

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/AZ/AUC/751/2019/36
Registration No. 2019070018**

Date of Admission : 09.07.2019

Date of Decision : 13.11.2019

M/s Meghdoot Resorts Pvt. Ltd., : COMPLAINANT
25, Parvati Opp. M.P. Law College,
New Samarth Nagar, Nirala Bazar,
Aurangabad.
(Consumer No. 490019003920)

VERSUS

Maharashtra State Electricity Dist. Co. Ltd.,: RESPONDENT
through it's Nodal Officer, EE (Admin),
Urban Circle, Aurangabad.

For Consumer : Shri H.A.Kapadia
For Licensee : Shri. S.R.Khakse
EE (Admin), Nodal Officer,
Circle Office, Aurangabad.

CORAM

Smt Shobha B. Varma, Chairperson
Shri Makarand P Kulkarni, Tech. Member/Secretary
Shri Vilaschandra S. Kabra Member

CONSUMER GRIEVANCE REDRESSAL DECISION

- 1) The applicant is Meghdoot Resorts Pvt. Ltd., 25 Parvati Opp. M.P. Law College, New Samarth Nagar, Nirala Bazar, Aurangabad having Consumer No. 490019003920. The applicant has filed a complaint against the respondent through the Executive Engineer i.e. Nodal Officer, MSEDCL Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 09.07.2019.

The facts of the dispute in nutshell are as under:-

- 2) That, the petitioner is authorized signatory of Meghdoot Resorts Pvt.Ltd. which is running a hotel in the name of "Hotel Kohinoor" at Nirala Bazar, Samarth Nagar, Aurangabad.
- 3) The petitioner has taken 11 kv HT connection with contract demand of 66 KVA for his hotel situated at Nirala Bazar, Aurangabad. The said connection was released by the Respondent in Oct-1998 and since then the complainant is regular payer of all electricity bills issued by the Respondent. The consumer No. allotted by Respondent is 490019003920 and the tariff charged is HT II Commercial.
- 4) That, the Respondent, at the time of releasing 11 kv HT connection, installed 11 kv CTS and PTs on double pole structure. All the monthly bills were issued by the Respondent on the basis of readings recorded on the meter installed in the premises of the petitioner.
- 5) That, there was no dispute regarding electricity bills till the month of March 2019. Since the use of electricity is for hotel purpose, the consumption of electricity depends on the season and occupancy. The average bill amount of the complainant till March 2019 was @ 1.5 to 2.00 lacs per month.

- 6) It is stated that, the complainant was shocked to receive bill of Rs.9,00,390/- for the month of April 2019 in which 41451 units were shown as assessed consumption without any details.
- 7) On receipt of this abnormal bill, the complainant has visited office of Respondent and requested to provide clarification of assessment units. During discussion, it was verbally told that the assessment of 41451 units were added as one CT (Y phase) is not recording consumption correctly.
- 8) The complainant has submitted that, on hearing about non functioning of one No. of 11 kv CT (Y phase CT), he requested Respondent to provide site testing report of CT and method of assessment adopted, while calculating assessment units. However, instead of handing over physical testing report, the Respondent has handed over copy of MRI data and told that the assessment of units are done on the basis of data shown by MRI. This act alternatively confirms that no physical verification and testing of CT was carried out at site and the assessment of units are arrived without carrying any physical testing of CTs & meter.
- 9) That, on receipt of MRI data from the Respondent, It is observed that the Y phase CT, which was declared faulty by Respondent, was showing recording of current. This fact alternatively confirms that Y phase CT was not faulty and is recording current as per load on Y phase.
- 10) That, the complainant has installed individual air conditioner units in his hotel rooms. The electrical consumption depends on the occupancy and use of air conditioners by the customers. Since the complainant has not installed centralized air conditioner system and therefore there is always unbalanced load on all three phases. In such condition, all the three CTs will not show equal & balance current. Hence, it is technically incorrect

to propose and add assessment in the bill only on the ground that one CT (Y phase) is recording less current.

