BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 150 OF 2024

(REVIEW OF THE ORDER IN REPRESENTATION NO. 126 OF 2024)

In the matter of accumulated excess billing

V/s.

Appearances:

Applicant : 1. Raman Datunwala, Addl. Executive Engineer, MSEDCL

2. Jyotsna Sonone, Asst. Law Officer, MSEDCL

3. Prasad Sutaone, A.G.M., TPL4. Mahesh Ghagare, Manager5. Sameerkumar Desai, Manager

Respondent No. 1 : 1. Sougata Mukherjee, Representative

2. Krishan Singh, Representative

3. Pratik Chinchmalatpure

Respondent No. 2 : Manoj Jaiswal

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 3rd January 2025

Date of Order: 16th January 2025

ORDER

This Review Application was filed on 21st November 2024 by MSEDCL Thane Urban Circle under Regulation 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer



Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 21st October 2024 (impugned order) passed by the Electricity Ombudsman (Mumbai) in Representation 126 of 2024. The Electricity Ombudsman (Mumbai) partly allowed the Representation No. 126 of 2024 by observing as below:

- "12. However, in the interest of settling the matter, Respondent No.3 (developer) was requested to accept some part of the payment of the said bill voluntarily, and the developer has reciprocated by agreeing to pay Rs.5 lakhs out of the pending bill amount of Rs. 1.15 crores. This amount should be paid to the Respondent No. 2, TPL against the pending bill (after revision as directed below) voluntarily, giving some relief to the Appellant society.
- 13. Considering the facts and circumstances of the case, the Forum's order is modified as below:

The Respondent is directed as under:

- a) to revise the bill of Rs. 1,15,13,234/- only for the period of Jan. 2020 to Dec. 2022 for 36 months instead of 48 months, and by waiving of the entire interest and delayed payment charges from Jan 2023 till the date of this order.
- b) to allow the Appellant to pay the revised bill in 36 equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will accrue, and the Respondent has the liberty to take action as per law.
- c) Compliance to be submitted within two months from the date of issue of this order.
- d) The other prayers of the Appellant are rejected."

2. **Preamble:**

(i) MSEDCL had released electricity connections in the year 2018 to Arihant Aarohi Phase 1 at Kalyan - Shilphata Road, Padle Gaon, Thane having 207 residential flats, 18 commercial shops and three connections for common purpose such as fire pumps/jockey pumps, lifts A and B wings, the club house and common lighting as per the applications from its Developer, Arihant Superstructure Ltd. The details of

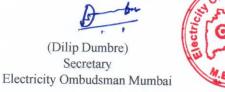


consumer / service numbers, sanctioned load, address and date of supply of the common connections are tabulated as below:

Table 1:

Sr.	Name of	Consumer/	San. Load	Address on Bill	Date of
No.	Consumer	Service No.	(KW)	Address on Bin	Supply
	Arihant			Firepump/ Jockeypump, S no.	
1	Superstructures	00402639164	96.98	18/1, 18/2 & 17/113, O Thane,	27/12/2018
	Ltd.			shil-400 612	
	Arihant			Lift AB wing, Club house.S no.	
2	Superstructures	00402639181	105	18/1, 18/2 & 17/1B Thane	17/09/2018
	Ltd.			Padle Shil - 400612	
	Arihant			STP/SC/SL, Survey no. 18/1,	
3	Superstructures	00402639156	35	18/2 & 1711B, O Bho Thane,	17/09/2018
	Ltd.			Padle shil -400 612	

- (ii) Torrent Power Limited (TPL) has been appointed as Distribution Franchisee by MSEDCL on 01.03.2020 for the purpose of operation and maintenance of electricity supply along with its billing to consumers in the area of Shil, Mumbra and Kalwa.
- (iii) The Arihant Aarohi CHS Ltd. Phase 1 was formed on 01/10/2018. MSEDCL/ TPL were mistakenly under billing the above three common connections on average basis, and this average was very nominal. There is no satisfactory explanation from MSEDCL as to why correct meter readings were not taken, and why under-billing continued. The Society was regular in payment of these electricity bills to MSEDCL and thereafter to TPL from March 2020 onwards.
- (iv) TPL inspected the premises of the Society on 30/11/2022 in the presence of the members of the Society. During inspection it was observed for the first time that there was mismatching of meter numbers in the billing system with the actual meter numbers installed at the site. There was a huge difference between the bills issued and the actual recorded consumption on the meters. The actual connected load was measured by Accucheck. The meters installed on site were tested and the test results of the meters were found in order. Also, MRI data of the meters were downloaded.



