



Consumer Grievance Redressal Forum, Kalyan Zone
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No. K/E/1473/1732 K/E/1476/1735 of 2017-18 Date of registration : 12/11/2018
Date of order : 26/12/2018
Total days : 44

IN THE MATTER OF GRIEVANCE NO. K/E/1473/1732 to K/E/1476/1735 OF 2017-18 OF M/S G.M. SYNTAX PVT. LTD., REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT DDF NON DDF.

M/S G.M. Syntex Pvt. Ltd., K/E/1473/1732 of 2017-18

Plot No.E-37/2 & 38, MIDC – Tarapur Boiser,
Tal-Palghar, Dist-Palghar, Pin Code- 401 506
(Consumer No. 003019009075)

M/S G.M. Syntex Pvt. Ltd., K/E/1474/1733 of 2017-18

Plot No.E-37/2 & 38, MIDC – Tarapur Boiser,
Tal-Palghar, Dist-Palghar, Pin Code- 401 506
(Consumer No.003019026740)

M/S G.M. Syntex Pvt. Ltd., K/E/1475/1734 of 2017-18

Plot No.E-37/2 & 38, MIDC – Tarapur Boiser,
Tal-Palghar, Dist. Palghar, Pin Code- 401 506
(Consumer No. 003019044690)

M/S G.M. Syntex Pvt. Ltd., K/E/1476/1735 of 2017-18

Plot No.E-37/2 & 38, MIDC – Tarapur Boiser,
Tal-Palghar, Dist-Palghar, Pin Code- 401 506
(Consumer No. 003019026930) . . . (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited
Through it's Nodal Officer/Addl.EE.
Palghar Circle, Palghar . . . (Hereinafter referred as Licensee)

Appearance : For Licensee - Shri.Y.J.Zarag, EE, Palghar Circle

For Consumer - Shri. Hogade (C.R.)

[Coram- Shri A.M.Garde-Chairperson, Shri A.P. Deshmukh-Member Secretary
Mrs. S.A.Jamdar- Member (CPO)].

1) Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressed Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005]. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.

2) Consumer herein is M/S G.M. Syntex Pvt. Ltd., having five connections bearing consumer no. 1) 003019009075, 2) 003019026740, 3) 003019026930 4) 003019044690. Consumer states as under :-

(A) DETAILS OF THE GRIEVANCE, FACTS GIVING RISE TO THE GRIEVANCE -

We are the HT Industrial Consumers of the licensee MSEDCL, Palghar Circle and the details of connections are given in detail in Para No. 2 above.

We were having total 4 connections in MIDC-Tarapur, Boisar. Out of which consumer No. 3 was merged with consumer No. 2 and the firm was amalgamated in G. M. Syntex Pvt. Ltd. after Jan. 2009. Hence after Jan. 2009, We are having 3 connections.

In all these 4 connections, while load sanction/enhancement, S.E. Vasai/Palghar circle issued sanction letters along with estimates of work under DDF. We have paid the Supervision Charges and completed all the concerned Infrastructure Works &/or Metering Works as per MSEDCL estimates and directions.

The issue of refund of Infrastructure Cost was pending due to Civil Appeal No. 4305 of 2007 filed by MSEDCL in Honorable Supreme Court of India, New Delhi. There was a stay on refund. Finally Honorable Supreme Court dismissed the Civil Appeal on 10/11/2016. Then after it become clear that we are eligible & we can claim for the refund of all the expenses done for the Infrastructure Works & Metering Works.

The details of the Works done & refund claimed along with the concerned sanctions, estimates & scope of work are given as below,

Name of the Consumer - M/s G. M. Syntex Pvt. Ltd.

Refund Demand Details of all 4 connections in MIDC, Tarapur-Boisar.

(a) Consumer No. 003019009075 HT-I-A Industrial Plot No. E-37/2 & 38

- Load Enhancement to C.L. 1230 KW/HP & M.D.880 KVA.

Estimate No. 15878 dt. 26/09/2007 Amount Rs. 20,69,110/- —(1)

Scope of Work - Conversion from 11 KV to 33 KV & Kiosk Metering

Work completed, Load release sanctioned on 16/04/2008

- Load Enhancement to C. L. 2230 KW/HP & M.D. - 1511 KVA

Estimate No. 10160 dt. 22/10/2010 Amount Rs. 14,85,975/- —(2)

Work completed, Load release sanctioned on 30/08/2011

- Load Enhancement to C.L. 2825 KW/HP & M.D. - 2040 KVA

Estimate No. 4122 dt. 30/05/2014 Amount Rs. 3,05,420/- —(3)

Work completed, Load release sanctioned on 01/08/2014

Copies of above mentioned sanction letters, estimates, load release letters and Single Line Diagram are attached herewith. (Annexure-2)

(b) Consumer No. 003019026740 HT-I-A Industrial Plot No. D-21/1

- Sanction of Fresh Power Supply C.L. 1048 KW/HP M.D. - 805 KVA

Estimate No. 02253 dt. 19/04/2005 Amount Rs. 1,22,800/- —(4)

Work involved - Extension of existing 11 KV Line

Work completed, Load release sanction letter No. 03488 dt. - Nil -

- Load Enhancement to C. L. 4083 KW/HP & M.D. - 3000 KVA

Estimate No. 3640 dt. 03/06/2008 Amount Rs. 10,63,430/- —(5)

Work - 33 KV Line work & Metering Cubical

Work Completed, Load release sanctioned dt. 11/06/2009

- Load Enhancement to 5250 KW/HP, M.D. 3500 KVA

Estimate No. 06901 dt. 17/09/2014 Amount Rs. 8,61,135/- —(6)

Work - 33 KV Line Work & Metering Cubicals.

