

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/255/2014

Applicant : M/s. Spentex Industries Ltd.,
A-31, MIDC Industrial Area,
Butibori,
Nagpur - 441 122..

Non-applicant : Nodal Officer,
The Superintending Engineer,
Nagpur Urban Circle,
MSEDCL,
NAGPUR.

Quorum Present : 1) Shri Shivajirao S. Patil,
Chairman.

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 6.12.2014.

1. The applicant filed present grievance application before this Forum on 13.10.2014 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. The applicant's case in brief is that M.S.E.D.C.L. issued energy bill for April 2013 by adding debit bill adjustment amounting to Rs. 81,26,196.71 (Rs. Eighty One Lacs Twenty Six Thousand One Hundred Ninety Six & Ps. Seventy One only) illegally. In tariff order

Dt. 12.9.2010 in case No. 111/09, provisions have been made for prompt payment discount and load factor incentives. Applicant received electricity bill for October 2012 Dt. 17.10.2012 for Rs. 2,74,82,960/- (Rs. Two Crores Seventy Four Lacs Eighty Two Thousand Nine Hundred Sixty only), if paid on due date i.e. 23.10.2012 and after due date i.e. on 31.10.2012, it is mentioned to pay Rs. 3,25,60,770/- (Rs. Three Crores Twenty Five Lacs Sixty Thousand Seven Hundred Seventy only), as per the date mentioned in the said bill. Applicant made payment by RTGS and same has been deducted from his bank State Bank of India from his account on the same day i.e. on Dt. 23.10.2012. The payment was transferred from the account of applicant through Code No. R-42. However, bankers of M.S.E.D.C.L. i.e. ICICI bank returned back that amount for the reason 'wrong code No. R-42 is mentioned by the banker of the applicant State Bank of India. In fact proper code No. is R-41, and therefore on the same day said amount came back to State Bank of India i.e. Bankers of the applicant due to technical fault. Applicant received energy bill for the month of November 2012 including illegal damages of Rs. 81,26,196.71 (Rs. Eighty One Lacs Twenty Six Thousand One Hundred Ninety Six & Ps. Seventy One only). Applicant made prompt payment of electricity bill within due date but due to internal technical fault and internal banking code system, M.S.E.D.C.L. received the amount on 25.10.2012. Therefore M.S.E.D.C.L. imposed charges of Rs. 81,26,196.71 (Rs. Eighty One Lacs Twenty Six Thousand One Hundred Ninety Six & Ps. Seventy One only) to the applicant. After approaching finance department, MSEDCL, Mumbai, they informed to the applicant in relation to collection of consumers bill through RTGS as well as technical

default, there is a circular No. DIR(F)/MSEDCL/03437 Dt. 7.2.2012 to the effect that consumer should not be held liable for manual mistakes on the part of the bank staff. After considering the directions of this circular amount of Rs. 81,26,196.71 (Rs. Eighty One Lacs Twenty Six Thousand One Hundred Ninety Six & Ps. Seventy One only) was adjusted in the energy bill for the month of January 2013. For adjusting this amount, Superintending Engineer (NRC), MSEDCL, Nagpur sent official note addressed to Chief Engineer, NUZ, Nagpur on 15.1.2013. Proposal for approval of credit of Rs. 81,26,196.71 (Rs. Eighty One Lacs Twenty Six Thousand One Hundred Ninety Six & Ps. Seventy One only) was submitted. But as per letter No. SE/NRC/HT Billing/1926 Dt. 29.4.2013, reversible credit given to the applicant, as the amount was reversed by Head Office Mumbai. Therefore applicant approached to Learned I.G.R.C. Being aggrieved by the order passed by I.G.R.C. the applicant approached to this Forum and requested to issue corrected energy bill for April 2013.