- (v) MSEDCL/TPL issued a bill for retrospective recovery towards under-billing for 48 months, which was reduced to 36 months by the Electricity Ombudsman's order dated 21.10.2024.
- 3. Aggrieved by the impugned order, the Applicant, MSEDCL (the Respondent No. 1 in the impugned order) has filed this Review Application. The e-hearing was held on 3rd January 2025 through video conference. All the parties were heard at length. The Review Applicant, MSEDCL's submissions and arguments are as below: [The Electricity Ombudsman's observations and comments are recorded under 'Notes' where needed.]
 - (i) The details of consumer numbers, sanctioned load, address, date of supply of the common connections are tabulated in Table 1.
 - (ii) The TPL inspected the premises of the Society on 30/11/2022 in the presence of the members of the Society and it was observed that there was mismatching of meter numbers in the billing system with the actual meter numbers installed at the site of the Society. There was high use of electricity as tabulated below:

(iii) Table 2:

	Meter Nos. Meter Technical Parameters observed											
Consumer/ Service No.	in Billing System	Nos. at Site	Voltage (V1)	Voltage (V2)	Voltage (V3)	Current (I1) in Amp.	Current (I2)in Amp.	Current (I3) in Amp.	Load (KW)	Reading on 30.11.2022 (KWH)	Load used	Remarks
00402639164	DK0420434(55)	X0680511	251	249	249	43.3	40.0	45.8	30	312560	Lifts(2 Nos.), Club House [Air Conditioners 6 Nos. Trade Mill 4 Nos., Electric Cycles 2 Nos., Water Pumps 4 Nos. (5 HP each)]	As per society, water pump running for 5-6 hours for a day
00402639181	550000055	X0680513	249	259	249	19.7	12.5	13.3	20	234080	Water purification plant, Sewerage water	Water purification plant is running for 22hrs.
00402639156	DK0420318(55)	X0680514	251	248	249	40.1	27.2	32.5	36	170050	Immersion water heaters installed in the overhead water tankers on terrace of two wings, Fire Sprinklers Pumps etc.	Load running for 24Hrs.

(iv) After discussions with society members, a provisional bill as per actual consumption from Jan.2019 to Jan. 2023 of Rs.1,22,12,053/ was issued to the consumer. This amount included the supplementary bill of Rs.1,15,13,234/- for the period Jan.2019 to Dec.2022. The debit for the consumed units was raised in the month of April



2023. The detailed calculations were submitted to the Society vide letter dated 26/04/2023. The abstract of these calculations is as below:

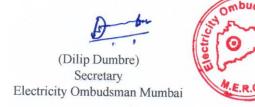
Table 3:

Debit bill Adu	Debit bill Adustment of suplementary bill for the period from Jan2020 to Dec. 2022 (48 Months)											
Consumer/ Service No.	Meter Nos.	Billing Period	Unit Charged (Units)	Actual Units consumed (Units)	Units Diff to be billed (Units)	Bill Amt. charged	Actual Bill Amt. to be charged	Difference				
1	2	3	4	5	6=5-4	7	8	9=8-7				
00402639164	319298	Jan.2019 to Dec. 2022	4800	3,19,297	3,14,497	1,44,315	51,29,590	49,85,275				
00402639181	239314	Jan.2019 to Dec. 2022	4800	2,39,313	2,34,513	1,63,418	38,47,824	36,84,406				
00402639156	184818	Jan.2019 to Dec. 2022	314	1,84,818	1,84,504	55,078	28,98,631	28,43,553				
Total Dues	upto Dec.	2022	9914	7,43,428	7,33,514	362811	1,18,760,45	1,15,13,234				

(vi) The Arihant Aarohi CHS Ltd. approached the Forum on 05/02/2024. The Forum by its order dated 03/06/2024 principally allowed the recovery of consumed units. Aggrieved by the order of the Forum, the Arihant Aarohi CHS Ltd. had filed Representation No. 126 of 2024 on 04/07/2024 under Regulation 19.1 of CGRF & EO Regulations 2020 which was decided by the Electricity Ombudsman (Mumbai) by order dated 21/10/2024. The operative part of the order is quoted above in the first para. The EO has allowed retrospective recovery for the period from Jan. 2020 to Dec. 2022 for 36 months out of 48 months (Jan.2019 to Dec. 2020). The review application is filed as per Regulation 22 of CGRF & EO Regulations 2020.

Grounds of Review:

(vii) The Hon'ble Ombudsman has misunderstood the basis of Sub-Section (2) of Section 56 of the Electricity Act, 2003 (the Act) which states that recourse to recovery through disconnection of electricity supply is limited to a period of two years from the date the sum became due. As long as the amount is due and within this two-year period, the licensee retains the authority to recover the dues by disconnecting the



electricity supply. This mechanism is specifically designed to enable the licensee to recover its dues efficiently. The Act provides this framework to facilitate the recovery of dues. Additionally, the licensee can pursue recovery through legal action as mandated in the Act. Therefore, the order issued by the Hon'ble Ombudsman contains an apparent error based on the facts of the record and consequently warrants a review. [Note: The Applicant seems to be in a confused state in terms of Section 56 (2) of the Act.]

(viii) The Hon'ble Electricity Ombudsman observed at Para 11 of order [Note: it is Para 12 instead of 11], has referred and discussed the Judgment dated 12/03/2019 of the Hon'ble Bombay High Court in W.P. No. 10764 of 2011 and relied on the Judgement of the Hon'ble Supreme Court dated 05/10/2021 in Civil Appeal No. 7235 of 2009 in Case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd.

In Prem Cottex Case, it was quoted that

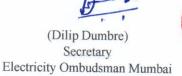
"The appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption "short Assessment Notice", claiming that though the multiplying factor (MF) is 10, it was wrongly recorded in the bills for the period from 3/08/2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs. 1,35,06,585/-. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow."

