to collect revenue returns by way of monthly minimum charges as per provisions in tariff and in case it is insufficient, Board was empowered to collect the minimum charges annually. Applicant also relied upon section 59 of the Electricity (supply) Act, 1948. The Applicant made the payments as desired by the non-applicants and, therefore, satisfied the provisions of the said conditions and moreover the non-applicants have created necessary infrastructure like 220 KV Sub/station from the said contribution. The non-applicants should have exclusively restricted the said infrastructure for giving power supply to the Applicant only, however, the non-applicants have taken to other feeders from the said sub/stations namely 220 KV Feeder and 132 KV Feeder which deliver power to adjoining Wardha I and district, tahsil. The other consumers who are supplied power from these two feeders may have paid the SLC or the capital expenditure for getting power supply. It, therefore, amounts to two times recovery of the cost for the same infrastructure. One from the Applicant and again from the other consumers. Due to down turn in the business, the contract demand was subsequently reduced from 100MVA. It was further reduced to 56 MVA, the capacity to the extent to the said reduction i.e. 44 MVA became spare in the said 220 KV -EHV Sub/station. The Applicant has not reduced the sanctioned connected load at any time and reduction of contract demand and it remained the same to the level of 128628 KW. The Applicant relied upon the condition No.7 of the Conditions of supply. The Applicant insisted to follow the order of MERC to refund the SLC and SCC charges alongwith interest on that count. The Applicant made the ground that orders of MERC and Appellate Tribunal are in their favour and, therefore, these orders should be followed to refund the amount as mentioned therein. The order of the Supreme Court is about the jurisdiction of the MERC and has not made any observations with regards to the merits of the demand raised by Applicant. It will be open for Forum to adjudicate the same.

- 4) The facts of the case in brief are that Applicant M/S.LSIL is a steel manufacturing company at village Bhugaon, district-Wardha. The company is a consumer of MSEDCL(Then Board). It availed the supply at 220 KV with the contract demand of

90 MVA from Nov,2002. Its consumer No. is 510019001332. Initially the electricity supply was given in 1994 with contract demand of 90 MVA. In April,1996 the contract demand was increased to 100 MVA and Applicant paid Rs.9.05 lakhs and 415 lakhs towards SLC and SCC charges in addition to security deposit. The Applicant company handed over a developed plot of 62500 sq.mtr. to non-applicants for setting up 220 KV EHV sub/station. On request of Applicant, contract demand was reduced to 90 MVA in March,1999, it was again reduced to 88 MVA in August,2000 and again it was reduced to 56 MVA in April,2001. The sanctioned connected load was not reduced and remained at the same level as per the earlier sanction. The non-applicants issued energy bills to Applicant after reduction in contract demand as per prevailing tariff rates. The Applicant requested non-applicants for reinstatement of contract demand to 90 MVA. The non-Applicants issued demand note of R.s 6.9 lakhs and 221.0 lakhs towards SCC and SLC charges respectively. The non-applicants also asked Applicant to pay Rs. 440/- lakhs towards additional security deposit. On request of the Applicant, the non-applicants agreed to give installment to Applicant as per their letter dated 8/10/2002(Applicaht-Ext-6, Record page 19) to enhance contract demand from 56 MVA to 90 MVA. The Applicant made the full payment of Rs. 6.9 lakhs and Rs. 221.0 lakhs towards SCC & SLC charges respectively.

The Applicant approached the MERC for refund of the amount of Rs. 6.09 lakhs and Rs. 221.0 lakhs as paid by them in addition to the earlier amount which they had already paid. The Applicant (LSIL) had earlier approached the Commission in 2002 in this matter with prayers to refund the amount of Rs. 227.9 lakhs. The Applicant wanted to settle out of the court with the MSEB(Now MSEDCL). This Application No. 3/2002 was disposed off by the MERC under order dated 3/8/2004 with the observations that Commission had not gone into the merits of the case and gave liberty to the Applicant to apply afresh before the Commission pending on the outcome of their ongoing negotiations with the MSEB. Thus the Applicant approached the Commission again. The MERC passed the order on 18/10/2005 and directed the non-applicants to refund the amount of Rs. 227.0 lakhs collected by MSEB against SLC & SCC charges to the petitioner within one months together with interest cost of