3. Non applicant denied applicant's case by filing reply dated 29.10.2014. It is submitted that bill for the month of October 2012 for an amount of Rs. 3,19,22,320/- (Rs. Three Crores Nineteen Lacs Twenty Two Thousand Three Hundred Twenty only) was raised by M.S.E.D.C.L. with its due date 31.10.2012 and consumer could have availed prompt payment discount by paying the bill on or before 23.10.2012 by paying Rs. 2,74,82,960/- (Rs. Two Crores Seventy Four Lacs Eighty Two Thousand Nine Hundred Sixty only). The consumer paid amount of Rs. 2,74,82,960/- on 25.10.2012 through RTGS as per statement of ICICI bank which is at Annexure 'B' with reply. It is the

contention of the applicant that he has paid amount of Rs. 2,74,82,960/- on 23.10.2012 by RTGS through its banker State Bank of India, Butibori to Bank of M.S.E.D.C.L. i.e. ICICI bank, but the same was returned by ICICI bank on the same day i.e. on 23.10.2012 at 13.42 Hrs. due to wrong code for transfer of funds i.e. well within business hours. As the short payment was received by M.S.E.D.C.L. on 25.10.2012, bill for November 2012 was issued to the consumer of the amount Rs. 3,80,28,450/- (Rs. Three Crores Eighty Lacs Twenty Eight Thousand Four Hundred Fifty only) with due date 4.12.2012, including with principal arrears amount 45,28,151.07 (Rs. Forty Five Lacs Twenty Eight Thousand One Hundred Fifty One & Ps. Seven only) and current interest Rs. 22,640.76 (Twenty Two Thousand Six Hundred Forty & Ps. Seventy Six only).

4. It is further submitted that on approaching of consumer to M.S.E.D.C.L. office Superintending Engineer, Nagpur Rural Circle referred the matter to Chief Engineer (Com.) vide letter No. 6693 Dt. 18.12.2012, but then as per H.O. circular No. 3437 Dt. 7.2.2012, the S.E. (NRC), Nagpur sought approval for credit adjustment of amount of Rs. 81,47,837.47 (Rs. Eighty One Lacs Forty Seven Thousand Eight Hundred Thirty Seven & Ps. Forty Seven only) to Chief Engineer, NUZ, Nagpur and passed the credit (-) B-80 of Rs. 81,47,837.47 (Rs. Eighty One Lacs Forty Seven Thousand Eight Hundred Thirty Seven & Ps. Forty Seven only) to the consumer in the bill for the month of January 2013. However, during the review of B-80 cases in respect of H.T. Consumers, Corporate office G.M. (F&A-CF) clearly stated that this case does not fit to H.O. Circular No. 3437 Dt. 7.2.2012 and directed to reverse the credit adjustment which was passed to the

consumer. Copy of Corporate Office G.M.'s Letter Dt. 22.3.2013 is filed with reply which is at Annexure 'G'. The wrong code of transfer of amount is at the account of consumer, as the RTGS payment made by submitting the details in RTGS bank slip by the consumer. This fact is also mentioned in ICICI bank letter attached with the reply. The consumer nowhere proved that details submitted by the consumer to the bank i.e. State Bank of India are correct during the payment on 23.10.2012. As the short payment was received by M.S.E.D.C.L. on 25.10.2012, the bill for the month of November 2012 was issued to the consumer for Rs. 3,80,28,450/- (Rs. Three Crores Eighty Lacs Twenty Eight Thousand Four Hundred Fifty only), with due date 4.12.2012, including principal arrears amount Rs. 45,28,151.07 and current interest of Rs. 22,640.76.

5. It is further submitted that during the review of B-80 cases in respect of H.T. Consumers, Corporate Office GM(F&A-CF) clearly stated that this case does not fit to the H.O. Circular No. 3437 Dt. 7.2.2012 and directed to reverse the credit adjustment which was passed to the consumer. Grievance application deserves to be dismissed.

5. Forum heard arguments of both the sides at length and perused entire record carefully.

6. It is an admitted fact that applicant consumer paid amount of Rs. 2,74,82,960/- (Rs. Two Crores Seventy Four Lacs Eighty Two Thousand Nine Hundred Sixty only) on 23.10.2012 by RTGS through his bankers State Bank of India Butibori to the Banker of