The National Consumer Disputes Redressal Commission dismissed the complaint, stating it was a case of "escaped assessment" rather than a deficiency in service. The Supreme Court emphasized that under Section 56(2) of the Electricity Act, no amount due from a consumer can be recovered after two years from when it first became due. The Court clarified that the obligation to pay arises only when a bill is issued, not merely upon consumption. In this case the bills are continuously raised to the consumer with lesser consumption instead of actual consumption due to mismatch of meter numbers in the billing system. This is nothing but "escaped assessment" as bills were continuously issued for the three meters. The Society agreed to pay the regular bills along with an additional Rs. 1.5 lacs every month for the arrears. Hence, the Hon'ble EO has failed to consider an important exception to



this two-year limitation, that if the amount has been continuously shown as recoverable as arrears, then the utility can pursue recovery beyond the two-year limit. This means that the utility must have indicated that the amount is outstanding in their records. Additionally, the judgment of the Hon'ble Supreme Court did not contain an express statement which limits the assessment period for escaped billing to three years.

- The Hon'ble EO has misconceived to consider that a Consumers obligation to pay (ix) electricity charges begins only after receiving a bill from the utility, which specifies the payment deadline; if unpaid, these charges carry over as arrears. The liability arises from electricity consumption, but payment is only due once the bill is issued. As per the judgment in M/s Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd' in Civil Appeal No. 7235 of 2009 -In this case, the Supreme Court examined critical issues surrounding the interpretation of the term "first due" as outlined in Section 56(2) of the Act. The Court established that while the obligation to pay for electricity arises from its consumption, the actual duty to pay is triggered only when the electricity company issues a bill. This means that the charges for electricity are considered "first due" only after the consumer receives the bill, which effectively starts the two-year limitation period for the electricity company to recover the dues. In this case, an assessment bill/demand was issued on 16-04-2023 for past charges due to meter mismatch error from 2018. The aforesaid demand was not beyond the stipulated limitation period or time barred.
- In this case, the mistake /error on account of meter mismatch between the actual three meters at site and the entry of the meters in the bill system was found by TPL on November 30, 2022. The demand containing the assessed bill was issued for the first time on February 16, 2023. Accordingly, the assessment bill first became due on February 16, 2023. The society responded to the demand made by the TPL, and on disconnection of the power supply, made a payment of Rs.1.5 lacs and continued to pay the current bills. In view of the above facts, the Hon'ble EO erred in holding that the demand by TPL was not continuously shown as recoverable.





(xi) The Applicant referred the following Regulations of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021).

"16.5.10 – The Consumer who neglects to pay his bill is liable for levy of delayed payment charges and interest on arrears in accordance with relevant orders of the Commission and/or appropriation of security deposit. A notice of disconnection to a Consumer under Section 56 of the Act shall be served in the manner provided for in Section 171 of the Act.

......

16.8.1. Charges for delayed payment shall be levied in accordance with the relevant orders of the Commission.

16.9.1. The Distribution Licensee may, at its discretion, allow Consumers the facility of payment of arrears by way of instalments:

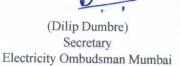
Provided that the facility of payment of arrears by way of instalments shall not affect the liability of the Consumers to pay interest and additional charges for delayed payment as per the relevant orders of the Commission from time to time, until all arrears have been cleared....."

From the above Regulations 16.5.10, 16.8.1, and 16.9.1 it is clear that the utility shall impose delayed payment charges and interest on arrears for non-payment. The regulations also indicate that the distribution licensee may, at its discretion, allow consumers to pay arrears in installments without affecting their obligation to pay interest and additional charges for delayed payment. Therefore, the Hon'ble Ombudsman's decision to waive the full interest and delay charges, without justification, lacks merit.

(xii) The Hon'ble EO has misconceived the Hon'ble Supreme Court's order in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam(supra). It is inappropriate to take the above referred Supreme Court judgement for establishing the escaped



- billing period of 3 years. In fact, para no. 13 of the said Order, states that, "However, in the interest of settling the matter, the non-Applicant had requested to accept some part of the payment of the said bill voluntarily, and the developer has reciprocated by agreeing to pay Rs.5 lakhs out of the pending bill amount of Rs. 1.15 crores. This amount should be paid to the TPL against the pending bill."
- (xiii) The Limitation Act, 1963 describes that a suit can be filed within 3 years from the date of cause of action. It is not correct to take the reference of this Act to limit the recovery period of escaped billing. Recovery period of escaped billing is nowhere mentioned under this Act. Rather the Hon'ble Supreme Court clarifies in order in M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam that(supra), that the limitation period is applicable for disconnection of the electric supply, it is not applicable for recovery of dues of escaped billing.
- (xiv) The Hon'ble Electricity Ombudsman has misunderstood the ruling described by the Hon'ble MERC given under the Supply Code, 2021, and passed the directions to Applicant to recover bill for 36 months instead of the actual period for recovery of 48 months.
- (xv) For the aforementioned reasons, prima facie, the final order passed by the Hon'ble Electricity Ombudsman on October 24, 2024, is devoid of merit of the provision of the Electricity Act and MERC Regulations. Therefore, the order needs to be reviewed.
- (xvi) In view of the above, it is therefore prayed that the order dated 21-10-2024 in Rep. No. 126 of 2024 be reviewed and the Applicant be allowed to recover the entire outstanding arrears of Rs. 1,15,13,234/- along with interest and delay payment charges for the 48 months' period.
- 4. The Respondent No. 1(Arihant Aarohi CHS Ltd)'s did not file any written submission. They argued that Section 56(2) of the Act, prescribes a limitation period of two years for retrospective recovery towards the deficiency in service. This case is nothing but deficiency in service (and not escaped billing) which should be considered as per Judgement dated 12th March 2019 of the Larger Bench of Bombay High Court in Writ Petition No. 10764 of 2011





with other Writ Petitions. The Respondent No.1 also pointed out that Regulation 7.8 & 7.9 of CGRF & EO Regulations 2020 mandate a period of two years for filing a grievance. The same should be applied to the other party. The Licensee should not be permitted recovery for an infinite period considering escaped assessment, by hiding behind the Judgement of Prem Cottex of Hon'ble Supreme Court, as the ratio of this Judgement is not applicable in this case. This is a very serious injustice to the Society.