- 11) That, the MRI data provided by the Respondent clearly discloses that Y phase CT has also recorded current which is as per load on Y phase. That, the current recorded by the Y phase CT is not zero and therefore cannot be declared as faulty only on the basis of low recording of current shown in MRI data.
- 12) That, the complainant has paid the provisional bill of Rs.2,41,332/- issued by the Respondent on 23.05.2019. The issuance of provisional bill itself discloses that Respondent is not confirmed on its own action of assessing units on the basis of low recording of current in Y phase CT.
- 13) That, as per advice given by the Superintending Engineer, the complainant submitted his grievance regarding abnormal bill, before Internal Grievance Redressal Cell (IGRC) on 22.05.2019. At the time of submission of grievance, it was given to understand that due to huge pendency of grievances in IGRC, minimum 2-3 months will be required to conduct hearing and to pass order. However, surprisingly IGRC, by keeping aside all other pending cases of similar nature, admitted the grievance of the complainant and passed order within period of seven working days which includes issuing notice for hearing, conducting, analyzing dispute and passing of order.
- 14) The complainant has submitted that, IGRC, without going into merit of the case and without demanding test report of CTs installed at site, went on to pass its order only with the intention to protect the interest of its company. The order passed by IGRC is not accepted.
- 15) That, during pendency of dispute before IGRC, Respondent on 27th May 2019, issued 15 days disconnection notice for nonpayment of disputed

bill. The complainant, as per provision of section 56 of EA 2003, and in order to avoid disconnection is paying the monthly electricity bills calculated on the basis of average of last six months.

- 16) That, as per MERC Regulations, metering is required to be provided by MSEDCL. However, after arbitrary declaration of CT being faulty, Respondent has still not replaced the same. Respondent without testing of CTs are adding assessment units in every month bills which is incorrect and needs to be withdrawn.
- 17) The Petitioner therefore prayed that :-
 - 1) Respondent may be directed not to take any coercive action.
 - 2) Respondent maybe directed to refund excess amount paid by the complainant.
 - 3) Respondent may be directed to issue revise bill after deducting interest and DPC.
 - 4) Respondent may be directed to pay suitable compensation.

The complainant has submitted rejoinder (P.No.87- 88) as under:-

- 18) That, there are 15 Nos. of A/c rooms in petitioner's hotel wherein single phase 1.5 Ton capacity Air conditioners are installed. The current on all phases are always unbalance nature as the same depends on occupancy of rooms i.e. use of Air conditioners. Also there is huge difference in current during day and night time.
- 19) That, the Respondent has added assessment of 41451 units in the bill of May 2019 without practically testing the meter and CTs at site. That the MRI report submitted by Respondent does not show ZERO current in Y phase CT which technically confirms that Y phase CT is recording current depending on load on it.

- 20) That, on one side Respondent are claiming huge assessment amount on the ground that one CT is recording less current and on other side deliberately avoiding to replace the same since May 2019, thereby violating provision of MERC SOP Regulation (No.7.3) 2014. The said Regulations read as under.

“The Distribution Licensee shall carryout an inspection for faulty/nonworking (stuck up, running slow, fast or creeping) meter within four days of receipt of complaint in class I cities and within 7 days in Urban areas and within 12 days in rural areas and incase the meter is found faulty the same shall be replaced before the end of subsequent billing cycle”.

In the rejoinder (Pg. No.94, 95) it is submitted by complainant that:-

- 21) The Complainant may be permitted to submit expert opinion or for testing of CTs in presence of representatives of Respondent. That Respondent has carried out testing on three occasions and at all times different reading was shown on Y phase CT. This alternatively confirms that Y phase CT is recording current as per load which is unbalanced.
- 22) In view of above fact, it is essential to test the performance of Y phase CT on balance as well as unbalanced load.
- 23) Order is passed by us on this rejoinder application for testing of old CT by testing team of the MSEDCL in presence of consumer representative.
- 24) On 22.10.2019 (Pg. No.110), the petitioner has submitted further rejoinder, repeated earlier stated facts, broadly stating following facts:-
- 1) That, before issuing the disputed bill of April-2019, hearing ought to have been given to the petitioner by following natural justice.
 - 2) That, the order passed by IGRC was predetermined. Consumers have no access to obtain MRI data. The assessment bill being

signed by the Chairman & other members of Cell, so they have no other alternative, but to pass order in favour of the Company.

- 3) In respect of granting installments, MSEDCL Circular No.24156 dt.18.07.2009 was not properly considered by IGRC.
- 4) That, during pendency of the petition, on 09.07.2019, 19.07.2019 & 29.07.2019, Respondent has visited the premises of the petitioner & on assurance of the Respondent to refund the cost of CT to the petitioner, it was replaced on 14.09.2019.

Testing report dt. 19.07.2019 (before replacement of CT)

Particulars	R Phase	Y Phase	B Phase
Voltage	6.14 Volt	6.10 Volt	6.15 Volt
Current (HV)	1.38 Amps	0.319 Amps	0.994 Amps
(LV)	29 Amps	9.3 Amp	24 Amps

Testing Results dt. 29.07.2019 (before replacement of CT)

Particulars	R Phase	Y Phase	B Phase
Voltage	6.40 Volt	6.44 Volt	6.37 Volt
Current (HV)	1.2 Amps	0.46 Amps	0.63 Amps
(LV)	32 Amps	11.5 Amps	8.5 Amps

Testing Result dt. 14.09.2019 (After replacement of Y Phase CT)

Particulars	R Phase	Y Phase	B Phase
Voltage	6.41 Volt	6.4 Volt	6.4 Volt
Current (HV)	2.34 Amps	0.83 Amps	1.64 Amps
(LV)	59.7 Amps	15.5 Amps	47 Amps

The above testing results discloses that inspite of changing 11 kv Y phase CT, the current (load) on Y phase is very low as compared to

R & B phase before and after replacement of Y phase CT. The results of LT side current also confirm the above fact.

- 5) It is further submitted that, considering three testing results, R phase is carrying more current as compared to 'Y' & 'B' phase. The percentage variation in current compared with 'B' phase as under:-

Date of testing	% Diff. R & Y (HV)	% Diff. R & Y (LV)	% Diff. R & B (HV)	% Diff. R & B (LV)	% Diff. B & Y (HV)	% Diff. B & Y (LV)
Before Replacement						
19.07.2019	76.8%	67%	28%	17%	67%	61%
29.07.2019	61%	64%	47%	73%	26%	26%
After Replacement						
14.09.2019	64%	64%	70%	20%	49%	68%

It is stated that the above testing alternatively confirms that there is no change in loading pattern even before & after replacement of 'Y' phase CT. This confirms that 'Y' phase is not showing zero loads but carrying current. This is only because of unbalanced nature of load. Hence, it is impossible to calculate the assessment on the basis of fixed percentage.

- 6) The petitioner has submitted record of past consumption i.e. of last 6 years which ranges between 10000 to 11600 units p.m. It is stated that after replacement of CT on 14.09.2019, the consumption recorded on new meter as per kwh reading is 9071 units for 14.09.2019 to 14.10.2019. It is stated that in such cases meter (includes CTs & PTs) is required to be declared as faulty.

- 7) It is stated that CT is recording some current & not showing zero current & load is of unbalanced nature, so it is impossible to work out correct percentage of assessment.
- 8) That, the meter is required to be declared as faulty & assessment is required to be calculated as per MERC Supply Code Regulation No.15.4.
- 9) In the rejoinder dt. 24.10.2019, it is stated that the complainant may be allowed to submit opinion of expert.

The Respondent has filed say (Pg. No. 30 & 106) & raised following contentions:-

- 25) The complainant is consumer of respondent, who is supplied with electricity connection at HT on 11 KV voltage level, since from 21.10.1998 and at present it is having contract demand of 66 KVA and connected load of 73 KW.
- 26) During analysis of daily profile data of the petitioner's energy meter, it is found that there is very less current in "Y" phase of meter and therefore the matter was referred to Executive Engineer, Urban Testing Division, Aurangabad on date 29.04.2019 and 08.05.2019 through emails for further testing and analysis of abnormality thereof.
- 27) Testing Team visited the petitioner's premises on date 09.05.2019 and reported that "Y" CT is faulty causing less current measurement. Also they have compared the HV and LV side currents and noticed that HV side current is much less than LV side current for "Y" phase which indicates that CT is measuring less current than actual. Due to less measurement of current by "Y" phase CT, energy recording for "Y" phase in meter is also affected and measures less energy than actual

consumption. From comparison of load currents of HT to LV side of “Y” phase, the less energy measurement ratio comes out to be 34.26%.