M.S.E.D.C.L. i.e. ICICI bank. It is also an admitted fact that while making this payment, it was necessary to mention code No. R-41 by State Bank of India at the time of making payment to ICICI bank. It is also an admitted fact that SBI wrongly mentioned code No. R-42 and therefore ICICI bank returned the said amount to SBI on the same day Dt. 23.10.2012 at 13.42 hrs. due to wrong code for transfer of funds, i.e. well within business hrs. It is also an admitted fact that though SBI received back this amount on the same day Dt. 23.10.2012 at 13.42 hrs. due to wrong code, even then SBI butibori did not correct its mistake immediately and did not resend this amount to ICICI bank on the same day Dt. 23.10.2012 by mentioning the correct code R-41. When SBI butibori received back the amount on 23.10.2012 at 13.42 hrs. there was complete half day with SBI butibori just to correct the mistake by mentioning correct code R-41 and to resend the amount to the bankers of M.S.E.D.C.L. But SBI butibori appears to be negligent on its part. It is an admitted fact that for the first time after mentioning correct code R-41, SBI sent this amount to bankers of M.S.E.D.C.L. on 25.10.2012 but by that time, period for prompt payment discount was lapsed and therefore the amount received by MSEDCL was short.

7. It is pertinent to note that the date of payment to the M.S.E.D.C.L. is to be considered on which there is actual realization of the amount in the account of M.S.E.D.C.L. It is an admitted fact that wrong code of transfer of amount is at the account of consumer as the RTGS payment is made by submitting the details in RTGS bank slip by the consumer. It was the duty of the applicant to fill up proper bank slip for RTGS. It was also necessary on the part of the bankers

of the applicant i.e. State Bank of India to mention correct code No. R-41.

8. From all these aspects, it is crystal clear that there was no realization of energy bill before the date of prompt payment discount in the account of M.S.E.D.C.L. and therefore applicant is not entitle for prompt payment discount.

9. In support of his contention, the applicant had produced number of documents. Document of the applicant A-10 filed along with the application is Dt. 27.12.2012. This letter is addressed by the applicant to the Branch Manager, SBI, Butibori Nagpur. In this letter applicant wrote following contents which are as under : -

1. *Payment was sent by you (SBI), wrongly through R-42 mode (inter-bank mode) in place of R-41 mode, as applicable in our cse, as per the regulations of RBI.*

2. *For the above reasons, RTGS was returned by ICICI Bank well within business hours (i.e. at 13.42 hrs) on the same day i.e. October 23, 2012 vide UTR-ICICH12297057925, contrary to statement of SBI that you had received RTGS back in the evening and you were not able to re-send the same correctly on the same day.*

Having come to know about the above facts and circumstances, we are really shocked, surprised and constrained to observe the following:

a) When your branch had already received the said amount well within time and knowing fully well that 23.10.2012 being the due date, RTGS of payment had to be invariably ensured, through right mode as per regulations of RBI, despite that, due care was not exercised at first place and RTGS was attempted through wrong mode i.e. R-42, in place of R-41.

b) When the RTGS was returned back with instruction to send back the same through R-41 mode at 13.42 hrs., i.e. well within the business hours, then you have not regenerated RTGS till 4.30 p.m. through correct mode, though you were having sufficient time to forward / regenerate RTGS in R41 mode;

c) further you have, for the reasons best known to you neither credited the said returned amount from ICICI bank to our Bank Account nor informed us for non payment of energy bill on due date i.e. 23.10.2012,

d) instead you have sent this amount on 25.10.2012 through RTGS under R41 mode, as advised by ICICI Bank, again this has also not informed to us;

e) Your Branch has utilised the amount of Rs. 2,74,82,960/- unauthorisedly for two days i.e. 23rd & 24th Oct. 2012 and

f) these lapses have caused us financial loss of Rs. 81,47,932/- that includes differential payment required to be made after due date (till next due date of 31.10.2012) Rs. 44,39,360/-, 2% DPC i.e. Rs. 88,791 (approx.), further interest on delayed payment till November 2012 i.e. Rs. 22640/- and load incentive of Rs. 35,97,042, for which we were otherwise entitled.

Further, had aforesaid information about delay, been conveyed to us immediately, we could have arranged to make payment on the next due date i.e. 31.10.2012 with additional amount and by that we could have saved Load Factor incentive of Rs. 36 lacs and 2% penalty on delayed payment charges. But for the casual attitude of SBI, we could not control such additional avoidable losses as well.

You may therefore kindly appreciate that despite funds were available with you all the times, we have been unceremoniously penalized to the extent of Rs. 81.48 lacs approx. by the MSEDCL, besides losing our creditability with MSEDCL as this is the first time in the history of our company that power payment has been delayed, without any fault of ours. As a result, SBI has rendered itself liable for indemnifying the said loss. Had the Bank been due diligent and vigilant, aforesaid lapses could have been easily avoided.