- 5. The Respondent No. 2 (Arihant Superstructure Ltd.), the developer did not submit any written say, however, argued that though the meters are registered in the name of M/s. Arihant Superstructures Ltd., the said services are in use by Arihant Aarohi CHS Ltd. which is the implied consumer, as discussed in detail in the original order in Rep. No. 126 of 2024. The arrears are on the premises, and the Society has to pay these outstanding dues. In the interest of settling the matter, the Electricity Ombudsman directed the developer to pay Rs.5 lakhs out of the pending bill amount of Rs. 1.15 crores for giving some relief to the Appellant society which was paid immediately on 21/10/2024.
- 6. During the course of the hearing, the Respondent No. 1 Society requested for additional time of **one week** to submit their say after consulting their lawyer, which was granted. However, the Society failed to submit further submissions. The matter was closed for orders.

Analysis and Ruling

- 7. Heard the parties and perused the documents on record. The Respondent No. 1 was billed with wrong status for the period from Jan.2019 to Dec. 2022 due to wrong recording of the meter numbers in the billing system. This was clearly the fault of MSEDCL and amounts to deficiency in services, since it led to a huge delayed accumulated bill to the consumer society. The Electricity Ombudsman in its original order, had taken a lenient stand while holding it to be primarily a case of escaped billing, in order to reduce the loss of MSEDCL. However, we have now come to the opinion that in fact it is primarily a case of deficiency in service.
- 8. We have studied the CPL of the Society right from inception when the first bill was issued. It shows the consumption pattern for the three common area connections as below: -

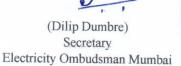




Table 4

					Cor	nsumer/ S	Service	No. 0	04026391	64					
Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev.	Cons. (Units)	Sr.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)
1	JAN-19	5500000055	R.N.T.	26-01-2019	0	0	100	35		5500000055	Faulty	21-11-2021	0	0	100
2	FEB-19	5500000055	R.N.T.	26-02-2019	0	0	100	36	DEC-21	5500000055	Faulty	21-12-2021	0	0	100
3	MAR-19	5500000055	Replace	25-03-2019	0	0	100	37		05500000055	_	21-01-2022	0	0	100
5	APR-19 MAY-19	5500000055 5500000055	R.N.T.	26-04-2019 25-05-2019	0	0	100	38		05500000055 05500000055	_	21-02-2022 21-03-2022	0	0	100 100
6	JUN-19	5500000055	Replace	25-06-2019	0	0	100	40		05500000055	_	21-03-2022	0	0	100
7	JUL-19	5500000055	Locked	26-07-2019	0	0	100	41		05500000055	_	21-05-2022	0	0	100
8	AUG-19	5500000055	R.N.T.	24-08-2019	0	0	100	42		05500000055	_	21-06-2022	0	0	100
9	SEP-19	5500000055	R.N.T.	24-09-2019	0	0	100	43	JUL-22	05500000055	Faulty	21-07-2022	0	0	100
10	OCT-19	5500000055	R.N.T.	25-10-2019	0	0	100	44		05500000055	_	21-08-2022	0	0	100
11	NOV-19	5500000055	R.N.T.	26-11-2019	0	0	100	45		05500000055		21-09-2022	0	0	100
12	DEC-19	5500000055	R.N.T.	25-12-2019	0	0	100	46		05500000055	_	21-10-2022	0	0	100
13	JAN-20	5500000055	R.N.T.	26-01-2020	0	0	100	47		05500000055	_	21-11-2022	0	0	100
14	FEB-20	5500000055	R.N.T.	24-02-2020	0	0	100	48	DEC-22	05500000055	Faulty	21-12-2022	0	0	100
15	MAR-20	5500000055	R.N.T.	24-03-2020	0	0	100	49	JAN-23	05500000055	Normal	21-01-2023	329495	319298	10197
16	APR-20	5500000055	R.N.T.	24-04-2020	0	0	100	50	FEB-23	05500000055	Normal	21-02-2023	338126	329495	8631
17	MAY-20	5500000055	R.N.T.	24-05-2020	0	0	100	51	MAR-23	05500000055	Normal	21-03-2023	347779	338126	9653
18	JUN-20	5500000055	Inaccessi ble	24-06-2020	0	0	100	52	APR-23	05500000055	Normal	21-04-2023	357177	347779	9398
19	JUL-20	5500000055	Inaccessi ble	24-07-2020	0	0	100	53	MAY-23	05500000055	Normal	21-05-2023	367418	357177	10241
20	AUG-20	5500000055	Inaccessi ble	24-08-2020	0	0	100	54	JUN-23	05500000055	Normal	21-06-2023	376351	367418	8933
21	SEP-20	5500000055	R.N.T.	24-09-2020	0	0	100	55	JUL-23	05500000055	Normal	21-07-2023	384973	376351	8622
22	OCT-20	5500000055	R.N.T.	21-10-2020	0	0	100	56	AUG-23	05500000055	Normal	21-08-2023	394287	384973	9314
23	NOV-20	5500000055	R.N.T.	21-11-2020	0	0	100	57	SEP-23	05500000055	Normal	21-09-2023	403405	394287	9118
24	DEC-20	5500000055	R.N.T.	21-12-2020	0	0	100	58	OCT-23	05500000055	Normal	21-10-2023	411922	403405	8517
25	JAN-21	5500000055	Faulty	21-01-2021	0	0	100	59	NOV-23	05500000055	Normal	21-11-2023	420423	411922	8501
26	FEB-21	5500000055	Faulty	21-02-2021	0	0	100	60	DEC-23	05500000055	Normal	21-12-2023	426168	420423	5745
27	MAR-21	5500000055	Faulty	21-03-2021	0	0	100	61	JAN-24	05500000055	Normal	21-01-2024	434610	426168	8442
28	APR-21	5500000055	Faulty	21-04-2021	0	0	100	62	FEB-24	05500000055	Normal	21-02-2024	442357	434610	7747
29	MAY-21	5500000055	Faulty	21-05-2021	0	0	100	63	MAR-24	05500000055	Normal	21-03-2024	449292	442357	6935
30	JUN-21	5500000055	Faulty	21-06-2021	0	0	100	64	APR-24	05500000055	Normal	23-04-2024	458358	449292	9066
31	JUL-21	5500000055	Faulty	21-07-2021	0	0	100	65	MAY-24	05500000055	Normal	22-05-2024	466069	458358	7711
32	AUG-21	5500000055	Faulty	21-08-2021	0	0	100	66	JUN-24	055X0680511	Normal	22-06-2024	474658	473698	8589
33	SEP-21	5500000055	Faulty	21-09-2021	0	0	100	67	JUL-24	055X0680511	Normal	20-07-2024	482180	474658	7522
34	OCT-21	5500000055	Faulty	21-10-2021	0	0	100	68	AUG-24	055X0680511	Normal	22-08-2024	491080	482180	8900