Work Completed, Load release sanctioned dt. 02/03/2015

Copies of above mentioned sanction letters, estimates, load release letters and Single Line Diagram are attached herewith. (Annexure-3)

(c) Consumer No. 003019026930 HT-Ind. Plot No. D-21/2/1

Earlier Name - Jagdish Weaving & Knitting Mills Pvt. Ltd.

(Unit closed in Jan. 2009 & the firm is amalgamated and merged with existing above mentioned consumer No. 2)

Fresh Power Supply 11 KV C.L. 1930 KW/HP, M.D. - 1482 KVA

Estimate No. 02255 dt. 19/04/2005 Amount Rs. 18,98,530/- —(7)

Work involved - 11 KV Line 700 Mtrs. & concerned works.

Work completed, Load release sanctioned 29/08/2005.

Copy of above mentioned sanction letter, estimate, load release letter are attached. **(Annexure - 4)**

- (d) Consumer No. 003019044690 HT-I-A Industrial Plot No. E-125/1
11 KV Fresh Power Supply C.L. 1435 KW/HP, M.D. - 996 KVA
Estimate No. 0597 dt. 20/02/2017 - Amount Rs. 1,57,460/- —(8)

Work - 11 KV Metering & concerned works.

Work completed, Load release sanctioned 23/02/2017.

Copy of above mentioned sanction letter, estimate, load release letter & Single Line Diagram are attached. **(Annexure - 5)**

Total Refundable Principle Amount Rs. 79,63,860/- (Total of No. 1 to No. 8 estimate amounts)

After the Final Decision of the Honorable Supreme Court in Civil Appeal No. 4305/2007 dt. 10/11/2016 regarding Refund of Infrastructure charges MSEDCL issued its first Refund Circular on 12/10/2017. Then after We have applied to the S.E., MSEDCL, Palghar Circle for the Refund of all the above mentioned estimate amounts along with the interest thereon on dt. 18/05/2018. The copy of our application is attached herewith. **(Annexure-6)**

But till today We have not received any response or refund from the licensee. We have applied to IGR Cell, Palghar, but IGR Cell, Palghar has rejected our complaint. Hence We are submitting this grievance & application for refund with interest before CGR Forum, Kalyan Zone, Kalyan.

(B) SUBMISSION/GROUNDS IN SUPPORT OF THE GRIEVANCE -

S.E., MSEDCL, Palghar Circle has not given any response to our application of Refund on the basis of the Order of the Honorable Supreme Court & concerned MERC Orders. This denial of refund is totally wrong, illegal and against the orders of the Honorable Commission & Honorable Supreme Court. Our detailed submissions in this regard are given in the following paragraphs.

(a) Work Done - The works done by us as per estimates of MSEDCL are the extension or tapping or conversion of the existing HT 11 KV/33 KV line up to our premises. The scope of the work was laying of 11 KV or 33 KV line and all the concerned infrastructure works and Kiosk Metering Works. The copies of the Single Line Diagrams are attached along with respective connection papers in Annexure-2 to Annexure-5.

Metering Work was done by us in some incidences out of the total 8 estimates. As per MERC Order regarding "Schedule of Charges" dt. 08/09/2006 in Case No. 70/2005 and

corresponding MSEDCL Circular No. 43 dt. 27/09/2006, meters are to be installed by the licensee. Also if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars. Copies of concerned Circulars No. 21560 dt. 09/05/2017 and No. 34307 dt. 03/09/2007 are attached herewith. **(Annexure-7)**

(b) Feeder Details - The name of the feeder for first 3 connections is 33 KV Feeder No. 7, which is emanating from Substation 132/33 KV MIDC-I in MIDC-Tarapur, Boisar. Name of another feeder for Plot No. E-125/1 is 11 KV Feeder No. 4 emanating from 33/11 KV Contessa Substation No.1. On both the above feeders, We have completed necessary line & infrastructure work as per MSEDCL directions.

(c) Other Consumers - There are many other consumers getting power supply from the same 33 KV feeder No. 7 i.e. Balkrishna Synthetics, DC Polystar, Duratex Silk Mills, Mandhana Industries, Status Clothing's, Sushila International, Mandhana Weaving House, Siyaram Silk Mills, Valsad Co-op. Milk Producers Union etc. Also there are many other consumers on another 11 KV Feeder No. 4 such as Jay Bharat, Tusha Textiles, Siyaram, Status, Omega, Ganesh Benzo, Kepra, VIVID Chemicals, Narayan, IVP, Nipur etc. Some consumers are shown in the line diagrams. List of the consumers is taken from the MSEDCL office itself.