Kindly note as a consumer of banking services, we have engaged and always trusted you, as a sole service provider for such services, however, it is highly regrettable that we are being penalized by an amount of Rs. 81479321/- without any fault of ours, which certainly calls for an immediate Redressal of our aforesaid grievances in right earnest.

In view of the above, we are constrained to ask you to compensate us Rs. 81.48 lacs, along with further interest charged by MSEDCL, within 30 days, failing which we shall have no option but to proceed legally. However, we are sure, you would look into it and would arrange compensation at an earliest to mitigate our aforesaid grievances as a consumer. We look forward to your understanding and positive response in the matter.

9. In this letter addressed to SBI butibori Nagpur applicant himself admitted in clear terms that it is the State Bank of India butibori who was at fault, negligent and therefore only because of SBI applicant sustained the loss and SBI is liable to pay this amount to the applicant.

10. Applicant also approached to the office of Banking Ombudsman (Maharashtra & Goa) as per his application which is at Annexure A-11 for taking action against the bank. It is pertinent to note that Exh. A-12 is the order of Banking Ombudsman, Mumbai Dt. 28.3.2013 and in this order it is specifically mentioned that as per Banking Ombudsman's Directions, SBI has paid the applicant a token compensation of Rs. 10000/-. Therefore this order of Banking Ombudsman Dt. 28.3.2013 shows that SBI Butibori already paid compensation of Rs. 10000/-. Therefore it is clear that SBI Butibori who is responsible for this entire episode and therefore amount was

not credited, legally and properly within stipulated time in the account of M.S.E.D.C.L.

11. It will not be out of place to mention here that applicant filed Special Civil Suit No. 371/13 in the Court of 4th Joint Civil Judge, Sr. Division Nagpur against M.S.E.D.C.L. As per order Dt. 1.8.2014, Hon'ble Civil Court held that as it is the matter against M.S.E.D.C.L., it is only Learned I.G.R.C. or C.G.R.F. who has jurisdiction to entertain the matter and Civil Court has no jurisdiction. It is pertinent to note that in the said Special Civil Suit No. 371/13, Defendant No. 1 is MSEDCL, but Defendant No. 2 was SBI and Defendant No. 3 was ICICI bank. We must mention here that so far as dispute between applicant consumer and M.S.E.D.C.L. is concerned I.G.R.C. & C.G.R.F. has definitely jurisdiction. However, we are bound by the regulations and therefore we are deciding dispute only between applicant consumer and M.S.E.D.C.L., the Distribution Licensee. However, so far as SBI is concerned, this Forum has no jurisdiction to decide civil rights of the parties and applicant consumer is at liberty to approach the competent court of civil jurisdiction to claim any compensation or damages against State Bank of India or ICICI bank. This Forum can not issue any directions to SBI. State Bank of India is neither consumer nor Distribution Licensee and therefore applicant is at liberty to approach competent court of Civil Jurisdiction to claim compensation and damages against State Bank of India if the circumstances and law permits.

12. It appears that consumer is intending to take shelter of Circular No. DIR(F)/MSEDCL/3437 Dt. 7.2.2012. However, during

the review of B-80 cases in respect of H.T. Consumers, the Corporate Office G.M. (F&A-CF) clearly stated that this case does not fit to H.O. Circular No. 3437 Dt. 7.2.2012. We have carefully perused said order which is at Annexure –G. In this order, it is specifically mentioned that –

“The H.O. Circular clearly states that only the cases pertaining to universal problems in RTGS mechanism such as non availability of internet and server related disputes, non matching of Names etc. shall be considered for allowing Prompt Payment Discount And / Or withdrawal of DPC resulted out of non receipt of funds by MSEDCL on the desired date. Further, each individual case shall be settled on merit basis with sufficient documentary evidence”