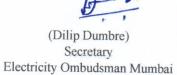




Table 5:

	Consumer/ Service No. '00402639181														
Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)	Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)
1	JAN-19	5500000055	R.N.T.	26-01-2019	0	0	100	35	NOV-21	5500000055	Faulty	21-11-2021	0	0	100
2	FEB-19	5500000055	R.N.T.	26-02-2019	0	0	100	36	DEC-21	5500000055	Faulty	21-12-2021	0	0	100
3	MAR-19	5500000055	Replace	25-03-2019	0	0	100	37	JAN-22	05500000055	Faulty	21-01-2022	0	0	100
4	APR-19	5500000055	R.N.T.	26-04-2019	0	0	100	38	FEB-22	05500000055	Faulty	21-02-2022	0	0	100
5	MAY-19	5500000055	Inaccessi ble	26-05-2019	0	0	100	39	MAR-22	05500000055	Faulty	21-03-2022	0	0	100
6	JUN-19	5500000055	Replace	25-06-2019	0	0	100	40	APR-22	05500000055	Faulty	21-04-2022	0	0	100
7	JUL-19	5500000055	Locked	26-07-2019	0	0	100	41	MAY-22	05500000055	Faulty	21-05-2022	0	0	100
8	AUG-19	5500000055	R.N.T.	24-08-2019	0	0	100	42	JUN-22	05500000055	Faulty	21-06-2022	0	0	100
9	SEP-19	5500000055	R.N.T.	24-09-2019	0	0	100	43	JUL-22	05500000055	Faulty	21-07-2022	0	0	100
10	OCT-19	5500000055	R.N.T.	25-10-2019	0	0	100	44	AUG-22	05500000055	Faulty	21-08-2022	0	0	100
11	NOV-19	5500000055	R.N.T.	26-11-2019	0	0	100	45	SEP-22	05500000055	Faulty	21-09-2022	0	0	100
12	DEC-19	5500000055	R.N.T.	25-12-2019	0	0	100	46	OCT-22	05500000055	Faulty	21-10-2022	0	0	100
13	JAN-20	5500000055	R.N.T.	26-01-2020	0	0	100	47	NOV-22	05500000055	Faulty	21-11-2022	0	0	100
14	FEB-20	5500000055	R.N.T.	24-02-2020	0	0	100	48	DEC-22	05500000055	Faulty	21-12-2022	0	0	100
15	MAR-20	5500000055	R.N.T.	24-03-2020	0	0	100	49	JAN-23	05500000055	Normal	21-01-2023	246391	239314	7077
16	APR-20	5500000055	R.N.T.	24-04-2020	0	0	100	50	FEB-23	05500000055	Normal	21-02-2023	252841	246391	6450
17	MAY-20	5500000055	R.N.T.	24-05-2020	0	0	100	51	MAR-23	05500000055	Normal	21-03-2023	257160	252841	4319
18	JUN-20	5500000055	Inaccessi ble	24-06-2020	0	0	100	52	APR-23	05500000055	Normal	21-04-2023	262757	257160	5597
19	JUL-20	5500000055	Inaccessi ble	24-07-2020	0	0	100	53	MAY-23	05500000055	Normal	21-05-2023	267550	262757	4793
20	AUG-20	5500000055	Inaccessi ble	24-08-2020	0	0	100	54	JUN-23	05500000055	Normal	21-06-2023	273772	267550	6222
21	SEP-20	5500000055	R.N.T.	24-09-2020	0	0	100	55	JUL-23	05500000055	Normal	21-07-2023	277816	273772	4044
22	OCT-20	5500000055	R.N.T.	21-10-2020	0	0	100	56	AUG-23	05500000055	Normal	21-08-2023	284857	277816	7041
23	NOV-20	5500000055	R.N.T.	21-11-2020	0	0	100	57	SEP-23	05500000055	Normal	21-09-2023	290655	284857	5798
24	DEC-20	5500000055	R.N.T.	21-12-2020	0	0	100	58	OCT-23	05500000055	Normal	21-10-2023	296162	290655	5507
25	JAN-21	5500000055	Faulty	21-01-2021	0	0	100	59	NOV-23	05500000055	Normal	21-11-2023	303261	296162	7099
26	FEB-21	5500000055	Faulty	21-02-2021	0	0	100	60	DEC-23	05500000055	Normal	21-12-2023	308023	303261	4762
27	MAR-21	5500000055	Faulty	21-03-2021	0	0	100	61	JAN-24	05500000055	Normal	21-01-2024	314373	308023	6350
28	APR-21	5500000055	Faulty	21-04-2021	0	0	100	62	FEB-24	05500000055	Normal	21-02-2024	317303	314373	2930
29	MAY-21	5500000055	Faulty	21-05-2021	0	0	100	63	MAR-24	05500000055	Normal	21-03-2024	319654	317303	2351
30	JUN-21	5500000055	Faulty	21-06-2021	0	0	100	64	APR-24	05500000055	Normal	23-04-2024	322219	319654	2565
31	JUL-21	5500000055	Faulty	21-07-2021	0	0	100	65	MAY-24	05500000055	Normal	22-05-2024	324450	322219	2231
32	AUG-21	5500000055	Faulty	21-08-2021	0	0	100	66	JUN-24	055X0680513	Normal	22-06-2024	327434	327123	2984
33	SEP-21	5500000055	Faulty	21-09-2021	0	0	100	67	JUL-24	055X0680513	Normal	20-07-2024	329997	327434	2563
34	OCT-21	5500000055	Faulty	21-10-2021	0	0	100	68	AUG-24	055X0680513	Normal	22-08-2024	332779	329997	2782



Table 6:

	Consumer/ Service No. 00402639156														
Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)	Sr. No.	Bill Month	Meter Sr. No.	Meter Status	Current Reading Date	Current Reading (KWH)	Prev. Reading (KWH)	Cons. (Units)
1	JAN-19	5500000055	Normal	25-01-2019	1	0	1	35	NOV-21	5500000055	Normal	21-11-2021	67	67	0
2	FEB-19	5500000055	Normal	25-02-2019	1	1	0	36	DEC-21	5500000055	R.N.T.	21-12-2021	67	67	19
3	MAR-19	5500000055	Replace	25-03-2019	1	1	0	37	JAN-22	05500000055	R.N.T.	21-01-2022	67	67	19
4	APR-19	5500000055	Normal	25-04-2019	1	1	0	38	FEB-22	05500000055	R.N.T.	21-02-2022	67	67	19
5	MAY-19	5500000055	Inaccessib le	26-05-2019	1	1	100	39	MAR-22	05500000055	R.N.T.	21-03-2022	67	67	19
6	JUN-19	5500000055	Replace	25-06-2019	1	1	100	40	APR-22	05500000055	Faulty	21-04-2022	67	67	19
7	JUL-19	5500000055	Locked	26-07-2019	1	1	100	41	MAY-22	05500000055	Faulty	21-05-2022	67	67	19
8	AUG-19	5500000055	R.N.T.	25-08-2019	1	1	100	42	JUN-22	05500000055	Faulty	21-06-2022	67	67	19
9	SEP-19	5500000055	Normal	24-09-2019	1	1	0	43	JUL-22	05500000055	Faulty	21-07-2022	67	67	19
10	OCT-19	5500000055	Normal	25-10-2019	1	1	0	44	AUG-22	05500000055	Faulty	21-08-2022	67	67	19
11	NOV-19	5500000055	Normal	26-11-2019	1	1	0	45	SEP-22	05500000055	Faulty	21-09-2022	67	67	19
12	DEC-19	5500000055	R.N.T.	25-12-2019	1	1	100	46	OCT-22	05500000055	Faulty	21-10-2022	67	67	19
13	JAN-20	5500000055	R.N.T.	25-01-2020	1	1	100	47	NOV-22	05500000055	Faulty	21-11-2022	67	67	19
14	FEB-20	5500000055	Normal	24-02-2020	18	1	17	48	DEC-22	05500000055	Faulty	21-12-2022	67	67	19
15	MAR-20	5500000055	R.N.T.	24-03-2020	18	18	5	49	JAN-23	05500000055	Normal	21-01-2023	207866	184819	23047
16	APR-20	5500000055	R.N.T.	24-04-2020	18	18	5	50	FEB-23	05500000055	Normal	21-02-2023	214757	207866	6891
17	MAY-20	5500000055	R.N.T.	24-05-2020	18	18	5	51	MAR-23	05500000055	Normal	21-03-2023	214757	214757	0
18	JUN-20	5500000055	Inaccessib le	24-06-2020	18	18	5	52	APR-23	05500000055	Normal	21-04-2023	214757	214757	0
19	JUL-20	5500000055	Inaccessib le	24-07-2020	18	18	5	53	MAY-23	05500000055	Normal	21-05-2023	214757	214757	0
20	AUG-20	5500000055	Inaccessib le	24-08-2020	18	18	5	54	JUN-23	05500000055	Normal	21-06-2023	214757	214757	0
21	SEP-20	5500000055	Normal	24-09-2020	47	18	29	55	JUL-23	05500000055	Normal	21-07-2023	214757	214757	0
22	OCT-20	5500000055	Normal	21-10-2020	47	47	0	56		05500000055	Normal	21-08-2023	214757	214757	0
23	NOV-20	5500000055	Normal	21-11-2020	48	47	1	57	SEP-23	05500000055	Normal	21-09-2023	214757	214757	0
24	DEC-20	5500000055	Normal	21-12-2020	48	48	0	58	OCT-23	05500000055	Normal	21-10-2023	214757	214757	0
25	JAN-21	5500000055	Normal	21-01-2021	67	48	19	59	NOV-23	055000000055	Normal	21-11-2023	214757	214757	0
26	FEB-21	5500000055	Normal	21-02-2021	67	67	0	60	DEC-23	055000000055	Normal	21-12-2023	214757	214757	0
27	MAR-21	5500000055	Normal	21-03-2021	67	67	0	61	JAN-24	055000000055	Normal	21-01-2024	214757	214757	0
28	APR-21	5500000055	Normal	21-04-2021	67	67	0	62	FEB-24	055000000055	Normal	21-02-2024	214757	214757	0
29	MAY-21	5500000055	Normal	21-05-2021	67	67	0	63	MAR-24	05500000055	Normal	21-03-2024	214757	214757	0
30	JUN-21	5500000055	Normal	21-06-2021	67	67	0	64	APR-24	05500000055	Normal	23-04-2024	214757	214757	0
31	JUL-21	5500000055	Normal	21-07-2021	67	67	0	65	MAY-24	05500000055	Normal	22-05-2024	214757	214757	0
32	AUG-21	5500000055	Normal	21-08-2021	67	67	0	66	JUN-24	055X0680514	Normal	22-06-2024	214757	214757	0
33	SEP-21	5500000055	Normal	21-09-2021	67	67	0	67	JUL-24	055X0680514	Normal	20-07-2024	214757	214757	0
34	OCT-21	5500000055	Normal	21-10-2021	67	67	0	68	AUG-24	055X0680514	Normal	22-08-2024	214757	214757	0

From the above Tables, it is seen that the 3 consumer/service numbers were billed with "Reading Not Taken, Replacement, Locked & Inaccessible" status for the period of 24 months from Jan.2019 to Dec. 2020. The consumer was billed with "Faulty" Status for the period of 24 months from Jan.2021 to Dec. 2022.

The Regulatory Provisions as per Electricity Supply code of the Commission are as below:

A. Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (which was in force from 20.01.2005 to 24.02.2021) mandates billing in the absence of a meter reading as below:



15.3 Billing in the Absence of Meter Reading

15.3.1 In case for any reason the meter is not accessible, and hence is not read during any billing period, the Distribution Licensee shall send an estimated bill to the consumer:

Provided that the amount so paid will be adjusted after the readings are taken during the subsequent billing period(s).

15.3.2 If the meter remains inaccessible after two consecutive efforts to effect a meter reading, then in addition to any remedy available to the Distribution Licensee under Section 163 of the Act, the consumer shall be served not less than seven clear working days' notice to keep open the premises for taking the meter reading on the days stated in the notice:

Provided that the notice shall also indicate the times at which the Authorised Representative shall remain present to read the meter.

B. Supply Code & SOP Regulations 2021 came in force from 25.02.2021 onwards. The Regulation 15.4 speaks as below:

15.4. Reading of Meter

15.4.1. The meter shall be read once in every three months in case of agricultural Consumers, and every month in the case of all other Consumers. Consumer shall extend all facilities to the licensee or his authorised representatives to read the meter: Provided that the meters should be placed in easily accessible common area of the premise or any other place easily accessible.

15.4.2. The meter shall be read by an authorised representative of the Distribution Licensee manually or by using appropriate meter reading instrument, if required or through AMR. The Distribution Licensee shall issue proper photo identity cards to all meter readers and meter readers shall visibly display the photo identity card during the course of meter reading.

It is surprising that the other individual consumers of the said Society were billed as per actual readings, but the Licensee MSEDCL (and its Franchisee TPL) took such a long period of four years (Jan.2019 to Dec. 2022) before pointing out the under billing of the common meters due to a mismatch of meter numbers, and failed to adhere the Supply Code Regulations in their true sense. This is a serious irregularity, and it also amounts to deficiency in services. Collusion in this regard with the ground staff or the meter reading staff cannot be ruled out. Hence, the Licensee is also equally, if not more, responsible for failure in its own duty, leading to under billing.