- 28) During visit of Testing team on dated 09.05.2019, following current are observed.

	“R” phase	“Y” phase	“B” Phase
LV Current	40	27	37
HV (CT sec.) (measured)	1.6	0.34	1.45
Required HV Current (CT sec)	1.6	1.08	1.48

- 29) After replacement of faulty CT in presence of consumer representative / expert by Testing Team on date 14.09.2019, following current were observed.

	“R” phase	“Y” phase	“B” Phase
LV Current	57.7	15.5	47.6
HV (CT sec.) (measured)	2.34	0.83	1.64
Required HV Current (CT sec)	2.26	0.62	1.9

- 30) From above result, it is concluded that before replacement of CT, the HV/LV current for R and B phase are tallied with HV/LV ratio of 25 but not tallied for “Y” phase which is recording 31.48% only of actual current. Whereas after replacement of CT, the HV/LV side currents are about tallies according to ratios. As actual recording of current for “Y” phase is 31.48%, the less recording is $100\% - 31.48\% = 68.52\%$ (if “Y” phase CT shows Zero current, in that case assessment is charged on 50% of recorded consumption of R & B phase). Hence, 50% of 68.52% is charged as assessment for identified period as per daily load profile data. As per CEA regulations, installation and operation of meter 2006, MRI data is valid.

- 31) As the less energy recording is observed since 11.05.2018 by ratio 34.26%, the additional assessed unit of 41451 units is proposed in addition to regular bill.
- 32) The regular monthly bill of the petitioner for the month of April 2019 is of 13996 units and amounting to Rs. 2,41,332/- approximately and the remaining amount of Rs.6,59,058/- is for assessed units only. The bill is correct.
- 33) As the current bills of month of April 2019 and May 2019 are issued to petitioner on their request application dated 23.05.2019 and 20.06.2019, the issuance of current bill is only for convenience of the petitioner and there was no any doubt about MSEDCL's action on proposed assessment due to faulty "Y" phase CT. The action taken by MSEDCL for proposing assessment for less energy recording "Y" phase is correct.
- 34) Now, petitioner is well aware about faultiness of CT and thereof less recording for corresponding phase, hence petitioner can manage their load by keeping low load on that phase. Hence the data after replacement of CT is not relevant for the assessment hence can't be considered.
- 35) It is prayed that the complaint may be dismissed.
- 36) We have perused the pleadings submitted by both the parties. Heard Consumer Representative Shri. Kapadia on 22/10/2019 and on 24/10/2019 and Shri. S. R. Khakse, Executive Engineer for Respondent was partly heard on 24/10/2019. Both parties have also submitted written argument Notes (P.No.167 to 172 & P.No.173 to 178). Following points arise for our determination & we have recorded findings for the reasons to follow:-

Sr. No.	POINTS	ANSWER
1	Whether the bill of April 2019 for the amount of Rs. 6,59,058 for assessed consumption of 41451 units requires to be revised as claimed?	Yes. To be revised at 22.84% instead of 34.26%
2	Whether the petitioner is entitled for refund of excess amount as claimed?	No
3	Whether the petitioner is entitled for compensation?	Yes Rs.1000/-
4	What will be the mode of payment by the petitioner?	12 Equal monthly installments of due amount for payment
5	Whether order passed by IGRC is found just, legal & correct?	Partly Yes
6	What order?	As per final order

REASONS

- 37) **Point No 1:-** It is the case of appellant consumer that since he has unbalanced load on all three phases, the load on Y phase itself is less and therefore Y phase is recording less current and since current is being recorded and it is not showing zero current on Y phase, Y phase CT is not faulty and therefore assessment done for faulty CT is not correct. The Respondent on the other hand has submitted that since Y phase CT was recording less current, the meter was not recording the consumption properly and as seen from the AMR report, the less recording started from 11th May 2018 which came to notice of the Respondent in the

month of April 2019 and therefore the Respondent has billed the Petitioner for the assessed consumption of 41451 units from 11/05/2018 to 01/05/2019 on the basis of 34.26% less recording. The Respondent further stated that before issuing the bill for assessed consumption in April 2019, the CT was tested by the Testing Division of the Respondent and only after receipt of the report for Y phase CT failure it has issued the bill for assessed units on the basis of AMR report of the consumer.