13. We have carefully perused facts and circumstances in this case. In the case in hand, there was no universal problem in RTGS mechanism, such as non availability of internet, server related dispute or non matching of names etc. On the contrary facts of the case in hand are totally different and distinguishable. In the case in hand SBI butibori banker of the consumer wrongly mentioned the incorrect code R42 and therefore bankers of M.S.E.D.C.L. returned back the amount immediately on the same day i.e. 23.10.2012 at 13.42 hrs. It is pertinent to note that on 23.10.2012 after 13.42 hrs. there was absolutely no problem for SBI butibori and they could have immediately mentioned correct code No. R41 and could have resent the amount on the same day before 5 P.M. at any time. However, though SBI butibori received the amount back from ICICI bank on 23.10.2012 at 13.42 hrs. SBI butibori did nothing and was sleeping over till 5 P.M. since 13.42 hrs. There was absolutely no technical

fault during this gap for SBI i.e. bankers of the applicant. It was also duty of the applicant consumer to be cautious and to watch whether the amount is realized and paid in the account of M.S.E.D.C.L. before stipulated time but applicant was also silent and did nothing. For the first time SBI butibori sent the amount to ICICI bank with correct code on 25.10.2012 i.e. after the expiry of date of prompt payment discount and therefore applicant is not entitle to take benefit of Circular No. 3437 Dt. 7.2.2012 and hence Head Office has rightly charged this amount in the bill of the applicant.

14. For these reasons we are of the considered opinion that applicant failed to pay the energy bill before the date of prompt payment discount as alleged.

15. Applicant relied on order passed by Hon'ble Electricity Ombudsman Nagpur in representation No. 12 / 14, Suryalaxmi Cotton Mills Ltd. Vs. Superintending Engineer Dt. 28.3.2014 & 9.5.2014. However, non applicant M.S.E.D.C.L. produced copy of Writ Petition No. 4999/14, M.S.E.D.C.L. Vs. Suryalaxmi Cottom Mills pending before Hon'ble High Court of Bombay, bench at Nagpur. It is the writ petition under the article 226 & 227 of Constitution of India pending against the order passed by Hon'ble Electricity Ombudsman Nagpur Dt. 28.3.2014 & 9.5.2014 in representation No. 12/14. Non applicant M.S.E.D.C.L. also produced copy of Ad-interim order passed by Hon'ble High Court in W.P. No. 4999/14 Dt. 30.9.2014 and as per this Ad-interim order Hon'ble Justice Shri Prasanna B. Barale had granted Ad-interim Stay to the said order passed by Hon'ble Electricity Ombudsman Nagpur. Therefore it is clear that order

passed by Hon'ble Electricity Ombudsman Nagpur is stayed by Hon'ble High Court by granting Ad-interim stay to the effect of operation, implementation & execution of impugned order. Therefore said matter is subjudice before Hon'ble High Court of Judicature at Bombay, Bench at Nagpur.

15. Non applicant M.S.E.D.C.L. relied on the authority of Hon'ble MERC Mumbai in Case No. 183/11, Chamber of Marathwada Industries and Agriculture Vs. M.S.E.D.C.L. Mumbai. In this authority it is held that -

1. Reckoning the date of deposit in case of cheque payment -

(b) In order to bring uniformity in the reckoning of the date of deposit in the PPF vis-a vis POSS and SCSS, the GoI vide their letter F. No. 7/7/2008/NSII dated February 10, 2010 have decided that hereafter in modification of Ministry of Finance letter No. F. 3 (9)- PD/72 DATED September 4, 1972 "when a deposit is made in the PPF account by means of a local cheque or demand draft by the subscribe, the date of realization of the amount will be the date of deposit".

In view of the Central Government Account Rules quoted above, and for the above stated reasons, the petitioner prayer's are rejected being devoid of merits and on account of lacking sufficient grounds.

With the above, Case No. 183 of 2011 is dismissed.

16. Facts of the present case and facts of the authority cited supra are similar and identical. Relying on the authority cited supra, we hold that date of realization of the amount will be date of deposit. In case in hand amount is realized and amount is deposited in the account of M.S.E.D.C.L. on 25.10.2012 and therefore in our

considered opinion applicant is not entitle for prompt payment discount by mis-interpreting certain inapplicable circulars.

17. For these reasons we find no substance in the present grievance application and application deserves to be dismissed. Hence following order :-

ORDER

- 1) Grievance application is dismissed.
- 2) Applicant is at liberty to approach competent Civil Court of jurisdiction to claim compensation and damages against SBI Butibori Nagpur if applicant deems fit and if circumstances, law and period of limitation permit.

Sd/-
(Anil Shrivastava)
MEMBER
SECRETARY

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN