

**CONSUMER GRIEVANCE REDRESSAL FORUM
AMRAVATI ZONE, AMRAVATI**

'Vidyut Bhavan', Shivaji Nagar, Amravati: 444603, Tel. No. 0721 2551158

Dt. 26.04.2018

ORDER

Case No. 02/2018

In the matter of grievance pertaining to refund of excess amount recovered with wrong application of tariff as HT-Continuous in place of HT- Non-Continuous

Quorum

Dr. Vishram Nilkanth Bapat, Chairman
Shri. R. A. Ramteke, Member Secretary

In the matter of

M/S Balaji Electro Smelters Ltd.
P.No.18, MIDC, Lohara , Distt.:Yavatmal
Consumer No. HT 370019002464

Complainant

.....Vs.....

The Superintending Engineer
MSEDCL, O&M Circle, Yavatmal.

Respondent

Appearances:-

Complainant Representative:-	Shri Ashish S. Chandarana
Complainant	:- Shri Raghunath Kaparathi, Chairman and Managing Director, M/S Balaji Electro Smelters Ltd.
Respondent Representative:-	Shri.Y.P. Warke Executive Engineer (Admn.), Yavatmal Circle
	Shri R.V.Bommi Jr.Law Officer, Yavatmal circle

Being aggrieved by non resolution of grievance pertaining to refund of excess amount collected by NA MSEDCL (hereinafter referred as NA) due to application of HT-1 Continuous (HT 1C) tariff in place of HT-1 Non-Continuous (HT 1NC) tariff limited to the billing months, when the Applicant had suffered interruption in power supply, by Internal Grievance Redressal

Cell, Yavatmal, Complainant approached to the Consumer Grievance Redressal Forum (CGRF) and filed his complaint, which is registered as Case No 02/2018.

As per complainant's complaint with documents attached, oral submission during hearing before Forum on 09.03.2018 and with written note of argument, Complainant representative submitted that :-

1) M/s Balaji Electro Smelters Ltd., situated at Plot No B 18, MIDC, Lohara, Yavatmal is HT consumer bearing C.No. 370019002464 and presently his sanctioned contract demand and sanctioned load is 2800 KVA and 3375 KW respectively and receiving power supply on Express Feeder at 33 KV level. According to Complainant, he is engaged in manufacture of Manganese Ferro Alloys and requires Continuous (without interruption of even few minutes) and good quality of power supply and any variations in voltage level or interruption causes adverse effect on production and hence huge financial loss.

2) Maharashtra Electricity Regulatory Commission (MERC) in its Tariff Order June 2008, classified the HT Industrial consumers into two categories of tariff as HT Continuous Industry (HT 1C) and HT Non Continuous Industry (HT 1NC). HT 1C category was on higher rate than HT 1NC category based on principle that HT 1C category consumers would get continuous power supply and not subjected to load shading (including staggering day), interruptions in power supply. This logic was followed by Hon'ble Commission in subsequent Tariff Orders, till Nov 2016, where these categories have been merged. Applicant submitted comparative statement showing tariff difference between HT 1C and HT 1NC Categorised Industrial consumers for the period June 2008 to Oct. 2016 which is on record.

3) According to Complainant, the applicant's industry was of continuous nature and connected on Express Feeder, he was categorised as HT 1C for tariff applicability and accordingly, he had paid as per higher tariff from June 2008 to Sept.2012. Then after that he was categorised as HT 1 Non-Continuous. Though applicant has paid higher tariff as HT 1C for period June 2008 to Sept.2012, he has received interrupted power supply, resulting in huge financial loss. It was the responsibility of NA MSEDCL to provide uninterrupted and load shedding free power supply to the consumer categorised as HT 1C for tariff as in case of applicant and NA MSEDCL fails to comply it, for the period June 2008 to Sept.2012, hence applicant is entitled for refund of additional charges paid with interest for the billing period involving Load shedding, outages and interruptions.

4) Applicant annexed copies of the orders passed by Hon'ble Commission (MERC) dt 16 July 2013 in the case of M/s Kalika Steel & Alloys Pvt.Ltd. and 16 Co-petitioners, (Case No.88 of 2012) Review order dt 17 July 2014 (Case No 105 of 2013) in same case and order dt.15 Feb.2017 in the case of M/s Century Rayon Ltd.(Case No.86 of 2015) which were the cases of identical nature and are on record. In the above cases decided by Hon'ble Commission all aspects regarding meaning of Continuous tariff category, its applicability, exemptions to continuity of power supply and refund of excess charges, if collected through wrong categorisation for tariff are considered and as his case is of identical nature with above cases, fit for refund of additional charges, already paid. Applicant submitted that exemptions granted to MSEDCL for not providing uninterrupted power supply to HT 1C categorised consumers are as specified in Regulation 17 of SOP Regulations, 2005 and in case of planned outages, advance notice is to be given to concern consumer as specified in Regulation 6.5 of the SOP

Regulations, 2005 which is not followed in the present case. Hence anything which is beyond the level of SOP is to be deemed as Substandard and Substandard Quality cannot be procured or charged at premium rate determined for Standard Quality as cleared in orders passed by Hon'ble Commission as above.

5) Applicant submitted that as Orders passed by Hon'ble Commission (MERC) as stated above were of generic applicability and clearly deciding the HT 1C and HT 1NC tariff and NA MSEDCL should have proactively give the refund of additional charges collected through wrong categorisation of tariff, without waiting for the aggrieved consumers to agitate the issue. Also this refund amount was approved for ARR determination in future tariff petition, hence no financial burden on MSEDCL. Though also NA MSEDCL not taken any action in this regard, hence consumer approached to CGRF as per provisions of MERC after filing his application to IGRC, Yavatmal, first on 04.02.2017 for same grievance and not redressing the same.

6) Applicant submitted interruption statement of power supply, which he faced during period from June 2008 to Sept. 2012, as per his records and stated that it can be cross verified by NA MSEDCL. Also he submitted DIC Certificate for Continuous purpose industry for period under consideration, as it was required for refund of additional charges collected through HT1C tariff and facing interruptions as per order passed by Hon'ble Commission (MERC) in case No 105 of 2013 on dt. 17 July 2014.

7) Complainant furthermore submitted that, in the petition of M/s Jai Corp. Ltd. Nanded and M/s J.J. Fine Spun Ltd. Akola before MERC regarding Non Compliance of order passed by CGRF, Nanded and CGRF, Akola in which refund between HT 1C and HT 1NC rate was allowed for the billing month in which petitioner not received continuous supply, pointed out submission of the MSEDCL on affidavit that it will be refunding the amount due, to M/s Jai Corp. Ltd. and M/s J.J. Fine Spun Ltd. Akola in installments by adjusting in its energy bills in compliance of the CGRF's order and the compliance is subject to challenge the order of CGRF upon the decision of MERC in case No 86 of 2015. Additionally applicant submitted that similar decision has been given by CGRF, Akola vide its order dt 04 Aug 2016 for refund of tariff difference with interest amount where M/s J.J. Fine Spun Ltd. Akola has suffered interruptions in power supply. He pointed out that all the cases were decided on the same line as in Orders passed by Hon'ble Commission (MERC) on dt 16 July 2013 (Case No 88 of 2012), 17 July 2014 (Case No. 105 of 2013) and Hon'ble Commission (MERC) vide its order dt 15 Feb. 2017 (Case No 86 of 2015) decided the general applicability and clarity of its order dt 16 July 2013 (Case No 88 of 2012) and dt. 17 July 2014 (Case No. 105 of 2013). Hence with order of Hon'ble Commission Dt 15 Feb. 2017 (Case No 86 of 2015), it was clear picture that the Commission had clarified the extent of applicability of the higher HT Continuous tariff during periods in which uninterrupted power supply was not supplied, the circumstances in which the difference between the Continuous and Non continuous tariff should be refunded and the principles to be followed in such cases. These clarifications are of general applications. Further as per section 62 of the Electricity Act, 2003, the Hon. Commission is inter-alia empowered to determine the tariff for retail sale of electricity and the tariff so determined by the Hon. Commission is applicable to all consumers.

8) Hence, according to Complainant considering previous say of Corporate office of NA MSEDCL in above referred cases before Hon'ble Commission and after deciding general

applicability of its orders in identical cases as above by Hon'ble Commission on dt 15 Feb.2017 (Case No 86 of 2015),the applicant submitted his application for refund of tariff differential amount to IGRC,Yavatmal on 04.02.2017, was well within limitation. But as his grievance not redressed by IGRC Yavatmal ,applicant filed his grievance before Hon'ble Forum on 20.01.2018 and it is well within limitation. Complainant submitted that limitation period starts from 16.02.2017 that is after order of Hon'ble Commission Dt 15.02.2017 .Also on tenability of grievance on the basis of cause of action as raised by NA MSEDCL, Complainant submitted that his grievance is well within time limitation. In support of deciding cause of action applicant submitted Judgements passed by Hon'ble Bombay High Court,Bombay in WP No 9455 of 2011 in M/s Hindustan Petroleum Corporation Vs MSEDCL and others, and Hon'ble Bombay High Court,Nagpur in WP No 3997 of 2016 in MSEDCL Vs Shilpa Steel & Power Ltd.and others 2 . All the provisions and analysis of different terms as per MERC CGRF & EO Regulations,2006 such as Grievance, IGRC, Forum and Cause of action had been dealt in length by Hon'ble High Court Of Bombay and passed the orders stating that cause of action before approaching Forum arouses after the 60 days of submission of grievance at IGRC or Order passed by IGRC whichever is earlier and it is two years from cause of action for filing grievance to the Forum and hence his grievance is well within limitation as it was filed before IGRC on 04.02.2017 and it is also held suitability of limitation even if it is assumed that order passed by IGRC ,Yavatmal on 03.04.2017, though not served to applicant . The Complainant also submitted that IGRC,Yavatmal had not followed procedure and principles laid down for redressal of grievance and it can be clearly understood after analysis of order passed by IGRC,Yavatmal on dt 03.04.2017, wherein no notices had been served to concern, appearances not mentioned and no transparency observed in said order. Additionally applicant submitted that with reliance upon the order passed by Hon'ble Appellate Tribunal for Electricity on dt 11.03.2011 in the matter of MSEDCL Vs MERC and others in Appeal No 197 of 2009 ,is based on the basis of several judgements passed by Hon'ble Supreme Court in which it had been held that State Authorities ought not to take such technical plea as that of limitation to defeat the legitimate rights of the consumers . MERC and APTEL has entertained and held the grievance of refund related to period 22.10.1999 to 05.05.2000 in case filed on 27.01.2009. Under these circumstances, the present grievance cannot be said as time barred as contended by NA MSEDCL.

9) On MSEDCL submission that the bills generated for the period of June 2008 to Sept 2012 were issued to the consumers and paid without any dispute after considering the status of interruptions ,and hence grievance for refund is after period of 4 years and 5 month from the date of cause of action, Applicant submitted that cause of action as stated by NA MSEDCL is not correct as applicability of tariff on ground of interruptions is first time came in to force on 16.07.2013 retrospectively by the order of MERC and clarification made on dispute by way of review order passed by MERC on dt 17.07.2014. So submission of grievance by the Complainant's an afterthought, is denied, as no related orders were available during period June 2008 to Sept.2012. In this context he added that MERC in exercise of the powers conferred under section 61 and 62 of IE Act 2003, related to determine the tariff and so also the applicability of tariff had given clarification on date 16.07.2013 in the case of 88 of 2012, wherein MERC elaborated spectrum of meaning of "continuous supply" and narrowed the applicability of HT 1C tariff, which was not accepted by MSEDCL immediately and NA

MSEDCL submitted petition for review before MERC vide case No 105 of 2013 i.e within 45 days from the said order and is partly allowed by Hon.ble MERC by disallowing interest vide its order Dt 17.07.2014. With this clarificatory order Dt 17.07.2014 it was duty of MSEDCL to implement the same for all consumers within reasonable period required to do so but MSEDCL restricted benefits to limited 17 no of consumers only covered in the petition . Aggrieved by this ,M/S Century Rayon Ltd. filed his application vide case No 86 of 2015 on 11.06.2015 before MERC as its plea was rejected by MSEDCL saying that order in case No 105 of 2013 was limited to only 17 Nos of applicant, in said petition and cannot applied to all, but MERC in its order Dt 15.02.2017 specified the general applicability of order passed in case No 105 of 2013 . Also the stand taken in Non- compliance with order of CGRF, Akola by MSEDCL in the case of M/s J.J. Fine Spun Pvt. Ltd. was that guidelines has been asked from Corporate Office. And accordingly Chief Engineer (Commercial) ,Mumbai informed to Authority of MSEDCL Akola that it has been requested to Hon.Commission to grant its dispensation in the case No 86 of 2015 at an earliest vide his letter Dt 06.09.2016 and then order in the case of M/s J.J. Fine Spun Pvt. Ltd. has complied with submission that the Compliance is subject to challenge the order of CGRF,Akola upon the decision in the Case No 86 of 2015. Thus applicant submits that law of estoppel prohibits MSEDCL from taking plea of cause of action when the Corporate Office of MSEDCL themselves was insisting consumers to wait for order of M/s Century Rayon Ltd. in the Case No 86 of 2015 which is decided by MERC vide its order Dt.15.02.2017 and therefore the cause of action for MSEDCL to process refund to eligible consumers arose on 15.02.2017 and hence reply filed by NA MSEDCL in present case is inconsistent with that of stand of Corporate Office of MSEDCL and is liable for rejection being lower Authority than CE Commercial of Corporate Office. It was Dt 15.02.2017 on which MSEDCL " stand and say " that the order in case No 105 of 2013 was limited to 17 Nos. of consumers covered under referred case was rejected by MERC and hence cause of action in present case is Dt 15.02.2017 and still MSEDCL rejected his application in IGRC without giving him the opportunity of being heard .