- 38) The Respondent, along with its say dated 30/07/2019, has submitted the Daily Load Profile Report for 11th & 12th May 2018 (Pg. No. 39, 40). It is seen from the report that on 11th May 2018, from 00.00Hrs till 07.30Hrs, the current recorded on R Phase was in the range of 1.167 to 2.110A, on Y phase it was in the range of 0.865 to 1.172A and on B Phase it was in the range of 1.676 to 2.530A. From 08.00Hrs to 12.00Hrs, the values of all the parameters are Zero and from 12.30Hrs onwards, a visible reduction is seen in the current value on Y phase whereas the current values on other two phases i.e. R & B has not shown such reduced trend. The Respondent has also submitted the Day Average data of Daily Load Profile of the Petitioner for the period from 01/01/2018 to 31/05/2019 (Pg. No. 125 to 142). From the said report, it is seen that on 11/05/2019, the day average Y Phase current reading is almost half of the reading generally prevailing before this date and this trend of reduced day average reading on Y phase is seen till 31/05/2019 whereas on other two phases no such reduction is visible. It can also be seen from the report that a current consistently less than 0.6A is not seen on any of the three phases before 11th May 2018 whereas a consistently low current only on Y phase is recorded from 11th May 2018 onwards.

39) During the course of hearing, the Petitioner has contended that AMR data is available only with the Respondent and it is the duty of the Respondent to maintain the metering installation. He has also produced the data of past 6 years consumption and submitted that there is not much variation in his consumption over the period and therefore the assessed units do not match with this consumption data and hence assessment is not correct. The Petitioner has also argued that the Respondent has not followed the MERC SOP Regulations and its own circulars and not replaced CT in time. It is also argued that the method of assessment on 1/3rd or percentage basis can be applied only if the load is balanced, but since he has unbalanced load, assessment cannot be done on this basis. Also since the Y phase is not showing zero current, it is not the case of CT current missing or CT failure.

The Petitioner further argued that even for the sake of argument it is considered that the meter is not recording correct current, then CT being part of metering installation, the meter is required to be declared faulty and assessment is required to be calculated as per R 15.4 of MERC Supply Code Regulations.

40) In reply, the Respondent has cited judgments by the Hon'ble Ombudsman, Mumbai in Representation No. 107/2017, 38/2019 & 64/2019 and Hon'ble Ombudsman, Nagpur in Representation No. 68/2019 wherein it is held that when the AMR/MRI data is available and meter itself is not faulty, it is not proper to deal such cases under R15.4 of MERC Supply Code Regulation.

41) It is seen that none of the party has claimed that the meter itself is faulty but have only argued regarding the working or non-working of Y phase CT. The petitioner has also not raised any dispute about the meter itself.

In the written submission dated 03/09/2019 (Pg. No. 94-95) the Petitioner requested for re-testing of the CT in presence of his representatives and accordingly the Forum issued order for re-testing of CT in presence of the consumer representatives and it was carried out on 14/09/2019 at the time of replacement of the Y phase CT. It is also to be noted that in none of the testing reports, the Executive Engineer (Testing) has reported any defect in the meter. It is also noted that in the report dated 21/09/2019 (Pg. No. 101), it is mentioned that the meter is replaced on 14/09/2019 at the same time when the Y phase CT is replaced to ensure KVAH compliant billing. Based on the above factual position, we believe that the meter itself per se was not intrinsically faulty.

- 42) The CT has been tested on four occasions i.e. 09/05/2019 (Pg. No.38 & Pg. No. 165-166), 19/07/2019 (Pg. No. 49 & Pg. No. 153-157), 29/07/2019 (Pg. No. 152 & Pg. No. 159-163) and 14/09/2019 (Pg. No. 101-104). All the test reports are signed by the consumer representative. In the test report dated 09/05/2019, the Executive Engineer (Testing) has passed remark that the Y Phase shows abnormal current and needs to replace failed Y Phase CT. In the reports dated 20/07/2019 (testing done on 19/07/2019) and 30/07/2019 (testing done on 29/07/2019) it is mentioned that no current is getting injected in Y Phase CT and hence the CT is faulty. In the said report dated 30/07/2019 it is also stated that some spurious earth leakage current is passing through meter Y phase as evident from load survey report.

On perusal of the report of testing done on 19/07/2019 (Pg. No. 157), it is seen that ratio test was conducted on the CT and the R & B phase CTs were found to be in order whereas Y phase CT was faulty and no current

was injected. Similarly on perusal of the testing report dated 30/07/2019 (Pg. No. 152), it is seen that Current Injection test was conducted on the Y phase CT but no current was getting injected in the said Y phase CT. On perusal of the Test Report dated 21/09/2019 (Pg. No 101) it is seen that the Y phase CT was again tested before replacement and again declared to be faulty. It is also seen that after replacement of the said Y phase CT by new CT, the Injection test and Ratio tests were carried out and the report says that the results were found OK. Based on the above cited test reports which were carried out in presence of the consumer representative we have come to the conclusion that the Y phase CT was faulty.

- 43) The Third Party opinion of Shri K.T. Mahamuni (Pg. No. 147), Shri Goulkar (Pg. No. 148) and Shri Rahul Deshpande (Pg. No. 149) being of private persons, it is not admissible and not considered. In the submissions of written argument notes, the petitioner has made request to direct Respondent to carry out testing of replaced Y phase CT & percentage of its slowness, if any, in any approved laboratory (NABL). The request is on the ground that the present testing is being carried out by Respondent who are party in the present dispute and therefore in view of fair justice, testing by third party is essential. The Petitioner has shown willingness to pay assessment amount based on such testing report. The Respondent in their say has submitted that such testing is demanded just to delay the payment.

The testing team was deputed on following dates and has tested CTs in presence of consumer representative & results were also shown to the consumer representative.

Sr No	Date of Testing	Testing Report
1	09.05.2019	Pg. No 38, 165 & 166
2	19/07/2019 (Report 20/07/2019)	Pg. No. 49, 153 to 157
3	29/07/2019 (Report 30/07/2019)	Pg. No 152, 159 to 163
4	14/09/2019 (Report 21/09/2019)	Pg. No. 101 to 104

In the letter dtd 24/06/2019 (Pg. No. 28) issued by the Petitioner to the Respondent, following communication is important.

“Since one no. CT, as claimed by you, is not functioning, we request you to replace the same at the earliest as the metering is required to be provided by MSEDCL. However, in case same is not available with you, we are ready to procure same on cost refundable basis, kindly confirm.”

In the application dated 20.08.2019 (Pg. No. 87,88), the Petitioner has raised grievance about not replacing the CT. Again in application dtd. 20.08.2019 (Pg. No 95), the complainant made a request to permit him to submit expert opinion or for testing of CTs in presence of representatives of Respondent. We have passed order and directions were issued for testing of old CT and accordingly it was tested and report dated 21.09.2019 (Pg. No. 101) is submitted. Detailed argument notes are submitted by the Petitioner on 22.10.2019 wherein again request was made for permission to submit opinion of expert. On 24.10.2019, third party opinion is submitted (Pg. No. 147, 148, 149). However, it is to be noted that third party opinion given by private parties is not admissible and can't be read in evidence. Thereafter on 30.10.2019 at the stage of further arguments, request is made for testing the CT in any approved NABL accredited lab (NABL).

It is pertinent to note that since the date of filing petition till after last testing dtd. 14.09.2019 and upto 30.10.2019, the Petitioner, though was having opportunity, did not raise such request. All the while, petitioner was raising his pleas by way of answer, but never made request for testing through NABL so now the request appears not bonafide. Petitioner has not even specified name & address of NABL accredited laboratory. For four times, the testing team of Respondent has tested the CT and in presence of consumer. There were no objections of any type of defect in checking or against the team. As such we do not feel it just & proper to allow the request of testing the CT with NABL accredited lab & we reject the said request.

- 44) We have perused the judgments of the Hon'ble Ombudsman, Mumbai and Nagpur as cited by the Respondent.

On perusal of the judgment dtd. 08.12.2017 of Hon'ble Ombudsman, Mumbai in the Representation No. 107/2017 (M/s Gurunath V. Pandit and Vipul K. Shah v/s MSEDCL), the case was regarding Y phase current missing (Y phase showing zero current). In the said matter, it was argued that the meter be declared as defective and assessment be done as per R15.4 of MERC Supply Code Regulation. However Hon'ble Ombudsman has held that:-

"9. Documents and the data produced by the MSEDCL show that the Respondent had checked the metering installation of the Appellant in presence of the consumer and found that the current display of meter of R phase and B phase was found in order, however, Y phase was showing zero value. Assessment is based on the data available. The meter was also tested in the Testing Laboratory of MSEDCL and was found within the limit of accuracy. There is, therefore, no case for assessment as per

the provisions of Regulation 15.4 of the Supply Code Regulation and the order of the Forum needs no interference.”

- 45) Second judgment dtd. 13th May 2019 of Hon’ble Ombudsman Mumbai in Representation No. 38/2019 (M/s Fine Cast Industries v/s MSEDCL) shows that the case was regarding current of the secondary side of R & B phase CTs being around 50% of the CT primary side current. Hon’ble Ombudsman concluded that:-

“9. I therefore conclude that CTs of R and B phase were not faithfully replicating corresponding primary currents. These secondary currents were almost half as compared to that in Y phase. This has resulted into less recording of consumption by 35% as claimed by the Respondent though however the appellant has used the power as per his load requirement.”

In the instant case in hand, it can be seen from the Ratio test conducted on 19/07/2019 (P.No.157) wherein it was seen that R & B phase CTs are showing primary and secondary currents in the range whereas in the case of Y phase CT the test failed. Considering the ratio it can be said that Y phase CT was not faithfully recording the current.

- 46) Third judgment dtd 24th April 2019 of Hon’ble Ombudsman, Mumbai in Representation No. 64/2019 (M/s Reliance Engineering v/s MSEDCL), the case was regarding meter recording less consumption due to absence of voltages on the R & Y phases, Hon’ble Ombudsman has referred following observation of Hon’ble High Court of Mumbai & considering it, upheld the assessment.

“11. Observation of the Hon’ble High Court of Mumbai, Bench at Aurangabad in W.P. No 8613 of 2017 in similar case is quoted below:-

“33. It is, therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. An under recording of electricity consumed was associated with the act of electrician in wrongly attaching the wires to the R, Y and B phases. I am therefore, of the view that such a wrong attachment of wiring by the electrician would not amount to defect in the meter. Consequently, due to the under-recording of the meter, the consumer has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under-recording.

34. Clause 3.4.4 of the Regulations, 2005 enables the Petitioner to recover the charges for the electricity actually supplied which would include a fixed charge as per the prescribed rates. The consumer, therefore, has to pay full charges for the electricity actually consumed.

35. In the Municipal Corporation case (supra), this Court has sustained the supplementary bill raised by the Electricity Company and this Court has upheld the recovery of the amount mentioned in the supplementary bill.”

12. Considering the above factual position and the data available with the Respondent, it will not be proper to give benefit to the Appellant Consumer. It clearly shows the Appellant consumer was billed less from May 2017 to March 2018. The Electricity Ombudsman (Mumbai) by its order in Representation no. 79 of 2017 dated 31.08.2017, 107 of 2017 dated 08.12.2017 has allowed recovery based on MRI Report subject to meter found in order, in testing. There is, therefore, no reason to interfere with the order of the Forum. It would be therefore proper to withdraw

interest and Delayed Payment Charges (DPC) for the period of litigation for redressal of the grievance. The Forum has given eight monthly installments to pay the supplementary bill. Interest and the DPC shall not be charged if the payment is made in 8 monthly installments."

- 47) Similarly in the judgment dtd 4th October 2019 of Hon'ble Ombudsman, Nagpur in Representation No. 68/2019 (M/s J.K. Industries, Nanded v/s Ex. Engr, MSEDCL, Nanded) in the case of meter recording less consumption due to absence of voltage on the B phase, Hon'ble Ombudsman relied upon the above referred judgment of Hon'ble High Court, Bombay and confirmed the assessment.
- 48) Considering the ratio of above cases, it is seen that Hon'ble Ombudsman has consistently held that in case of less recording of consumption because of absence/mismatch of current or voltage due to defect in CT/PT/wring etc. & meter is not intrinsically defective, the provisions of R15.4 of Supply Code Regulation do not apply and also upheld the orders of the Forum for assessment on percentage basis.
- 49) Applying the ratio of aforesaid cases, in this case 'Y' phase recording less consumption, we hold that the provisions of R15.4 are not applicable.
- 50) Considering all circumstances we hold that 'Y' phase was recording less consumption than actual current. Considering the test results & MRI data it is stated by the Respondent that the 'Y' phase CT was recording only 31.48% of its actual current.

According to us the correct calculation is as follows:-

Had all the CTs recorded actual current, the total consumption would have been

Total consumption = $(1/3^{\text{rd}}$ for R ph + $1/3^{\text{rd}}$ for Y ph + $1/3^{\text{rd}}$ for B ph)
i.e.100%

However, in the current situation, the consumption recorded is:-

Recorded consumption=(1/3rd for R ph+31.48% of 1/3rd for Y ph+1/3rd for B ph) i.e. Recorded consumption = (33.33% + 10.49% + 33.33) = 77.16%.

So, the recorded consumption is observed to be 77.16% of the actual consumption.

- 51) In view of the above calculation, we hold that the assessment done by the Respondent for 41451 units considering 34.26% less recording is not correct. It is the correct calculation is 22.84% less consumption was recorded. Therefore bill assessed for the month of April 2019 for the amount of Rs.6,59,058 is not correct and needs to be revised considering that 22.84% less consumption has been recorded. We therefore answer point No.1 in affirmative and hold that the assessment be done considering that 22.84% less consumption was being recorded during the period of assessment.
- 52) **Point No.2**:- On perusal of the submission made by both the parties, it is seen that the petitioner is paying only the current bill of April 2019 w/o assessed units (para 10 P.No.7, para 13 P.No.8 & para 7, P.No.32), it is concluded that the petitioner has not paid any excess amount and hence he is disentitled for such refund. However, in view of the order to point No.1, reassess the consumption considering that 22.84% less consumption was being recorded and if, after such reassessment, any excess amount found to have been paid by the petitioner, same be adjusted in the future bills without any interest.
- 53) **Point No.3**:- It is not disputed fact that the CT was tested and declared faulty on 09/05/2019. However, no action for replacing the CT was taken by the Respondent until 14/09/2019 i.e. for more than four months. We therefore feel that it is just and proper to grant

compensation of Rs 1000/- to the petitioner. We therefore answer Point No. 3 in affirmative.

- 54) **Point No.4:-** It is to be noted that since the AMR data is available with the Respondent and the Respondent is preparing monthly bills, the abnormality of the current reading should have come to the notice of the responsible officer preparing monthly bill of the petitioner. Had this been noticed timely, the CT could have been tested immediately and corrective action could have been taken. We are therefore of the opinion that the consumption be assessed. Considering that 22.84% less consumption was being recorded for the period of 11/05/2018 to 01/05/2019 and be equally divided in 12 monthly installments. The interest and DPC shall not be charged. We therefore answer Point No 4 accordingly.
- 55) **Point No.5:-** The order passed by IGRC is found partly just, legal & correct. We feel that the assessment be revised. Considering that 22.84% less consumption was being recorded and the payment of revised bill by the Petitioner be divided in twelve equal monthly installments & to that extent the order of IGRC is modified. We answer Point No. 5 accordingly.
- 56) In view of the above, we pass the following order in reply to Point No.6.

Order

The petition is partly allowed in the following terms:-

1. The order passed by IGRC holding bill of April 2019 for Rs. 6,51,058 as correct stands modified as under.
2. The bill of April 2019 now be revised considering that 22.84% less consumption was recorded.

3. The Petitioner is hereby permitted to pay the bill in 12 equal monthly installments, starting from December 2019.
4. No interest and DPC shall be charged on the said revised bill of April 2019.
5. The Respondent is hereby directed to pay compensation of Rs 1000 (Rs. One Thousand) to the Petitioner.
6. Parties to bear their own cost.
7. The Respondent is directed to report the compliance of this order within 30 days from the date of the order.

Sd/-

Shobha B. Varma
Chairperson

Sd/-

Shri. M. P. Kulkarni
Technical Member / Secretary

Sd/-

Vilaschandra S.Kabra
Member