(d) MERC Order 16/02/2008 - Only the extension and/or conversion and/or tapping work was done by us and many other consumers are getting supply from the same feeders. **"Mere extension or tapping of the existing line (LT or HT) can not be treated as DDF (Dedicated Distribution Facility)"** is the Clarification given by MERC, on the demand of MSEDCL itself, in its order in Case No. 56 of 2007 dt. 16/02/2008. Order copy is attached herewith. **(Annexure-8)**

(e) Work Non DDF - It is clear from the definition of DDF in the regulations & clarifications given by MERC in detail in the above mentioned order, our feeders and the works done by us are clearly Non DDF. Hence We are fully eligible for the refund of all the above mentioned amounts total Rs. 79,63,860/- along with interest thereon as per MSEDCL's own office estimates.

(f) MERC Order 17/05/2017 - Honorable MERC in its Order dt. 17/05/2007 in Case No. 82 of 2006 has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts along with the interest thereon, that have been collected towards ORC, ORC-P or such other head based charges which are not allowed in Electricity Supply Code Regulations 2005 and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dt. 08/09/2006. The copy of the Order Dt. 17/05/2007 is attached herewith. **(Annexure-9)**

Few Extracts of this Order are as below.

Para 4 end - "MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the order dated September 8, 2006."

Para 5 end - "The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests."

Para 9 end - "While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006."

(g) MERC Order 21/08/2007 - Again the Honorable Commission has issued further Order dt. 21/08/2007 in the same Case No. 82 of 2006, imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL for compliance as per Order dt. 17th May 2007. Copy of the order dt. 21/08/2007 is attached. (Annexure-10)

(h) DDF Clarifications - Again Case No. 56 of 2007 was filed by the same petitioner before MERC for the compliance of the directions issued on 17/05/2017 in Case No. 82 of 2006. In this case issues of ORC, DDF and Non DDF were fully discussed by the Honorable Commission. In this order, MERC has clarified the concept and issued detailed clarification on "DDF" on request of MSEDCL itself.

Few important extracts of this order are as below,

Para 9 - "The Commission observed that consumers should not be burdened with infrastructure costs which are the liability of MSEDCL. MSEDCL may seek the recovery of the same as an annual revenue requirement."

Para 12 - "It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility."

Para 12 - "Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers."

Para 12 - "Also Dedicated Distribution Facility can not be shared in future by other consumers. Such facilities can not be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Sector 43 of E. Act 2003 read with SoP regulations."

(i) Provisions of S.62 (6) of the IE. Act 2003 - It is very much clear from the directions of MERC quoted in Para 7 above that "the directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally". Also it is clear from the

directions quoted in Para 8 above that "consumers should not be burdened with infrastructure costs which are the liability of MSEDCL".

Also S.62 (6) of the E Act 2003 reads as below,

S.62(6) - "If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

The directions of the Honorable Commission clearly states that "the collection towards infrastructure cost is totally illegal and consumers should not be burdened with infrastructure costs." Also Section 62(6) clearly states that excess recovered amount must be refunded to the concerned person along with the interest thereon. Hence we are clearly eligible to get the refund of infrastructure cost along with the interest thereon.

(j) MSEDCL Circular 20/05/2008 - After this order dt. 16/02/2008, MSEDCL has issued circular on 20th May 2008 as Guidelines for release of new connections on the basis of above mentioned MERC orders. The copy of the circular is attached herewith. **(Annexure-11)** The circular itself clarifies that all the Non DDF connections are refundable. MSEDCL has issued circular only for LT connections. Actually MERC order is for both LT & HT connections.

MSEDCL Circular 21/12/2009 - MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21st December 2009 regarding refund of the infrastructure cost. The copy of the circular is attached herewith. **(Annexure-15)** It is pertinent to note here that it is clearly stated in the circular that the work may get executed under DDF & the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.

(k) MSEDCL Civil Appeal in Supreme Court - In the meanwhile MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007), in which Honorable Supreme Court had ordered "Stay on Refund" while hearing on 31/08/2007. Hence all the Refunds were stopped.

(l) Supreme Court Order 10/11/2016 - Finally the Civil Appeal filed by MSEDCL before the Honorable Supreme Court came for final hearing in the Year 2016. Honorable Supreme Court heard the matter, issued final order on dt. 10/11/2016 and dismissed the Civil Appeal in toto. The copy of the Order is attached herewith. **(Annexure-12)**

(m) MSEDCL Circular 12/10/2017 - After the order of the Honorable Supreme Court, It is binding on MSEDCL to implement concerned MERC orders in letter & spirit. MSEDCL issued circular for refund of SLC, ORC & meter cost after 11 months vide its circular No. CE/Dist./D-IV/MERC No. 25079 on 12/10/2017. Copy of the circular is attached. **(Annexure-13)**

(n) In this circular dt. 12/10/2017, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by MERC in its order dt. 16/02/2008 on demand of MSEDCL itself. But if the connection is actually Non DDF and it is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then in such Non DDF cases, Consumer is eligible to get the refund along with the interest thereon.

(o) **Supply Code Regulations** - After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF", MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually using the phrase DDF and imposing cost on consumers is totally illegal & against the orders of the Commission. Actually such act & such conditions of MSEDCL are against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

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

(p) **Interest** - As per provisions of Section 62 (6) of the Electricity Act 2003, it is binding on the licensee to refund the excess recovered amount to the concerned person/consumer along with interest equivalent to the bank rate. The copy of the bank rate for last 10 years, as declared by RBI is attached herewith. **(Annexure-14)**

(q) Actually our expenditures on all the concerned works are more than the estimates of MSEDCL. But logically and reasonably, We can claim the estimates amount only. Hence, on the basis of all above mentioned grounds, We are eligible to get the refund of all the above mentioned MSEDCL's own estimate amounts total Rs. 79,63,860/- along with the interest thereon at bank rate from the corresponding work completion/load release date up to the actual date of repayment.

(r) **Compensation** - Our complaint is a complaint other than bills. Hence as per **SOP regulations 2014, Regulation No. 7.6, "In other cases the complaint shall be resolved during subsequent billing cycle."** We have filed our complaint on 18/05/2018. It was necessary & binding on MSEDCL to resolve it in subsequent billing cycle means up to the end of May 2018 or in the bills received in June 2018. But MSEDCL has failed to do so. Hence We are eligible for SoP Compensation of Rs. 100 per Week or part thereof from 1st June 2018.

(s) SLC, ORC & DDF are Different - Observations of IGR Cell, Palghar in its order are totally wrong. IGR Cell noted in the order that SLC, ORC & DDF are different. All these 3 type of charges are the charges towards Infrastructure Cost. ORC was allowed up to 20/01/2005 i.e. up to the date of Supply Code Regulations. SLC was allowed up to 08/09/2006 i.e. up to the date of Schedule at charges. DDF is allowed from 20/01/2005, but in the cases only where the connection is actually DDF as per Supply Code Regulations & as per MERC Clarificatory Order dt. 16/02/2008. In our case the connection is totally Non DDF. And as per MERC regulations & orders, in case of all Non DDF connections, Infrastructure Costs can not be recovered from the consumers. Hence We are fully eligible for refund.

(t) LIMITATION - IGR Cell has observed & noted that our complaint is beyond the period of limitation of 2 years. This observation is totally wrong & illegal.

This issue was before Honorable Supreme Court in Civil Appeal No. 4305/2007 filed by MSEDCL itself. Honorable Supreme Court has issued final order on dt. 10/11/2016 and on that date the stay on refund is vacated. Then after MSEDCL HO itself has issued circulars for refund on dt. 12/10/2017, and then after on 07/11/2017 & on 29/12/2017. We had applied for refund to SE, Palghar on 18/05/2018, Hence there is no issue of any limitation. Hence the order of the IGR Cell is totally wrong, illegal and it needs to be set aside.

Also it should be noted that MSEDCL has itself represented before various Courts that the judgment towards refund of ORC is pending before Honorable Supreme Court, Delhi. The copy of the said circular dt. 07/11/2017 is attached herewith. **(Annexure - 15)**

Also it should be noted that any excess or illegal recovery is against the provisions of S.62(6) and the licensee has no right to retain it with itself on any grounds. It must be refunded to the concerned person with interest. The licensee can recover these expenses through ARR as allowed by MERC in its various orders.

NATURE OF RELIEF SOUGHT FROM FORUM -

We hereby humbly pray to the Honorable CGR Forum as below,

(a) Our all the connections should be declared as Non DDF connections on the basis of Supply Code Regulations & Concerned MERC Orders.

(b) The expenditure amounts as per MSEDCL estimates in total Rs. 79,63,860/- should be refunded to us along with the interest thereon at bank rate from the respective work completion/load release date till the date of repayment, or alternatively all the total amounts should be credited in our further respective bills.

(c) *SOP Compensation, for delay in Complaint Resolution, amount Rs. 100/- per week from 1st June 2018 should be awarded.*

(d) *Any other orders may be passed by the Honorable CGR Forum, in the interest of justice, as it may think fit & proper.*

3) Distribution Licensee in reply states as under :

a) *MSEDCL submits that, the consumer in Grievance totally misconceived fact and law points and misinterpreted the MERC order in Case No. 82 of 2006 & Case No.56 of 2007.*

b) *MSEDCL submits that, the issue of ORC, SLC etc as dealt my MERC in Case No. 82 of 2006 & Case No.56 of 2007 & issue of limitation under 6.6 of MERC (CGRF & Electricity Ombudsman) Regulation, 2006 are totally different.*

c) *The MERC in case No. 82 of 2006 & 56 of 2007 is dealing with issue of refund of ORC, SLC etc. recovered during the period from 08th Sept, 2006 to 30th April, 2007. The matter before Hon'ble Supreme Court vide Civil Appeal No. 4305 of 2007 and stay order to refund is in respect of recovery of those charges during above period only. That, the complainant in present case need not necessary to wait till the decision dtd.10.11.2016 of Supreme Court in Civil Appeal No.4305 of 2007.*

d) *The claim of the complainant company is time barred and beyond limitation. Clause 6.6 of Consumer Grievance Redressal Forum & Electricity Ombudsman Regulations, 2006, provides that forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Therefore, in view of the above mentioned clause claim of the consumer company is not maintainable. Consumer has filed complaint in respect of estimate letter dtd.26.09.2007, dtd.22.10.2010 and dtd.30.05.2014. If consumer was not agreed with the estimate, he should have raised grievance etc but on contrary consumer in response to estimate dtd.26.09.2007, dtd.22.10.2010 and dtd.30.05.2014 paid the estimated cost which inclusive of Fixed Charges, SD, 1.3 Supervision Charges etc., and even single protest letter/complaint was not filed with MSEDCL till the dtd.18.05.2018. The Cause of action to file complaint was aroused in Oct.2007, for which no complaint was filed. In this view of the matter, the grievance of the consumer in respect of estimate dtd.26.09.2007, dtd.22.10.2010 and dtd.30.05.2014 beyond two years and granting relief beyond two years is not in consonance with Regulation 6.6 of CGRF and Electricity Ombudsman Regulation 2006. The MSEDCL states that, Complainant has agitated claims which he had not pursued for 7 Yrs. Complainant was not vigilant but is content to be dormant and choose to sit on the fence till somebody else's case came to be decided.*

e) *It is stated that, in the case of M/s Hindustan Petroleum Corp. Ltd. Vs. MSEDCL (W.P.no. 9455 of 2011) it has been held by the Hon'ble Bombay High Court, that the period of limitation of 2 years as given in 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 starts running from the date of decision of the IGRC. This judgment of the Hon'ble High Court would entitle a Consumer to file a grievance before the IGRC any time whatever be the date when his right under the law was in fringed. He would move the IGRC even after 10 years, 20 years and then after IGRC's decision he would file grievance before the Forum within two years there from. In the above background of the decision one has to see the provision of 6.6 of MERC (CGRF & Ombudsman) Regulation 2006. Which may be reproduced for advantage as below.*

"6.6 The forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen." Nowhere the provision even whispers about IGRC and it's decision. No doubt there in a provision in the MERC Regulation to move to the IGRC which is an internal grievance mechanism of the MSEDCL itself. There is no limitation period prescribed for moving IGRC. It is however expected that a Consumer moves IGRC immediately or at the earliest. The Hon'ble Bombay High Court in the case of M/s. Salodkar (W.P. 1650 of 2012) has dealt with the above question. The case of M/s Hindustan Petroleum (W.P. 9455 of 2011) was also cited and referred. It was held that period of limitation of two years has to start from the date when cause of action arose and not after the IGRC decision. Consumer has to move IGRC immediately or within a reasonable time. It is for IGRC to give it's decision within two months. Consumer may wait for two months for the IGRC decision but has to file grievance before the forum within two years from the date of cause of action. The decision of the Bombay High Court in the case of M/s. Shilpa Steel (W.P. 3997 of 2016) which toes the line of M/s Hindustan Petroleum case. It is to be noted however that Shri. Salodkar's case was apparently not cited before the Bench in M/s. Shilpa steel case. Only the case of M/s. Hindustan Petroleum was cited. It was submitted that as held in the case of D. V. Laxmanrao Vs. State of Karnataka when there are two conflicting judgments of similar bench on same issue, the latter one will prevail. (Full text of the judgment not given). Herein however in the case of M/s. shilpa steel which the Consumer seeks to refer and rely, the decision of M/s. Salodkar's case was apparently not cited as such the principal laid down in D. V. Laxmanrao's case will not apply there. There is also an order of the electrical ombudsman Mumbai in case no. 125 of 2016 in which a similar claim of the consumer on identical law point there in was rejected However case no. 125 of 2016 is on law points identical to the present case in which the consumers claim was denied being beyond the period of two years in view of Regulation 6.6. This judgment of the Hon'ble Ombudsman in case no. 125 of 2016 concurs with the judgment of the Bombay High Court in M/s. Salodkar's case. Hence in view the principle laid down in M/s Salodkar' case & the Ombudsman in case no. 125 of 2016 will bind this forum with greater force.

Reply on merit:-

a) *It is submitted that MSEDCL states that, the date of supply of cons no. 003019009075 is dtd.06.10.1980. In year 2007 connection appears in name of M/s. Dhana Singh Silk Mills Pvt. Ltd. M/s. Dhana Singh Silk Mills Pvt. Ltd. on dtd. 29.03.2007 has applied for additional load extension of 370 KW i.e. from 860 KW to 1230 KW. MSEDCL has sanction additional load under DDF on dtd.26.09.2007 in the name of M/s. Dhana Singh Silk Mills Pvt. Ltd. The Present consumer M/s. G.*

M. Syntex Pvt. Ltd. has no right to claim refund of infrastructure cost on behalf of old consumer, M/s. G. M. Syntex Pvt. Ltd. did not produced corresponding legal documents to claim on behalf of M/s. Dhana Singh Silk Mills Pvt. Ltd., only change of name on energy bill does not itself any authority to claim on behalf of old consumer. The present consumer has not locus-standi and hence above claim does not sustained. In year 2010, the connection of stands appears in the name of M/s. G. M. Syntex Pvt. Ltd. On 02.02.2010 he applied for additional load extension of 1000 KW i.e. from 1230 KW to 2230 KW. The consumer was applied for additional load of 1000 KW which was 100% of existing the load and hence the estimate was prepared & sanctioned on 22.10.2010 for dedicated supply line. The estimate was agreed by the consumer, consumer in response deposited the estimate amount of Rs.51,070/- (Fixed Charges, SD, 1.3 Supervision Charges etc.). The amount of Rs.14,85,975/- was not deposited with MSEDCL. On 19.04.2014 he applied for additional load extension of 595 KW i.e. from 2230 KW to 2825 KW. The estimate was prepared & sanctioned on 30.05.2014 for dedicated supply line. The estimate was agreed by the consumer and consumer has submitted consent dtd.04.03.2014 to carry out estimated work and he will not seek any refund for expenditure done. Consumer deposited the supervision charges of estimate. The amount of Rs.03,05,420/- was not deposited with MSEDCL.

b) The consumer carried out the estimated work through licensed electrical contractor and after submission of Work & Completion Report etc. the additional supply was released. The said extended supply line and Transformer was dedicated to the consumer and it his DDF supply.

c) That, as per MERC Supply Code,2005

3.3 Recovery of expenses for giving supply

3.3.1 The Distribution Licensee shall recover the expenses referred to in Regulation 3.2(a) above, in accordance with the principles contained in this Regulation 3.3 and based on the rates contained in the schedule of charges approved by the Commission under Regulation 18: Provided that the Distribution Licensee may, with the approval of the Commission, in case of any category of consumers, recover such expenses on the basis of an average or normative rate for providing the electric line or electrical plant for the purpose of giving supply.

3.3.2 Where the provision of supply to an applicant entails works of laying of service line from the distributing main to the applicant's premises, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18:

Provided that the Distribution Licensee shall be entitled to use such service-line to supply electricity to any other person, notwithstanding that all expenses reasonably incurred have been recovered in accordance with this Regulation 3.3.2, except if such supply is detrimental to the supply to the consumer already connected therewith.

3.3.3 Where the provision of supply to an applicant entails works of installation of dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.

3.3.4 Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred on such works as the load applied for bears to the incremental capacity that will be created by augmentation of the distribution system:

Provided that where the load applied for does not exceed 25 per cent of the capacity that will be created by augmentation of the distribution system, the Distribution Licensee shall not be entitled to recover any expenses under this Regulation 3.3.4:

Provided further that any dispute with regard to the need for and extent of augmentation of the distribution system under this Regulation 3.3.4 shall be determined in accordance with the procedure set out in the Consumer Grievance Redressal Regulations.

In view of the provision the complainant was not entitled the refund of expenses incurred for carry out work as per estimated amount. In this respect we referred and relied on the order dtd.27.03.2018 in Rep.No.121 of 2017 of E.O, Mumbai.

a) *That, MERC has approved schedule of Charges for MSEDCL with effective from 08.09.2006 and MSEDCL has accordingly issued the Circular No.43 dtd. 27.09.2006. The case has been filed by Rajaya Veej Grahak Sanghatana vide No. 82 of 2006 for refund of ORC, SLC collected after the schedule of Charges approved by MERC with effect from 08.09.2006. The MERC by its order dtd. 17.05.2007, directed to refund the ORC, SLC recovered from all consumers for period of 08.09.2006 to 30.04.2007. The said issue was thereafter raised in MERC case No. 56 of 2007. The issue before Hon'ble Supreme Court in Civil Appeal No. 4305 is in respect of order of refund of ORC, SLC etc of MERC is under challenged. The fact of present case is totally different and not concern with these cases. The MERC in various cases such as Case No. 93 of 2008 and Case No. 105 of 2014, clear the above issue and directed consumer to approach CGRF for violation if any of schedule of charges by MSEDCL.*

b) *That, after the dismissal of Civil Appeal in Supreme Court, the MSEDCL has issued various circular in Compliance of the order of Hon'ble MERC in case No. 82 of 2006. The case of complainant was neither covered in said period i.e. 20.01.2005 to 20.05.2008 nor has complainant produced the receipt of deposit under head of ORC/SLC etc of above period. Further, as per 3.3.3 & 3.3.4 of Supply Code, the complainant was liable for expenses for DDF and augmentation as he exceeding his load exceeds 100% of existing load. Hence complainant was not liable for any refund at all.*

c) *The MSEDCL further states that, this Hon'ble CGRF has in its decision dtd.04.07.2018 Com. No.1607 of 2017/18 has considered similar matters and rejected grievances. The MSEDCL relied and referred said decision in present case.*

4) We have heard both sides. There is no dispute that as per schedule of charges dated 8 Sept 2006 which come to be implemented in April-2007, Distribution Licensee could not recover any charges over and above those provided in the schedule of charges. In the present matters they have recovered such charges from the consumer for the four connections referred above. The works done in the four connection viz consumer no. 003019009075, 003019026740, 003019044690 and 003019026930 are respectively for the years 2007 and 2014, 2005 and 2008, 2005 and then 2017.

5) The first point that came up for consideration is whether the infrastructure costs incurred by the consumer are refundable by Distribution Licensee. In that context it can be seen that there are in all four connections. Three of them are on feeder no.7, 33 KV which is emending from substation 132/33 KV MIDC-I , Tarapur, Boiser. The other feeder for plot no.E-125/1 is 11 KV feeder no.4 emending from 33/11 KV contessa substation no.1. Consumer has completed necessary line and infrastructure work on both the above feeders. Consumer points out that there are many other consumer getting power supply from 33 KV feeder no.7 viz. Balkrishna Synthetics D.C. polyester, Duratex Silk Mills, Madhanna Industries, status clothing's Sushila International, Madhanna weaving house. Syaram Silk mills, Valsad coop. Milk Producer Union de. Also on other feeder no.4, 11 KV, there are other consumer's viz. Jaybharat, Tusha Textles, syaram, status, omega, Ganesh Benzo, Kepra, VIVID chemicals facts do not appear to be in dispute. Now admittedly when there are several other consumers connection the same feeder as that of present consumer his case does not fall under DDF.

6) Now coming to second point Regulation 6.6 of MERC (CGRF & Ombudsman) Regulations provides that no cognizance of grievance shall be taken by CGRF after two years of the date when cause of action arose. Cause of action in the above three connection arose in Feb-2007, April-2005 and April-2005 respectively when Distribution Licensee recovered the said charges from the consumer. Mr. Hogade for consumer tries to say that this issue was before the Hon'ble Supreme Court in Civil appeal no.4305/2007 filed by MSEDCL itself . Hon'ble Supreme Court has issued final order on 10/11/2016 and on that date stay on refund was vacated. Thereafter MSEDCL Head Office issued circular for refund on dt.12/10/2017 and thereafter on 07/11/2017. & 29/12/2017. Consumer applied for refund to Superintending Engineer, Palghar on 18/05/2018. Hence there is no issue of limitation. Unfortunately the drafting of limitation point in complaint is very vague, if not deliberately kept so. It cannot be contended that there is no issue of limitation, it was incumbent upon the Consumer/Consumer Representative to contend specifically as to according to him when the cause of action arose. He is not specific that cause of action arose on the date of decision of Supreme Court. It is this diffidence in contention itself that clinches the issue in as much as no date of commencement of cause of action is pleaded. The actual date of cause of

action as we have seen are stated above. Consumer also appears to be well aware of that and did not take any action because of the stay of Supreme Court as he wants to say.

7) Even otherwise let us discuss about the appeal then pending in the Supreme Court, its decision and subsequent fallout of Circular issued by MSEDCL. We have studied the circular along with Supreme Court judgment. The circular pertains to the period from 20 Jan 2005 to 30 Apr-2007. All these litigations relate to the confusion created because of ill legalities continued by the MSEDCL officers in recovering infrastructure and metering charges from the consumers in spite of the same having been stopped due to commencement of new Indian Electricity Act-2003. Provisions of IE Act prohibited recovery of any infrastructure charges and meter cost. In spite of this officers of MSEDCL continued to recover the same. There were several circulars issued and then in the year 2006 full-fledged schedule of charges was issued. The above referred litigation pertained to such charges recovered during the transition period which went up to Supreme Court. We are at a loss how those proceedings prevented present consumer from moving CGRF within 2 years from that date of sanction and estimate under DDF. Refund was stayed for those specific consumers for that specific period and it is to be further noted that such a stay never prohibits any filling of grievance and for the question of limitation the factor to be considered is filling. Thus taking the best case, though incorrect, that the stay also applied to present consumer it could never be for filing the grievance.

8) There is some case law shown which we have gone through :

In the case M/S Hindustan Petroleum Corp. Ltd Vs. MSEDCL (W.P.no.9455 of 2011) it has been held by the Hon'ble Bombay High Court, that the period of limitation of 2 years as given in Regulation 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 starts running from the date of decision of the IGRC. This judgment of the Hon'ble High Court would entitle a consumer to file a grievance before the IGRC any time whatever be the date when his right under the law was infringed. He would move the IGRC even after 10 years and then after IGRC's decision he would file grievance before the forum within two years from. In the above background of the decision one has to see the provision of 6.6 of MERC (CGRF & Ombudsman) Regulation 2006. Which may be reproduced for advantage as below.

“6.6 The forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen”.

Nowhere the provision even whispers about IGRC and it's decision. No doubt there is a provision in the MERC Regulation to move to the IGRC which is an internal grievance mechanism of the MSEDCL itself. There is no limitation period prescribed for moving IGRC. It is however excepted that a consumer moves IGRC immediately or at the earliest. The Hon'ble Bombay High Court in the case of M/S Salodkar (W.P.1650 of 2012) has dealt with the above question. The case of M/S Hindustan Petroleum (W.P.no.9455 of 2011) was also cited and referred. It was held that period of limitation of two years has to start from the date when cause of action arose and not after the IGRC decision. Consumer has to move IGRC immediately or within a reasonable time. It is for IGRC to give it's decision within two months. Consumer may wait for two months for the

IGRC decision but has to file grievance before the forum within two years from the date of cause of action. The decision of the Bombay High Court in the case of M/S Shilpa Steel (W.P.3997 of 2016) toes the line of M/S Hindustan Petroleum case. It is to be noted however that Shri.Salodkar's case was apparently not cited before the Bench in M/S Shilpa Steel case. Only the case of M/S Hindustan Petroleum was cited. It was submitted that as held in the case of D.V.Laxmanrao Vs. State of Karnataka when there are two conflicting judgments of similar bench of same issue, the latter one we prevail. (full text of the judgment not given). Herein however in the case of M/s. Shilpa steel which the Consumer seeks to refer and rely, the decision of M/s.Salodkar's case was apparently not cited as such the principle laid in D.V. Laxmanrao's case will not apply.

9) Mr.Hogade, Consumer Representative sought to further elaborate his points. He read out to us the provisions of sec 62 (6) of I.E. Act 2003 which run thus:

Sec 62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

He also pointed out the observations of Hon'ble Ombudsman in case no. 56 of 2007 to the effect that consumers should not be burdened with the infrastructure cost which are the liability of MSEDCL it was further observed that if paucity of funds is the actual reason behind burdening of consumer for distribution infrastructure, MSEDCL may seek recovery of the same as annual revenue requirement there is another judgment of Hon'ble Ombudsman in case no.62 of 2018. Mr.Hogade seeks to Put up a proposition that. Regulation 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 can not with stand the above referred provision of IE Act and the observation made in the judgment. He submitted that the provision of IE Act 2003 prevails in the conflict with Regulation 6.6 referred above. We however regret to state that the proposition put forth is fallacious for the simple reason that in that event it will render Regulation 6.6 nugatory. Which can never be contemplated.

10) Mr. Hogade went on further submit that CGRF should not give much significance to procedural provision like that of limitation. He tried to rely on several quotes like procedure should sub serve cause of justice and is not a substitute for justice. In particular he showed judgment in APTEL case bearing Appeal no. 197 of 2009 in which there are some observations made that limitation Act will not apply to quasi-judicial authorities like state commission. Also judgment of Hon'ble Supreme Court in Madras Port Trust. Case reported on AIR 1979 SC 1144 with similar observations against Government authorities. Also judgment of Hon'ble SC in court appeal no.4367 of 2004 in M.P. Steel corporation case.

11) We have carefully studied all above cases cited. The APTEL case is with respect to issue of tariff fixation under the provision of IE Act 2003. There was no question of any barring provision. Hon'ble APTEL on facts there in held that limitation Act was not applicable to state commission in

their regular activities of fixation of tariffs. Here the very CGRF has been constituted under MERC (CGRF & Ombudsman) Regulations 2006 Which confers jurisdiction on CGRF to take cognizance within 2 years of cause action. The Regulations 2006 itself limits the jurisdiction of the CGRF which is the body constituted by the said Regulations. In Madras Port Trust case Hon'ble S.C. has refused to entertain the plea of limitation apparently under their extra ordinary jurisdiction which this CGRF does not have. In MP steel corporation case question before the Hon'ble SC was whether limitation Act applies to only Courts and not to tribunals. Here CGRF is constituted to deal with only grievance within two years of cause of action.

12) Mr.Hogade submitted that the application for refund was made on which was rejected hence from that date limitation period should be counted. He relied on SC judgment in civil appeal no.1156 of 2008. In that case an insurance claim was lodged by the insured on the very next date of the incident in which his property was damaged/destroyed due to heavy rains. It is the national insurance Company, the insurer who appointed a surveyor who took more than one year to submit his report. There was also an addendum further. Thus national insurance company itself took more than two years in causing survey of the loss or damaged suffered by the insured. Thus the delay was attributed to insurance company itself. Thereafter Natural Insurance Company repudiated the claims on 22 May 2001 before which the insured had filed complaint with the natural commission. There was no delay on the part of the insured at all. The Hon'ble S.C. in its judgment opined that court have to take pragmatic view of the right of the consumer. Provision of limitation Act cannot be strictly constructed. The facts of the case cited are totally different that the insured had given complaint on the very next date. As such the judgment does not apply here.

13) It follows from the above reading of the judgment that the findings in any case cannot be based on some quotes without looking in to the context. The judgments cited are not applicable to the facts of the case. The basis of the ground of the consumer in fact is the stay of the Hon'ble SC in case no 4305 of 2007 in which the MERC order in case no.82 of 2006 was called in question. The simple fact is that case no. 82. Of 2006 pertained only to cases within the period from Sept 2006 to April 2007.

14) There are several cases of CGRF & Ombudsman, Nagpur cited (Regulation no.62/2018) in which such petition were allowed but in those cases there is either no issue of limitation or that there is no sound reasoning in respect of bar of 6.6 of 2006 Regulations. The basic jurisprudential principle of limitation is that the right does not get extinguished, it simply can not be executed due to lapse of time. As against all these judgments there is one judgment of our own Ombudsman, Mumbai in Representation no.125/2016 where in grievance was dismissed on the point of limitation in FAC case which applies here. It can be concluded therefore that substantive law as submitted by Mr.Hogade entitles the consumer for reimbursement of the expenses incurred by the consumer but equally has to entertain grievances within two years.

15) Mr.Hogade submitted that in case no.82/2006 he had argued on behalf of all consumers in representative capacity and as such even the present consumer is governed by the said order. The said argument is not acceptable as the said case was in respect of those consumers who had taken the supply during period from Sept 2006 to April 2007. The representation was for them only. Even otherwise if the said argument is accepted consumer has to move the Hon'ble MERC for relief as mentioned in the last para of the judgment.

16) In the above view of the matter the only claim within limitation is in respect of consumer no. 003019044690 i.e. estimate no.0597 dt.20/02/2017. Rest of the claims are barred by limitation. So far as quantum of the estimate and amount spent is concerned there is no specific denials.

Hence the order.

ORDER

- 1) Grievance No. 1734 for Consumer No. 003019044690 is allowed.
- 2) Distribution Licensee to reimbursement all charges of Rs.1,57,460/- spent by consumer in respect of connection no. 003019044690 along with interest from 18/05/2018 till realization.
- 3) Complaints No.1732, 1733 and 1735 stand dismissed.
- 4) Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 26/12/2018

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

(A.P.Deshmukh)
MemberSecretary
CGRF, Kalyan.

(A.M.Garde)
Chairperson
CGRF, Kalyan.

NOTE

- a) *The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.
"Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51".*
- b) *Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or*

- c) *delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-*

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- d) *It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.*