10) In response to reply filed by NA MSEDCL and allegation in it that applicant has surpassed the order of IGRC, Yavatmal, Applicant submits that he had filed his application to IGRC, Yavatmal on 04.02.2017 and SE, MSEDCL,Yavatmal has not taken any action on it and the order of IGRC, Yavatmal was served to him first time with reply at CGRF. He may not have received the said order but order itself is showing that no notices to concern parties, no details of appearances before IGRC hearing and no details of reply in said complaint and hence no transparent procedure seems to be followed and principle of natural justice is violated. This confirms that there was a administrative mismanagement on NA MSEDCL side and no concrete communication in view of section 171 of EA 2003 is being followed by NA MSEDCL hence allegation of surpassing the IGRC,Yavatmal order is baseless. Also NA MSEDCL submitted new document at the time of hearing on plain paper certified by Superintending Engineer, MSEDCL Yavatmal showing the procedure for grievance submission, resolution and time period specified for submission of it after order of IGRC which is not in accordance with the MERC (CGRF & EO)Regulations,2006 hence not valid one and should not be accepted more particularly in view of the High Court's Judgements referred herein.Applicant submits that MSEDCL already dealt with all issues regarding refund of difference in tariff as in present case before MERC in Case No 88

of 2012, 105 of 2013 and 86 of 2015 and as Hon.ble MERC had already decided the cases, now NA MSEDCL cannot reopen the arguments before Forum being decided by MERC.

11) Further MERC had directed MSEDCL to get the tariff difference in HT-1C and HT-1NC reimbursed through Annual Revenue Return and hence there is no adverse financial impact on MSEDCL in this matter.

With this submission, Applicant prayed for

A) This application may please be admitted.

B) The applicant may please be allowed refund of Rs 3,30,39,918/- towards the difference between the tariff as applicable to HT Continuous Industrial and HT Non Continuous Industrial consumers for the period June 2008 to Sept.2012 (Only during the months when the applicant has suffered interruptions/load shedding / voltage fluctuations or dips, a statement of which is attached with application) alongwith interest @ PLR of State Bank Of India

C) Permit to make further submissions, additions and alterations as may be necessary from time to time.

D) Any such other relief as the Hon.ble CGRF may deem fit and proper in the facts and circumstances of the case.

In response to present complaint and notice of CGRF, Amravati Zone dt .22.01.2018 to NA MSEDCL to file their reply, Non-Applicant MSEDCL in its written statement dt.05.02.2018 and oral submission before Forum submitted that :-

1) NA MSEDCL submits its preliminary application raising the point of tenability of present complaint before Hon.ble Forum. In this context NA MSEDCL submitted that the present complaint should be dismissed as it is not filed within limitation period and procedure laid down in regulation 6.6 of MERC (CGRF & EO) Regulations, 2006 . NA MSEDCL requested to decide first tenability without going to merits of the case. NA submitted that IGRC,Yavatmal has passed the order on 03.04.2017 in present grievance submitted on 04.02.2017 wherein grievance is dismissed in view of Regulation 6.6 of MERC (CGRF & EO) Regulations, 2006 on the ground that refund asked was for period June 2008 to Sept.2012.It is pointed out that the bills generated for the period June 2008 to Sept.2012 were paid by Complainant without disputing same and for the first time the grievance is put before IGRC, Yavatmal on 04.02.2017 which clearly shows that it is submitted after thought as complainant had paid the issued bill for the period under consideration with status of interruptions and now is demanding refund after lapse of period of 04 years and 05 month from date of cause of action arose to the complainant which should not be allowed as per Regulation 6.6 of MERC (CGRF & EO) Regulations, 2006. Also NA MSEDCL submitted that complainant had meticulously suppressed the order of IGRC,Yavatmal in present matter and present complaint made in vain, on the point how the complaint is within limitation and thus complainant has not come with clean hand. A copy of order of IGRC,Yavatmal is attached with a copy of office diary showing that the same was posted by the way of ordinary post by affixing Rs 5/- postage stamp in routine course of the official procedure which has ethical weightage in the eye of law. The letter has not sent back by postal department hence it is deemed to be served to complainant. That is suppression is made intentionally for showing how present case is well within limitation . The present complaint is filed after a lapse of 9 months which is also against the regulation as the complaint has ought to

be filed within 60 days from order of IGRC or within 120 days from the filing of case to IGRC which is not followed in present case and as the case is submitted beyond limitation and it is not even accompanied with condonation application, hence case is liable to be dismissed by Hon.ble Forum without going into merits of case with compensatory cost of Rs 10000/- to NA MSEDCL for unnecessarily vexing to NA to this complaint. NA MSEDCL submitted certified copy of document downloaded from its website how the grievances are redressed-procedural aspects which is on record.

Forum asked to NA MSEDCL whether they are ready for further arguments if tenability is decided now only, NA MSEDCL replied negatively. Forum expressed displeasure on it and said that NA MSEDCL should have been ready for complete arguments as sufficient time has been given to them and it was asked to submit point wise reply to the complaint before Forum. As NA MSEDCL was not ready for complete argument, next date is scheduled for hearing as 13.03.2018 as mutually agreed by both the parties.

On scheduled hearing on 13.03.2018, incomplete hearing in present case before Forum started with submission of written reply from NA MSEDCL. Complainant was not happy with this on-the-spot submission of reply from NA MSEDCL as it could have served to him in advance for his preparation. NA MSEDCL submitted that reply was ready for submission on today's morning only as it involves lot of analysis of data and submission. After willingness of both parties for advancement of total arguments in present case, hearing started.

In written reply and oral submission before Forum, NA MSEDCL submitted that :-

1) It is admitted that the connection details as given in para 1 of complaint is true and applicant was getting supply on express feeder at voltage level of 33 KV. Regarding financial loss to the complainant due to interrupted power supply are denied in toto for want of direct knowledge and complainant has to prove it. Comparison of tariff for HT Continuous and HT Non continuous Industrial tariff as given by applicant in his complaint is correct unless it has been denied hereinafter.

2) For HT Continuous tariff applicability, NA MSEDCL reproduced para no 37 of MYT Order 2008-09 vide MERC case No 72 of 2007 DT 20.06.2008 as "*When the ASC was being charged earlier, a lower base energy charge was applicable for the HT Continuous industry as compared to HT Non -continuous industry, which was set off by the higher ASC percentage charged to HT Continuous industry. However the ASC has now been removed. Since the Continuous process industries are getting supply on continuous basis, and are not subjected to load shedding, including staggering day, the tariff for HT continuous industry has been specified slightly higher than that applicable for HT Non continuous industry.*" That is industries with Continuous tariff were free from load shedding hours including staggering day only and word interruption in present matter had been added by afterthought to benefit complainant. The word interruption added merely because somebody has been given relief in a matter by Hon.ble MERC, this complainant consumer will not automatically qualify for receiving the so called tariff difference. In response to complainant's submission regarding not receiving uninterrupted power supply and hence no tariff as HT 1C during June 2008 to Sept.2012 as per clarificatory order of MERC Dt 16.07.2013, NA MSEDCL denied the same as Complainant never spelt anything during the said period and thereafter till his submission before IGRC. Hon.ble MERC has allowed the tariff difference to the applicant who approached before it with the grievance.

NA MSEDCL further added that contents in complaint specifying discussion and order details in the orders passed by Hon'ble Commission (MERC) dt 16 July 2013 in the case of M/s Kalika Steel & Alloys Pvt.Ltd.and 16 Co-petitioners,(Case No.88 of 2012) Review order dt 17 July 2014 (Case No 105 of 2013) in same case and order dt.15 Feb.2017 in the case of M/s Century Rayon Ltd.(Case No.86 of 2015) are not related to present complaint on limitation period issue as present case is totally different from those who have approached to Hon.ble MERC .

2) NA MSEDCL submitted that MSEDCL had filed case for review order before Hon'ble MERC in the case of order Dt 15.02.2017 in M/s Century Rayon Ltd. ,same is admitted as case No 122 of 2017 and is reserved for order on 06.12.2017 by Hon.ble MERC and is on record .

3) It is admitted that application was filed before IGRC,Yavatmal on 04.02.2017 for refund of difference in tariff as stated and it was decided with dismissal on limitation ground, is on record.Also applicability of orders passed by MERC as stated in Complainant,s submission are not related to present case hence applications of same are denied.

4) Interruption submission from complainant side are accepted to the extent of admission regarding interruptions which are tabulated below in Table 1

Table 1: Record of interruptions as submitted by N.A. MSEDCL

Month	EHV Shutdown Outage		MSEDCL Tripping/Breakdowns		MSEDCL Shutdown/Outage		Total	
	No.	Duration (Min)	No.	Duration (Min)	No.	Duration (Min)	No.	Duration (Hrs.)
Jun -08	1	45	15	55	0	0	16	1.4
July-08	0	0	11	72	0	0	11	1.12
Aug-08	0	0	13	79	1	46	14	2.05
Sept-08	0	0	8	345	0	0	8	3.45
Oct-08	0	0	4	21	1	105	5	2.06
Nov-08	0	0	2	6	1	130	3	2.16
Dec-08	0	0	1	5	1	170	2	5.25
Jan-09	1	190	0	0	1	15	2	3.16
Feb-09	1	161	2	12	0	0	3	2.53
Mar-09	0	0	3	10	0	0	3	0.1
Apr-09	1	200	6	126	1	235	8	9.21
May-09	0	0	15	391	0	0	15	6.31

Jun-09	0	0	14	367	0	0	14	6.07
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July-09	1	196	1	2	1	210	3	6.48
Aug-09	0	0	8	48	0	0	8	0.48
Sept-09	0	0	17	1398	2	717	19	35.15
Oct-09	0	0	6	56	0	0	6	0.56
Nov-09	0	0	18	877	1	170	19	17.27
Dec-09	0	0	6	18	0	0	6	0.18
Jan-10	0	0	9	52	1	423	10	7.55
Feb-10	0	0	1	7	2	783	3	13.1
Mar-10	1	381	3	8	0	0	4	6.29
Apr-10	0	0	6	19	0	0	6	0.19
May-10	0	0	5	25	0	0	5	0.25
June-10	0	0	15	105	1	386	16	8.11
July-10	0	0	4	175	0	0	4	2.55
Aug-10	0	0	12	241	0	0	12	4.01
Sept-10	0	0	17	846	1	370	18	20.16
23 Oct-10	0	0	9	32	0	0	9	0.32
Nov-10	0	0	11	196	1	142	12	3.38
Dec-10	0	0	1	2	1	475	2	7.57
Jan-11	1	128	0	0	0	0	1	2.08
Feb-11	1	370	1	2	0	0	2	6.12
Mar-11	0	0	6	111	1	125	7	3.56
Apr-11	1	255	7	233	0	0	8	8.08
May-11	0	0	5	42	0	0	5	0.35

June-11	0	0	6	37	1	269	7	5.06
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July-11	0	0	10	22	1	450	11	7.52
Aug-11	0	0	28	474	0	0	28	7.54
Sept-11	0	0	35	653	0	0	35	11.28
Oct-11	0	0	35	109	1	260	36	6.09
Nov-11	0	0	1	5	0	0	1	0.05
Dec-11	0	0	4	65	0	0	4	1.05
Jan-12	0	0	6	412	0	0	6	6.52
Feb-12	0	0	18	388	0	0	18	6.28
Mar-12	0	0	23	283	0	0	23	4.43
Apr-12	0	0	14	817	0	0	14	13.37
May-12	0	0	26	66	0	0	26	1.06
June-12	0	0	22	816	1	410	23	20.26
July-12	0	0	12	195	0	0	12	3.15
Aug-12	0	0	7	31	0	0	7	0.31
Sept-12	0	0	12	238	0	0	12	3.58

is on record. Further it is submitted that trippings/breakdowns on MSEDCL side were beyond control of MSEDCL and the interruptions occurred were never on the account of negligence of any person etc.

5) It is submitted by N.A. that applicant has produced DIC Registration certificate Dt 23.07.2014, sought after the period mentioned and is an afterthought. Complainant had not filed any certificate of Continuous Process Industry to the respondent during the period June 2008 to Sept. 2012 and thereafter consumer was billed as non Continuous tariff as per his application. In this context it is submitted that in the order of Commission Dt.07.02.2007 in case of 59 of 2006, Categorisation as Continuous and Non continuous were held as under :-

"The commission clarifies that Continuous and Non Continuous categories are differentiated based on the continuous and non continuous nature of the process adopted in the industries and not based on whether industries are connected to express feeder or Non express feeder. It is obvious that a certified continuous process industry availing of uninterrupted power supply and paying additional supply charges (ASC) of 42% cannot be on mixed non express

feeder subjected to load shedding. The Commission clarifies that the Development Commissioner of Industries (DCI) or similar authority designated by the State Government are the appropriate forum to certify whether an industry is a continuous process industry or non continuous process industry . Industries need to submit required certifications from State Industrial development Authorities to avail the tariff allocated for continuous process industries." It is submitted by N.A. that certificate of DIC is of Dt. 23.07.2014 which is after the order of Hon'ble Commission Dt 17.07.2014 in case No 105 of 2013 which is review petition filed by MSEDCL and directions given to MSEDCL at para 12.2 as:-

Taking into consideration the Commission's order in Case No 88 of 2012, the Commission is of the view that regardless of undertakings or agreement on supply on sub SOP level , MSEDCL was bound to supply continuous power as envisaged for continuous process industry. MSEDCL is directed to verify that Respondents (in Case No 105 of 2013) had DIC certificates as continuous process industry issued by the Directorate of industries, Government of Maharashtra during those billing months under consideration of this petition and refund these Respondents. The Respondents who did not have a valid certificate as continuous process industry issued by the Directorate of Industries , Government of Maharashtra for that period will not be entitled for any relief.

In the present case the DIC certificate was procured after the order of Hon'ble Commission and when consumer had opted for Non continuous supply which directly questions the sanctity of the same. Also it was not submitted with application before IGRC,Yavatmal.

6) It is added that facts and circumstances in the case of M/s J.J. Fine Spun Pvt. Ltd ,Akola and M/s Jai Corp. Ltd.,Nanded were different and not related with this case .Also submission from Complainant side on these references are denied in toto for want of direct knowledge regarding the same so also the case of M/s Kalika Steel and other 16 petitioners.

7) NA MSEDCL need not find its jurisdiction to file their say on legal issue as it relates to Hon.ble MERC in reference with section 62(1) of EA 2003 for tariff determination and application of same .

8) NA MSEDCL submitted on the issue of proactive refund of tariff difference to concern as per order of MERC dt.15 Feb.2017 in the case of M/s Century Rayon Ltd.(Case No.86 of 2015) not related with this present case . Applicant has enjoyed load shedding / staggering day free continuous power supply with continuous tariff to its maximum and switched to Non Continuous when circumstances were such that even by opting for Non continuous tariff the consumer not subject to load shedding and staggering day and this was the basic reason for not filing any application for refund during period under consideration. Regarding generic applicability of order of MERC dt.15 Feb.2017 in the case of M/s Century Rayon Ltd.(Case No.86 of 2015) is now matter of review vide case no 122 of 2017 filed by MSEDCL and same is admitted and reserved for order on 06.12.2017 by Hon.ble MERC.

9) Again it is submitted that limitation period in present case is already passed and Complainant,s submission on that part is false and is misleading to Hon.ble Forum. Respondent praying for deciding the case on limitation ground .

10) Further it is pointed out that Load Factor Incentive of Rs 6,26,88, 970/- was given to the complainant consumer for the period June 2008 to Sept.2012 which is on record and material fact for present case .

11) The consumer had prayed and is expecting relief given to M/s Kalika steel and others which shows that applicant was well aware about all developments since beginning in said petitions then why applicant not filed any application for his grievance before 04.02.2017. So it will be injustice to all consumers if the refund is allowed and adjusted in ARR.

12) Finally in view of above submission it is submitted that the present complaint is an after thought and hence liable for dismissed off along with cost of Rs 10000/- for unnecessarily vexing the Respondent to this complaint without any cause.

In addition to this written reply, MSEDCL additionally stated during hearing before Forum and in written note of argument as :-

1) MSEDCL again stressed on tenability of present case on the point of limitation. Here they submitted that there must be time limit to file complaint for consumer from date of cause of action and it is the date on which dispute arises in this case. NA pointed out that there is limit of two months to appeal to Hon. Ombudsman after Hon. CGRF's order, same should be applicable to IGRC also. It is mentioned in regulation 6.4 of MERC (CGRF & EO) Regulations, 2006 that IGRC should give decision within two months and if no remedy is provided, consumer may submit the grievance to the Forum. Hence consumer can submit his grievance to the Forum after a lapse of two months from filing the same before IGRC, if IGRC does not give any remedy within the time frame.

Regarding order of High Court in the case of Hindustan Petroleum as submitted by applicant for time limit, it was limited to that case only & not the general order.

2) It is submitted that orders produced by applicant before Hon. Forum are limited to those particular cases only and requested for taking into consideration only for information and should not be followed blindly in present case. In the judgement of APTEL in Case No 197/2009 Dt 11.03.2011, further comment has been passed on the issue of technical plea of limitation that "of course, if a government or a public authority takes up a technical plea, the court has to decide it and if plea is well founded, it has to be upheld by court". Hence as the cause of action in present matter is Sept. 2012 and case is filed in Feb. 2017, it is to be dismissed as tariff has been revised nos. of times from Sept. 2012. Even after well aware of developments in the case of M/S Kalika Steel & Others, there is not a single application for refund and the Complainant has not succeeded in proving his grievance and therefore present grievance is liable to be dismissed.

3) NA MSEDCL stated that the Continuous tariff arises in the year 2006 when Maharashtra State was suffering from huge power shortage, so load shedding was being carried out for approx. 2000 hrs per year. Hence Hon. MERC introduced Continuous tariff for Industries optionally by paying additional charges as MSEDCL had to purchase power at extra charge from open market to provide power without load shedding / staggering days outage (Without pre intimation) to consumers under said continuous category and was already taken into consideration that trippings and outages will bound to happen.

4) Regarding submission of DIC Certificate Dt 31.05.2008 for Continuous process industry, it is submitted that it has been submitted in hearing only after objection raised on DIC Certificate submitted earlier with complaint and not submitted to MSEDCL in the year 2008 or even till today.

5) The 33 KV feeder feeding supply to Complainant,s industry was originated from 220/33 KV Yavatmal S/S and goes to Complainant,s industry through 33KV MIDC S/S Yavatmal which was IN & OUT hence the trippings, shutdown of MIDC S/S (MSEDCL) as well as EHV S/S (MSETCL) goes to applicant side hence all interruptions are divided in EHV / MSETCL Shutdown /Outages, Trippings/Breakdowns (MSEDCL) and Shutdown / Outages (MSEDCL). All above shut down / outages were availed with prior intimation to applicant . The Trippings/Breakdowns (MSEDCL) were beyond control of MSEDCL and were very less considering total hours of months.

6) As per Commission,s order in case no 2 of 2013 ,the concept of load factor was introduced and in the formula ,Commission clearly states that

"Interruptions /No supply to the extent of 60 hr. In 30 days month have been built in the scheme".

As per above applicant have availed Load factor Incentives of Rs 6.27 Crs. and also aware that 60 hr. In 30 days month interruption can occur and the interruption faced by applicant per month are very less which is maximum of 14.38 hrs only in Sept.2009 . Hence as applicant have already availed incentives of Rs 6.27 Crs as load factor incentive so no additional benefit should be allowed.

7) No application for financial loss has been submitted by applicant till IGRC case submission as he was well aware about interruptions and made provisions for same, so no financial loss.

8) All the argument was based on order passed by Hon.MERC in the case of M/S Century Rayon Ltd. in case no 86 of 2015 and held himself eligible for refund . But the said order has been filed for review by MSEDCL and is pending for order .

9) As stated in order of M/S Kalika steel & Others amount refunded for tariff difference should be adjusted in tariff petition as ARR, it is submitted that by giving benefit to applicant who is not suffered at all, of the act happened 9 years ago & also availed the benefit of Load Factor Incentive, unnecessarily 2.20 Cr regular consumers will have to pay additional charges though they are not responsible for it .

10) As stated by applicant that they have also paid cross subsidy but it has to pay as per tariff order of Hon. MERC and it has to plead before Hon. MERC .

Hence it is submitted that as our Judicial system is based on "Thousands guilty persons can be free but not single innocent person should be punished " and in this case 2.20 Crs regular consumers are innocent .

Hence in view of above said facts and circumstances, MSEDCL prays before Hon. Forum to disallow the prayer of applicant .

Again submission on say of MSEDCL from applicant side is made during same hearing before Forum and later on with written note of argument ,applicant submitted as :-

1) Regulation 10 of SOP Regulations 2005 deals with reliability indices and MSEDCL has to maintain data on frequency,duration of interruptions of the consumers with type of interruption i) scheduled outages ii) Momentary outages of duration less than three minutes and iii) outages due to reasons described in Regulation 11.1.

2) NA MSEDCL submitted bifurcated statements of interruptions but failed to produce copies of advance intimation and notice causing interruptions which demonstrates not compliance of SOP notified in compliance of section 57 of EA 2003 by state regulator.

3) Applicant submitted that the para no 31 to 36 in the order of MERC in case no 88 of 2012 Dt 16.07.2013 clearly clarified classification of supply during the period as falling under non-continuous category . He reproduced para 25 in said order as :-

“ Therefore , from all the above stipulations, it is amply clear that the intent of specifying a premium tariff for the consumers availing supply under Continuous category is under the assumption that the licensee shall supply such consumers on a continuous basis, i.e. without any interruptions of any form. Only exemptions granted to the Distribution Licensee are as specified in the Regulation 17 of SOP Regulations 2005. In the case of planned outages, it is the duty of MSEDCL to give advance notice to the consumers as specified in regulation 6.5 of the SOP Regulations,2005.”

As per the Regulation 6.5, MSEDCL shall give public notice on interruptions but MSEDCL did not submit copy of any notice public or individual of planned interruptions during the period June 2008 to Sept 2012 and therefore adverse inference is obvious.

4) The summary of interruptions data based on submission of same by applicant and tabulated by NA MSEDCL is as:-

Table 2

Details	EHV shutdown/ Outages	MSEDCL Tripping / Breakdown	MSEDCL Shutdown / Outage	Total
Nos of months having interruptions	9	50	20	79
No.of times having interruptions	9	521	22	552
Duration of interruptions (Minutes)	1926	10325	5891	18142 (303.53 Hours)

5) Hon. Commission in case of 88 of 2012 of M/s Kalika steel & others, in para 32 and 33 analysed interruption data in 3 scenarios of 17 consumers who were petitioners. Among these some were connected on the Sub SoP level (**Sub SoP level means voltage level lower than prescribed by SOP Regulations on the basis of corresponding contract demand**) and some Industries together connected to single feeder and length of feeder from s/s to point of supply was also more. In case of applicant, the connection is on 33KV which is as per standard as per notified by MERC through SoP Regulations,2005 and distance from S/S to point of

supply is only 95 meters (As supported by Google map) and only single consumer connected on said feeder and hence case of applicant is far strong in comparison with M/S Kalika Steel and Others 16 .

6) In response to submission of MSEDCL that the cases of Jai Corporation Nanded ; J.J. Fine Spun Pvt. Ltd. and Kalika Steels & others 16 are not related with present case it is strongly submitted that all above cases are very much identical as all cases were of refund of tariff difference between Continuous and Non continuous tariff due to interruptions faced during Continuous tariff applicable period and NA MSEDCL has not stated how these cases are not identical with present case .

7) In response to objection on DIC Certificate Dt 23.07.2014 , Applicant submitted that it was summarised certificate for the period mentioned in it and had submitted another DIC Certificate Dt 31.04.2008 showing that their industry is Continuous process Industry .

8) Again issue raised by NA MSEDCL about load power factor incentive, it is submitted that this issue was raised by MSEDCL and decided /rejected by Commission while deciding Case No 88 of 2012, 105 of 2013 and 86 of 2015 . Hence issue decided by Hon. Commission cannot be reopened before this Forum . Also other issues raised by NA were also decided by MERC and cannot be reopened and debated before CGRF as the order of MERC is binding for MSEDCL and Hon. CGRF. NA MSEDCL absolutely failed to explain how the applicant's establishment did not qualify the criterion laid down by MERC whereas applicant have well explained the qualifying criteria for his grievance .

9) The judgement cited by applicant in the matter of Hindustan Petroleum Vs MSEDCL and MSEDCL Vs Shilpa Steel are binding precedent for MSEDCL and Hon.CGRF as such MSEDCL have not challenged the same .

10) Complainant's representative in presence of Complainant submitted before Forum during hearing that they are withdrawing prayer for refund of interest on tariff differential amount as decided by MERC in Case 105 of 2013 and Complainant also agreed for same. It is not covered in written note of argument of complainant but verbally assured by Complainant representative.

During hearing, Forum asked some clarificatory queries to Complainant to throw light on present grievance that whether he has filed any application to N.A.before IGRC application,dt.04.02.2017, for providing him Uninterrupted supply as expected in HT Continuous category, refund of tariff differential amount if he was not receiving Continuous supply . The answer was negative on ground that he was waiting for orders of MERC in the case of M/s Kalika Steel & Alloys Pvt.Ltd.and 16 Co-petitioners ,(Case No.88 of 2012) Review order (Case No 105 of 2013) in same case and M/s Century Rayon Ltd.(Case No.86 of 2015) . Secondly Forum asked that if there is any specific limit decided for frequency of occurrences of trippings for applicability of Continuous tariff, Complainant representative expressed that he had no knowledge of existence of any such explicit specifications for the said purpose.

After going through the documents placed on record, arguments advanced by both the parties in present case, verifying and analysing the facts, the Forum has to determine following points .

A. Tenability of present grievance on time limitation.

The facts concerning the issue are

- a. The petitioner upon his application to that effect was put in HT-1 Continuous consumer category from June 2008 by N.A. MSEDCL.
- b. The petitioner was under this category till September 2012 and was changed to noncontinuous by the N.A. MSEDCL and accepted by applicant .
- c. Under Continuous category the consumer paid special tariff which was higher than that for Non continuous category in lieu of which N.A. MSEDCL was required to supply continuous supply to the consumer as defined in MERC Tariff order dated 31 May 2008 and further orders in this regard.
- d. It was noticed by the complainant that though he was charged with Continuous category tariff, the supply that was actually made available to him was not compliant with the definition of the Continuous supply.
- e. Petitioner approached IGRC on 4.2.2017 and IGRC issued its orders on 3.4.2017 vide which the grievance was dismissed on the grounds that the grievance was not filed before IGRC within stipulated time limit of 2 years from cause of action as per regulation 6.6 of MERC (CGRF and EO) Regulations, 2006.
- f. Complainant filed his grievance to the forum on 20.1.2018.
- g. N.A. MSEDCL raised the issue of tenability of the grievance on the basis of time limitation as per regulation 6.6 of MERC (CGRF and EO) Regulations, 2006.
- h. Regulation 6.6 reads as follows
 - i. 6.6. *The forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen.*
- i. Further Regulation 6.7 (a) and (b) read as
 - i. 6.7. *The forum shall not entertain the grievance :*
 - a. *Unless the consumer has complied under regulation 6.2 and has submitted his grievance in the specified form, to the forum;*
 - b. *Unless the consumer is aggrieved on account of his grievance being not redressed by the IGR Cell within the period set out in these regulations.*
- j. Regulation 6.2 reads as

" A consumer with a grievance may intimate the IGR Cell of such grievance *in the form and manner and within the time frame as stipulated by the distribution licensee in its rules and procedures for redressal of grievances.*

Provided that where such grievance can not be made in writing, the IGR Cell shall render all reasonable assistance to the person making the grievance orally to reduce the same in writing.

Provided also that the intimation given to officials (who are not part of IGR Cell) to whom consumers approach due to lack of general awareness of the IGR Cell established by the distribution licensee or the procedure for approaching it, shall be deemed to be the intimation for the purposes of these regulations unless such officials forthwith direct the consumer to the IGR Cell."

B. If the application is admitted, the tariff difference that is due to be refunded by N.A. MSEDCL to the Applicant.

Facts available before the forum concerning this issue are

- Data of interruptions occurred during the period in question.
- Detailed analysis of interruption record as mutually agreed by both the parties has been carried out here in line with that done by Hon. MERC in the case No.88/2012 of M/S Kalika Steel and Alloys Pvt. Ltd. & 16 co-petitioners Vs MSEDCL. In this case, as no data is separately made available on interruptions due to load shedding, the Forum has excluded that from analysis and accordingly proportionately modified the filters under 3 scenarios as given below.

Table 3

Nature of interruptions	No. of interruptions in a month		
	Scenario 1	Scenario 2	Scenario 3
Outages	3	3	3
Tripping/Breakdown	3	5	6
Total interruptions	6	8	9

The number of months over the period June 2008 to Sept 2012 in which total number of outages and trippings/breakdowns have exceeded the above applied filters under each of the three scenarios are found to be as under

Table 4

Scenario	No. of months having interruptions exceeding filter		
	Outages	Tripping/Breakdown	Total Interruptions
1	0	40	31
2	0	35	24
3	0	28	23

The basis for deciding the months in which the applicant has received non-continuous supply has been taken as total number of interruptions in a month exceeding the corresponding filter for total interruptions for scenario 1. These months during which the applicant has received the non-continuous supply have been tabulated below.

Table 5

Month	Total Interrupt ions	Month	Total Interrupt ions	Month	Total Interrupt ions	Month	Total Interrupt ions
June 08	16	Sep 09	19	March 11	07	March 12	23
July 08	11	Nov 09	19	April 11	08	Apr 12	14
Aug 08	14	Jan 10	10	June 11	07	May 12	26
Sep 08	08	June 10	16	July 11	11	June 12	23
April 09	08	Aug 10	12	Aug 11	28	July 12	12
May 09	15	Sep 10	18	Sep 11	35	Aug 12	07
June 09	14	Oct 10	09	Oct 11	36	Sep 12	12
Aug 09	08	Nov 10	12	Feb 12	18		

Note: The filter parameter considered here is 6 numbers of Total Interruptions. Above table shows the months in which the total number of interruptions have exceeded the filter parameter.

Justification for delay in decision in the case

On the first hearing that is on 9.3.2018, the N.A. MSEDCL raised point of time limitation bar on applicant and prayed for dismissal of the case without going into the merits. When asked if they are prepared to argue on points of merit, the N.A. expressed inability and asked for some more time for that. The final hearing was scheduled on 13.3.2018 wherein the N.A. presented on the spot fresh written submission in addition to their prior written reply. In response to this, the applicant asked for some more time to respond. Thus as mutually agreed during final hearing, two parties submitted their written notes of the verbal arguments by 19.3.2018.

Further as the case involves reference to several past decisions of the Hon. MERC and Hon. Bombay High Court, time for detailed study was necessary. Furthermore in the event of admitting the application of the complainant, deeper study was warranted in the supply interruption data made available by both the parties to decide on the months when the applicant has received the non-continuous supply, hence delay for the order.

Corum:

During the final hearing of the case Hon. Member (CPO) was not present. Hence corum of two members namely the Chairperson and Member Secretary was in chair during the final hearing.

Dissenting opinion of the Member Secretary of the Forum

In present case, Member Secretary is of the view that limitation period to file case before CGRF is stipulated and it is within two years from date of cause of action arose. In this case it is crystal clear that first cause of action arose when the Complainant had received first

bill of HT Continuous tariff with interrupted power supply in that billing month and it is July 2008 . But as per facts before Forum, no representation from applicant side was made to Non applicant MSEDCL. The applicability of HT Continuous tariff was in continuation with interrupted power supply till Sept 2012 when applicant's tariff category has been changed to HT Non Continuous. That is last bill with HT Continuous tariff and interrupted power supply was for Sept 2012 which is also not found represented by applicant to NA MSEDCL for proper remedy . The approved tariff orders specifying the meaning of all categories by Hon. MERC for concern period were available to all in that period. From this it seems that he was satisfied with the interrupted power supply he was receiving from N.A.MSEDCL and hence no any grievance from him was filed. Then from the facts before Forum, it was M/S Kalika Steel Alloys and others 16 petitioners who filed their petition before MERC on Dt 13.08.2012 seeking clarification with respect to levy of additional electricity charges for HT 1 Express feeder (Continuous Supply) category consumers and applicability of the tariff under the express feeder category in billing cycles when there were instances of failure in the electricity supplied by MSEDCL which was decided by Hon. MERC on Dt 16.07.2013 with relief to petitioners . That is order of Hon.MERC Dt.16.07.2013 in the case of M/S Kalika Steel Alloys and others 16 petitioners was available as cause of action to applicant in present case and was free to file his grievance to Competent Authority within time limit but no any grievance filed of same to NA MSEDCL from Complainant side. Also review petition was filed by MSEDCL before Hon. MERC in the order of case of M/S Kalika Steel Alloys and others 16 petitioners in case no 88 of 2012 and disposed of on Dt.17.07.2014 with view that refund to be given in full without interest. Again it was last cause of action in present case for filing grievance to CGRF as applicant was very much conversant with developments in Continuous and Non Continuous tariff determination and its applicability. None has prevented him to file his grievance for same. Had the grievance been filed by the complainant between June 2008 to Sept 2012, Non-applicant, N.A.MSEDCL would have got the chance to resolve the complainant's grievance and further complications in the matter would have been avoided, and necessary corrective action could have been taken then & there only, but here in the present case as per procedure of natural justice, N.A.MSEDCL didn't get any opportunity to resolve the complainant's grievance till applicant had filed his grievance to IGRC on 04.02.2017, whereas original cause of action started in the month of July 2008 only , when complainant started receiving interrupted power supply in spite of paying premium quality tariff for uninterrupted supply. Hence in the opinion of Member Secretary at the most cause of action for filing present grievance to CGRF was 17.07.2014 only. Also it seems that no correspondence from applicant side regarding receiving interrupted power supply with Continuous tariff had been made to NA MSEDCL. If it has been bring into notice of NA MSEDCL ,there was chance of rectifying the same or NA MSEDCL could have asked to applicant to opt for Non Continuous tariff to applicant . That is natural opportunity for rectification the discrepancies in service was not given to NA MSEDCL .

The citations produced by applicant regarding cause of action as upheld by Hon. Bombay High Court in the case of M/s Hindustan Petroleum Vs MSEDCL in WP No 9455 of 2011, it is important to note that application for grievance redressal by petitioner for the first time made to the Authority of MSEDCL was within time limitation as specified in regulation 6.6 of MERC (CGRF and EO) Regulations, 2006. And the case of MSEDCL Vs M/s Shilpa Steel was

decided in line with the case of M/s Hindustan Petroleum Vs MSEDCL in WP No 9455 of 2011 and limited to those cases only. If simply cause of action is considered from date of IGRC rejection or decision without its nature, then all the cases even after 50 years can be brought as "within time limitation" by registering the grievance to IGRC and after deciding there, it can be filed to CGRF and can be claimed as **within time limitation** as per regulation 6.6 of MERC (CGRF and EO)

Regulations, 2006, and that is not expected from law point of view. Cause of action should not be generalised and must be decided case wise and its nature wise and then only regulation 6.6 of MERC (CGRF and EO) Regulations, 2006, should be applied. The judgement passed on Dt 11.03.2011 in Appeal No 197 of 2009 by Hon. Appellate Tribunal for Electricity upheld that "if a government or a public authority takes up a technical plea, the court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not be taken ordinarily by a government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

In view of the above and limitation provided by regulation 6.6 of MERC (CGRF and EO) Regulations, 2006, Member Secretary is of the opinion that present grievance has not been filed in time limit stipulated in regulation 6.6 of MERC (CGRF and EO) Regulations, 2006 and hence can not be entertained for further details and fit for dismissal on limitation ground.

Sd/-

R.A.Ramteke
Member Secretary

Opinion of the Chairperson of the Forum

Contrary to that of the Member Secretary, the Chairperson of the Forum holds following view in the present case.

A. Time Limitation

After careful study of the regulations cited above and submissions before it, Forum does not find any evidence of the existence of the required **Rules and Procedures** officially set out by the N.A. MSEDCL for submission of a grievance by the consumer to IGR Cell. Hence time limitation to file a grievance by a consumer to IGR Cell does not exist in the absence of stated **Rules and Procedures for redressal for grievances.**

Hence in the opinion of Chairperson of the Forum, the cause of action for submitting grievance to the CGRF arises when the IGR cell does not redress the grievance within stipulated time or decides the grievance not to the satisfaction of the complainant whichever is earlier. The same interpretation for cause of action has been clearly upheld by Hon'ble Bombay High Court in the matters of WP-9455-2011 and WP-3997-2016. Moreover in the judgement in Appeal No. 197 of 2009 Hon. APTEL goes on to say "We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with **disfavour** and it is unfortunate that the public authority like the Port Trust should, in all morality and justice, take such a plea to defeat a just

claim of the citizen. It is high time that Governments and Public Authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens." In the present case, the claim made by the applicant for refund of overcharged amount appears just and well founded by all means.

Thus in present case, cause of action arose when the IGR Cell rejected applicant's grievance i.e. on 03.04.2017 and hence grievance filed to CGRF on 20.01.2018 is well within period of two years from the date of cause of action and is in compliance with the regulation 6.6 of MERC (CGRF and EO) Regulations, 2006 and hence the application in this case is fit for admission.

The Chairperson of the Forum also feels that there indeed has to be a well defined procedure and time frame for consumers to approach IGRC for their grievance. The responsibility of stipulating such Time Frame and Procedure has been assigned to the distribution licensee vide MERC (CGRF and EO) Regulations 2006, clause 6.2 read with clause 3.3. Had it been for the N.A. MSEDCL that it had timely stipulated such rules and procedures for consumer grievance redressal, the claim of limitation bar by N.A. MSEDCL could have held some substance. No credible evidence whatsoever was placed before the Forum to prove that such rules and procedures for time and manner for consumer grievance redressal exist even on this date.

B. Amount of refund

Further with regard to second prayer of the applicant, the Chairperson of the Forum feels that in the light of decisions given by Hon. MERC and Hon. Bombay High Court, the stated tariff difference between tariffs HT Continuous and HT Non-Continuous computed appropriately is due to be payable by N.A. MSEDCL to the Applicant.

On the basis of analysis carried out in Tables 3 to 5, it clearly reveals that the applicant has received non-continuous supply during total of 31 months as detailed in Table 5 as against the HT Continuous category tariff made applicable to him by N.A. MSEDCL during these months. Hence demand of the applicant for refund of the tariff difference for the months in which the supply was not continuous should be upheld.

The Forum during final hearing has recorded statement by complainant's representative in presence of Complainant that he is withdrawing prayer for refund of interest on tariff differential amount as decided by MERC in Case 105 of 2013 and hence the Forum feels that interest need not be paid to complainant by N.A. MSEDCL on the tariff differential to be refunded.

With equality of votes, the Chairperson chooses to exercise powers vested in him by Regulation 8.1 of MERC (CGRF and EO) Regulations, 2006 to cast second and casting vote. Thus with majority of votes as two Vs one, the Forum proceeds to pass the following order.

ORDER

- 1) The Complaint No. 02/2018 is partly allowed.
- 2) N.A. MSEDCL is directed to refund the amount of difference in tariff applicable as per Tariff Order in force between HT Continuous Industrial and HT Non-Continuous Industrial without interest for the 31 months as per Table 5 above during which the applicant has suffered from non-continuous supply and should be adjusted in forthcoming bills.
- 3) No order as to cost.
- 4) N.A. MSEDCL is directed to submit the compliance report of this order within 60 days from receipt of this order.

Sd/-
(Dr.V.N.Bapat)
Chairman

Contact details of Electricity Ombudsman appointed by MERC(CGRF & EO)
REGULATIONS 2006 under regulation 10:
THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikripa, Vijay Nagar, Chhaoni,
Nagpur-440013.
Phone:-0712-25966

NO. EE / CGRF/AMZ/ Amravati/ No./ 56

Dt. 26 .04.2018

To,
The Nodal Officer,
The Superintending Engineer
MSEDCL, O&M Circle, Yavatmal.

The order passed on in the Complaint No.02/2018 is enclosed herewith for further compliance and necessary action.


Secretary

Consumer Grievance Redressal Forum,
MSEDCL, Amravati Zone, Amravati.

Copy to:-

M/S Balaji Electro Smelters Ltd.

P.No.18, MIDC, Lohara , Distt.-Yavatmal

Consumer No. HT 370019002464

Copy f.w.c.to:-

The Chief Engineer, MSEDCL, Amravati Zone, Amravati.