12% per annum for the period from the date of receipt to date of refund by adjusting in energy bill or other manners. The MSEDCL preferred an appeal before the Appellate Tribunal, New Delhi, against the order dated 8/10/2005 of the MDERC. The Appellate Tribunal in appeal No.191 of 2005 vide judgement dated 5/4/2006 dismissed the appeal of the MSEDCL with modification of the order of MERC and directed to refund of Rs. 227.9 lakhs without interest to LSIL and the same to be adjusted towards future consumption charges in terms of the order of MERC. The MSEDCL preferred a civil appeal against the order of the Appellate Tribunal to the Supreme Court. The MSEDCL (Non-applicants) raised the issue of jurisdiction of the MERC and Appellate Tribunal in respect of the dispute about the refund of the above amount. The Supreme Court under judgement dated 14/8/2007 allowed an appeal of MSEDCL and set aside the orders of MERC and Appellate Tribunal with the directions as laid under para 9 of the judgement of the Supreme Court. In view of this judgement, the Applicant approached before this Forum for Redressal of its grievance.

5) Before coming to the merits of the case and grounds raised by the non-applicants to oppose the claim of the Applicant, it is desirable to mention about the doctrine of 'ESTOPPEL'. Section 115 of Indian Evidence Act, 1972 provides for the meaning of the doctrine of estoppel (as per Regulation 6.19 of Regulations, the Forum is not bound by the Indian Evidence Act, 1972 as in force from time to time). However, understanding the meaning of the "doctrine of estoppel" may not be out of place. As per the above section, estoppel means, "When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing". The Supreme court observed, "the payment, if any made by the company will not operate as an estoppel against the respondent company (LSIL)". Estoppel is a rule of evidence that the person making certain representation is bound by it and cannot afterwards in a court of law, to be allowed to run away from it. When a person would be estopped from denying what he had stated or represented. An estoppel seeks to discipline administrative authorities in so far as it is insisted that they can not resile from their promises at their whim and fancy and that if they

make any promises they must keep them. The Supreme Court observed in N Ramnath Pillay Vs. Keral AIR 1973 SC 2641, "Therefore as a general rule of doctrine of estoppel will be applied against the state in its government, public or sovereign capacity. An exception however arises in application of estoppel to the state where it is necessary to prevent fraud or manifest in justice". In Motilal Padmapat, this doctrine of estoppel has been elaborately dealt with (AIR 1979 SC, 631). It is in the interest of the proper working of the public body that its promises for some legal sanctity otherwise the public body will have no credibility left in the eyes of the public. In the instant case, the Forum has not found any instance or occasion that the MSEB has gone out of its agreement or the promises. The MSEDCL collected the amount from the Applicant in terms of the Supply Conditions and the various tariff orders as framed time to time.

- 6) The non-applicants submitted their replies on 25/10/2007 to the Forum. They have also submitted additional reply on 19/11/2007 to the Forum. The main contention of the non-applicants is that they have collected an amount of SLC & SCC in terms of the prevailing conditions of supply at the relevant time in 1992. The Applicant's original sanction load was 90 MVA which was reduced to 88 MVA in August,2000 and further it was reduced to 56 MVA in June,2001. After reduction in contract demand, applicant was billed on the basis of reduced contract demand and not on the basis of connected load. Thus Applicant was benefited to the tune of R.s 8.72 crores (Exhibit-NA-1). The reduction was allowed in 2001 on permanent basis. It was categorically mentioned in the order that further enhancement in contract demand if required, will attract the payment of SLC and other charges and it is subject to terms and conditions. Applicant asked for enhancement of the load from 56MVA to 90 MVA on 13/6/2002. The non-applicants are justified in charging SLC and other charges when the contract demand was enhanced from 56 KVA to 90 MVA. They relied upon the circular Nos. 487 dated 27/4/92, 504 dated 27/5/92 and No. 546 dated 14/3/1995. They have filed the copies of these circulars as NA-Exhibit Nos.3, 4 & 5. They have denied the claim of Applicant to refund the said amount on the ground that at the instance of Applicant it was reduced on permanent basis. This requires a load

management. It also requires changes in the infrastructure because of passing of time between load reduction and enhancement of load resulting in reconsideration of management of load. The Applicant requested for installment on demand by non-Applicant for Rs. 6.0 lakhs and 221.0 lakhs . This commitment for payment of installment was confirmed before the Hon'ble High Court. The Board (Now MSEDCL) in exercise of the powers conferred under Section 49 of Electricity(Supply) Act,1948, has revised the provisions of conditions of supply of the powers and as prescribed that HT consumer availing fresh power supply shall be liable to pay entire capital cost as may be necessary to provide the required infrastructure. The Supreme Court upheld the power and authority of the Board in various matters that these conditions of supply are statutory or subordinate legislation and thus is compulsory binding on the consumers. The action of the Board in recovering SLC from Applicant for enhancement of contract demand from 56MVA to 90 MVA is correct as per the provisions of Condition of Supply and the circulars issued by the Board from time to time. The provisions of the Board Condition of Supply being statutory and binding at that time are not open to challenge at this stage. The Applicant vide letter dated 2/9/2002 had unconditionally agreed to pay the SLC charges and the Board allowed Applicant to make payment in installments. The Applicant is estopped in law and it prevents from challenging action of non-applicants after availing overall benefits of reduction in contract demand. The said contract demand from 56 MVA to 90 MVA was virtually new demand of supply by way of enhancement of contract demand.

- 7) The non-applicants further contended that this Forum has no jurisdiction to quash or modify the provisions of law, Regulations and Conditions of Supply. The Forum has to see whether the non-applicants have acted as per the express provisions of law or otherwise. The present dispute is prior to commencement of Electricity Act,2003. At relevant period Board was empowered to frame and publish the conditions of supply and the consumers are bound by the same. The conditions of supply were amended from time to time in view of the resolution of the Board. The SLC charges as per prescribed rate were found higher than estimated cost of supply. The same amount

was, therefore, rightly claimed and recovered from the consumer as per the provisions of conditions of supply. They also relied upon the condition No.7(I) and V) of the Condition of Supply. It is to be seen the definition of connected load and it is admitted fact about reduction of contract demand and on request of consumer itself. While asking for increase of contract demand from 56MVA to 90 MVA it can not be presumed that the connected load or contract demand was more than 56MVA. They have considered the actual connected load and contract demand at the relevant time only. This provision is made for recovering SCC & SLC from the consumer who was increasing connected load. In this case the actual estimated cost it seems to be negligible, the SLC charges as per the prescribed load were from higher than the estimated cost of supply. The same amount was rightly claimed and recovered from the consumer as per the prescribed provision and Conditions of the Supply. The case of Applicant is that there is no need to spend for infrastructure, does not help Applicant to claim the refund. While asking for increase of contract demand from 56MVA to 90 MVA, it cannot be presumed that its connected load or contract demand was more than 56 MVA. They have considered the actual connected load and actual contract demand at the relevant time only. The non-applicants also relied upon the circulars(Exhibit-NA-4, 5 and condition No.V of Conditions of Supply). As per condition No.7, the fixed SLC charges as per KVA or KW as the case may be more made recoverable over and above the amount to be paid towards actual estimated cost of supply. It means, at the relevant time, the non-applicants were entitled to recover more of both as per the above circulars. The Applicant is insisting to consider the connected load rather than the contract demand and seeing that he has paid the SLC charges for the entire connected load. The rates of SLC for HT/EHT Consumers for new/additional power supply. This provide that the non-applicants have to recover from the consumer availing EHV supply at the rates Rs. 650 per KVA of contract demand or 400 per KW C.L. or estimated cost whichever is more. They have to recover Rs. 30000/- for first 1000 KVA and Rs. 20 per KVA for each additional KVA demand towards SCC. The amount of Rs. 6.09 lakhs as SCC was

recovered as per provision of condition No.7(v) of condition of supply. The difference of connected load calculated as follows.

Contract demand 90-56= 34 MVA, , 34 MVA= 34000 KVA for additional 33000 KV at Rs. 28 per KVA is equal to Rs. 6.6 lakhs. the total service connection charges were calculated as Rs. 6.9 lakhs. The SLC charges for 34000 KV at Rs. 650 per KVA as per circular No.556 dated 24/3/95, which becomes to Rs. 221.0 lakhs. They have considered the connected load, contract demand and estimated cost while calculating SLC.

8) On perusal of the record and hearing both the parties, the Forum comes to the conclusion and decides unanimously as under.

The Hon'ble Supreme Court set aside the orders of the MERC and Appellate Tribunal. The MERC dealt with the issue of refund of amount of Rs. 227.9 lakhs in detail by giving analogy and reasons to order for the refund of this amount. The Appellate Tribunal made it clear that this is a illegal collection (Rs. 227.9 lakhs) and it is not fair on the part of MSEDCL to raise such hyper technical objection, when once it is clear that the MSEDCL has illegally collected this amount. The Forum makes it clear that though the orders of MERC and Appellate Tribunal are in favour of the LSIL(Applicant) , the Forum has to decide as fresh proceedings without the shadow of MERC & Appellate Tribunal orders. Shri R.B. Goenka, representative of Applicant argued elaborately and mostly reiterated the grounds as mentioned in the application, (schedule 'A' with statement). The supply was connected in Nov,2002. Initially the contract demand was 90 MVA in 1994, in April,1996, the contract demand was increased to 100 MVA which was again reduced to 90 MVA in 1999 and 88 MVA in Aug,2000. Again it is reduced to 56 MVA in Aug,2001. On this reduction and increase on request of Applicant were done before coming into force new Electricity Act. Both the parties have also quoted relevant provisions of Indian Electricity Act,1910 and Electricity(Supply)Act 1948. As per section 185 of the Act, the Indian Electricity Act,1910, Electricity(Supply)Act,1948, Electricity Regulatory Commission act 1998 are repealed notwithstanding such repeal anything done or any action taken ----- in documents or instruments executed in terms given in the related laws shall in so far as it is not in consistent with the provisions of this Act to be deemed to have been done or taken under the

corresponding provisions of the Electricity Act,2003. This is apparent that electricity supply connection was made prior to 2003 and, therefore, the provisions of the old acts are applicable. The non-applicants have rightly pointed out that the circulars and the supply conditions were made as per section 49 of the Electricity (Supply)Act,1948 by the then MSEB. They have also rightly pointed out that the supply conditions and the circulars No. 504, 546, 526 and Supply Conditions are not set aside by any competent court and, therefore, they have rightly relied upon these circulars and supply conditions to charge additional SLC and SCC charges.

9) Shri R.B.Goenka argued elaborately and submitted the case of Applicant at length. He mostly relied upon the grounds as raised in the application schedule 'A' with statement. However, his main thrust is on the point that connected load remained the same. He argued that there is no demand of additional connected load and whatever the connection was sanctioned originally it was as per the condition of supply. This is the gist of whole case. The interpretation of the Act cannot decide the case. The non-applicants are relying upon condition No.7 of supply condition but this condition does not support the case of the non-applicants. Under these conditions nowhere contract demand is defined. The feeders and service provided to other consumers in the same infrastructure, non-Applicant would have raised the amount from other consumers. The difference between 100 and 56 MVA (difference of 44 MVA) has been on the sub/station. The non-applicants have not created any additional infrastructure however, they have collected additional SLC & SCC charges. He referred to the order of the MERC. Shri Abhijeet Deshpande raised the preliminary objection at the time of hearing on the reference to the order of MERC. Shri Deshpande objected on the grounds that Supreme Court set aside the order of the MERC (Reference to para 9 of the S.C.Judgement), and therefore, Shri Goenka cannot rely on order of MERC. It was made clear by the Forum to both the parties and in particular in respect of the objection of Shri Deshpande that though the order of MERC is set aside by the S.C., by way of reference Shri Goenka can refer to the order of MERC but he cannot rely upon this order to press his point.

- 10) The whole matter in this case is revolving around point whether MSEDCL can recover the amount as claimed by the Applicant and if so whether MSEDCL acted within the permissible limits of the circulars, Acts and Supply Conditions. It is a matter of fact that the connected load was 100 MVA whereas the contract demand was 90 MVA and it was reduced upto 56 MVA in Aug,2001. The Applicant requested for reinstatement of contract demand of 90MVA. The MERC (Electricity supply code and other conditions of supply) Regulations,2005 define the term contract demand. As per Regulations 2.1(f) “Contract Demand” means demand in kilowatt (KW) / Kilo volt ampere (kVA), mutually agreed between Distribution Licensee and the consumer as entered into in the agreement or agreed through other written communication. It means the non-Applicants agreed to reduce the contract demand on the request of the consumer and as per the agreement written communication between them. The contract demand was increased and reduced as per request of the Applicant. The non-Applicants have rightly pointed out to the letter 2/9.2002 (Exhibit-NA-7). In this letter the Applicant has clearly mentioned, ”to increase the production, it is envisaged to increase the contract demand to 90 MVA. We hereby agree to pay SLC charges of Rs. 221.0 lakhs and we also request you to allow us to pay this amount in 20 installments. We may be using this extra load from 25th Sep,2002 after payment of first installment towards this”. This clearly shows that Applicant itself agreed for payment of SLC charges of Rs. 221.0 lakhs and also requested for 20 installments. When Applicant has agreed and MSEDCL allowed for the same, the Applicant has no case to agitate before the Forum. The non-applicants have committed no fault, imperfection or shortcoming. They have not defied any order of the MERC or any action to be taken in pursuance thereof. Since Applicant agreed in unequivocal terms, the present grievance application before this Forum also does not fall within the definition of the term “grievances” which is laid down in Regulation 2.1 (c) of the Regulations. It is also clear from the affidavit sworn in writ petition No.3399/2000 before the Hon’ble High Court by one Shri Rajesh Ramnarayan Gupta who declared and undertaken that the Applicant company was making the regular payment of installment as per the

package approved by the then MSEB by their letter dated 24.10.2002. The Applicant agreed and admitted about the installment which was pertaining to SLC charges of Rs. 221.0 lakhs. The Applicant cannot take shelter under double standard, on one hand agreeing to payment of installments and on the other hand in demanding the refund of SLC & SCC Charges which it has already paid. It has been clearly laid down under circular (Comm) No.504 27/5/1992 (Exhibit-NA-4) that the Board has to incur expenditure on upper system also to strengthen the same. When the contract demand was reduced to 56 MVA and it was reinstated to 90 MVA, it certainly increased expenditure on upper system to strengthen it. As per annexure to this circular, this category 3 of the consumer pertaining to EHV supply. The non-refundable service line charges are enumerated in this category. It reads, "Rs 650 /KVA of contract demand or Rs. 400 KV of C.L. or remitted cost whichever is more. This circular speaks about the new or additional power supply of HT/EHT consumers. It nowhere speaks about the connected load but it exclusively speaks about the contract demand.

- 11) Shri Goenka vehemently expressed in his argument that connected load was the same and contract demand varied from time to time. This argument is not acceptable to the Forum. Shri Deshpande has rightly pointed out that the MSEDCL is bound to give 90 MVA but on payment of additional SLC and SCC charges by the consumer. The MSEDCL agreed and took the responsibility about 56 MVA as per the contract demand and if it is to be enhanced to 90 MVA, the Applicant has to pay the charges of SCC & SLC as prescribed by the MSEDCL. In increase in load to the consumer, he has to pay the charges as prescribed. The transformer which was installed in the premises of LSIL was not for the exclusive use of the Applicant. When the contract demand was reduced to 56 MVA, the MSEDCL had to make the load management by supply to other consumers. The Applicant cannot restrict the MSEDCL on this count. It is the responsibility of the MSEDCL for overall development of infrastructure. Shri Goenka argued that in condition No.7 of supply condition, nowhere contract demand is defined. The condition No.7 pertains to SLC & SCC for HT/EHT supply. As per 7(I) a) the consumer has to pay on demand non-refundable

SLC. Condition No.7(v) laid down, 'Every HT/EHT consumer shall pay the fixed (non-refundable) fix SCC charges over and above the amount to be paid as per condition No.7(i) for new loads demanded by him and in case of additional load only to the extent of new demand i.e. excluding load already connected". In the present case, the fixed service charges are over and above the amount as already paid by the Applicant. Thus the consumer has to pay the SCC to make the total cost of works involve in affecting the supply. It is clear case of additional supply from 56 MVA to 90 MVA and, therefore, non-applicants have rightly collected the amount of SCC & SLC over and above the charges already paid by the Applicant. The MSEDCL is required to review generation, transmission and distribution entirely a fresh whenever there is change in contract demand. In such circumstances, the MSEDCL is entitled to collect the SLC & SCC charges over and above the charges already paid and these charges are justified. If any fluctuation in the contract demand, the MSEDCL has to see need of other consumers who are likely to be affected. Shri Goenka strongly stucked up to the connected load but he overlooked the contract demand. The non-Applicants have rightly point out that the HT Consumer availing fresh power supply shall be liable to pay the entire capital cost as may be necessary to provide the required infrastructure. It is admitted fact that the Applicant made available the plot for sub/station and made the necessary security deposit, SLC & SCC charges as prevailing during that period. The non-applicants rightly pointed out in their parawise comments that the contract demand from 56 MVA to 90 MVA was virtually the new demand of supply by way of enhancement of contract demand and, therefore, Applicant had no option but to make the payment in view of enhancement in the contract demand. The Applicant had also not made it clear in their case before the MSEDCL that about what period the contract demand is to be reduced. The MSEB was justified in presuming that the said contract demand was as the new demand which will operate for future except charges in original sanctioned load, connected load and the contract demand. Even if connected load continues to be the same, it does not affect the concept of reduction in contract demand because of reduction in contract demand. It is admitted that the term contract demand is not defined in

supply conditions. But the same term has been defined in Regulation 2.1(f) in Supply Code Regulations, 2005. It is mutually agreed between distribution licensee and the consumer entered in the agreement agreeing through other written communication. The Applicant made the communication with the non-applicants about the reduction or increase of the contract demand. It means, Applicant committed for the same. If there is a variation of reduction or increase, it is a new demand and, therefore, it should be treated as additional demand for which the consumer has to make the payment of SCC & SLC charges as prescribed by the MSEDCL. Condition No.7(v) clearly speaks about the charges over and above the amount to be paid as per condition 7 (1) for new loads demanded by the consumer in case of additional load. It means for enhancing the load from 56MVA to 90 MVA it is new load demand by Applicant which is in addition to contract demand. The non-applicants have also rightly pointed out that whenever the changes are to be made they are to be approved by the MERC otherwise the existing status-quo continues. The connected load remained the same but the contract demand changed, some times it was reduced, in the present case it was requested by Applicant for increase. Connected load of 2001 as the Applicant had prayed as per condition No.7(v) the charges pertaining to contract demand of KVA for connected load. Thus question of connected load as claimed by the Applicant should not arise. The MSEDCL is entitled to recovery the SCC & SLC charges on the basis of contract demand as prescribed under various circulars and conditions of supply. It has been laid down in circular No. 624 dated 30/6/1888(Record page 206) that the S.C charge, wherever applicable, shall be recovered as per the department circulars No. 486 dated 8.8.91 and 487 dated 8.8.91. The circular No.504 dated 25/7/92 is not quashed by MERC or other competent court and, therefore, the collection of SLC & SCC charges by non-applicants is justified. The infrastructure includes complete network to strengthen the upper system. The Applicant cannot stickup to the connected load in ignorance of the contract demand. The non-applicants have rightly billed the energy charges as per contract demand and they have supplied the electricity accordingly at 56 MVA and whenever the demand was increased by Applicant, the non-Applicants gave the

supply as per its demand. The MSEDCL cannot ignore demand of other consumers when the Applicant requested for reduction of any MVA. The MSEDCL has collected the SLC/SCC charges as per the contract demand or connected load whichever is more.

- 12) With above observations, the Forum finds no justification in the demand of Applicant to refund the amount of Rs. 227.9 lakhs with interest. Thus the Forum passes the following order unanimously.

-: ORDER :-

- 1) Application is rejected.
- 2) The demand to refund an amount of Rs. 227.9 lakhs with interest is rejected.
- 3) There is no order as to cost.

SD/ILLEGIBLE

SD/ILLEGIBLE

SD/ILLEGIBLE

CHAIRMAN

MEMBER

MEMBER/SECY

CONSUMER GRIEVANCE REDRESSAL FORUM

M.S.E.D.C.L.(NAGPUR ZONE – RURAL)NAGPUR

NO. CGRF/NZ/R/

Date::

Certified that this is the true and correct copy of the above order.

Member-Secy/ Exe.Engineer,
C.G.R.F.(NZ-R)MSEDCL
N A G P U R

Copy to:

1. M/S. Lloyds Steel Industries Ltd., Bhugaon, Post-Selukate, Tah/Dist-Wardha, for information .
2. The Chief Engineer,Nagpur Zone (Rural)MSEDCL, Vidyut Bhavan,Katol Road, Nagpur.
3. The Chief Engineer(Commercial), MSEDCL,Prakashgad,Head Office, Mumbai.
4. The Exe.Engineer/N.O., O&M Circle Office, MSEDCL.Wardha, --
5. The E.E.,C.C.O&M Dn., MSEDCL, Wardha for information and necessary action.

Address of the Ombudsman is given as below.

Office of - The Ombudsman,
Maharashtra Electricity Regulatory Commission,
606-608, Keshava Building,
Bandra-Kurla complex,
MUMBAI- 400 051

TEL.- 022 - 26592965 (Direct)
022 - 26590339 (Office)