- 9. The Applicant contended that the TPL inspected the electric installation of the Appellant on 30/11/2022 in the presence of the members of the Society when it was found that the actual consumption recorded on the Meters had remained unbilled due to mismatching of meter numbers in the billing system. There was a huge difference between the bills issued and the actual recorded consumption on the meters for 48 months.
- 10. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

"(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Hon'ble Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges due to deficiency in service.

- 11. The Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:
 - "9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee



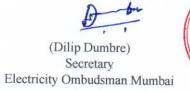
company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand."

- 12. The important paras of the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. for recovery of escaped billing are reproduced below:
 - "3. The appellant is carrying on the business of manufacturing cotton yarn in Panipat, Haryana. The appellant is having a L.S. connection, which got extended from 404.517 KW to 765 KW with C.D 449 KVA to 850 KVA, on 3.08.2006.
 - **4.** After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption "short assessment notice", claiming that though the multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/-. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.

6 Program Onder dated 1 10 2000 the National Commission diamissed the co

6. By an Order dated 1.10.2009, the National Commission dismisse	d the complaint or
the ground that it is a case of "escaped assessment "and not a cas	e of "deficiency ir
service". Aggrieved by the said Order, the appellant is before	ore us

11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.



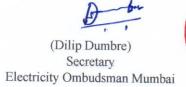


12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)". This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1) (c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. V/s. State of Madhya Pradesh2.

.....

21. The raising of an additional demand in the form of "short assessment notice", on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and not "deficiency in service".

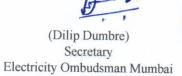
22. In fact, even before going into the question of section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that recourse taken by the licensee for recovery of the amount can be put to test in terms of the section 56. If the case on hand tested on these parameters, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.





26. The matter can be examined from another angle as well. Subsection (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahamatullah Khan and Section 56(2) will not go to the rescue of the appellant.

- 13. It is important to note that in the above Judgment, the assessment period <u>for escaped billing</u> (due to wrong application of multiplying factor) is applied for about three years. In the instant case, the Respondent has issued a supplementary bill towards accumulated consumption for the period from 19.09.2015 to 29.12.2020, which is about five and 1/4th years. Further it is not a case of wrong application of multiplying factor, but a serious mistake of entering the wrong meter numbers in the system.
- 14. The Judgment of the Hon'ble Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. refers to Section 17(1) (c) of the Limitation Act, 1963. The said Section of the Limitation Act, 1963 is reproduced as under: -





"17. Effect of fraud or mistake. — (1) Where, in the case of any suit or application for which
a period of limitation is prescribed by this Act, —
(c) the suit or application is for relief from the consequences of a mistake; or
the period of limitation shall not begin to run until the plaintiff or applicant
has discovered the fraud or the mistake or could, with reasonable diligence, have discovered
it; or in the case of a concealed document, until the plaintiff or the applicant first had the
means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or
- (ii) (ii)in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or
- (iii) (iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed."

THE SCHEDULE PERIODS OF LIMITATION

[See sections 2(j) and 3

PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

113. When the right to sue accrues

113	Any suit for which no period of	Three years	When the right
	limitation is provided elsewhere in		to sue accrues
	this Schedule		



- 15. There is no doubt that Section 17(1) (c) of the Limitation Act, 1963 covers both mistakes of fact as well as law. The Respondent discovered the mistake of under billing when the premises were inspected on 30/11/2022 in the presence of the Appellant. However, this mistake should actually have come to notice much sooner, within a few months of when the under billing started. It is surprising how MSEDCL did not take a note of recorded consumption of only 100 units (or less) per month for such a large society's common connections. This amounts to sheer negligence. The Respondent failed to inspect the common connections of the Society periodically, at least once a year. Had it done so, the mistake would have come to notice much earlier, and the high amount of retrospective bill for 4 years could have been avoided. Hence, the Electricity Ombudsman has correctly held that retrospective recovery towards accumulated consumption should be limited to three years counting (backwards) from the date of detection of mistake i.e. Dec. 2022. Therefore, the valid recovery period is three years period retrospectively from January 2020 to December 2022 without any interest and delayed payment charges.
- 16. We are of the opinion that all important issues in sum and substance have already been covered in detail with reasoning in the original order dated 21/10/2024 in Representation 126 of 2024 of the Electricity Ombudsman (Mumbai). The review application is nothing but a mere repetition of the original representation.
- 17. The provisions with respect to review of orders passed by the undersigned is given in Regulation 22 of the CGRF & EO Regulations 2020. The relevant provision is quoted below: -
 - "22 Review of Order of Electricity Ombudsman
 - 22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:
 - (a) Where no appeal has been preferred;
 - (b) On account of some mistake or error apparent from the face of the record;
 - (c) Upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.
 - 22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him





- at the time when the order was passed or the mistake or error apparent from the face of the record.
- 22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.
- 22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application:
 - Provided that no application shall be rejected unless the Applicant has been given an opportunity of being heard.
- 22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for."
- 18. The Review Applicant has not brought out any new issue which has not been dealt with in the impugned order, which is the primary requirement for a review of this order under Regulation 22 of the CGRF & EO Regulations 2020. In fact, the Electricity Ombudsman had taken a lenient view of MSEDCL's negligence, yet MSEDCL has chosen to challenge rather than accept the Electricity Ombudsman's order.
- 19. In view of the above, the Review Application of the Applicant is rejected with a cost of Rs.1000/- and disposed of accordingly.

Sd/ (Vandana Krishna) Electricity Ombudsman (Mumbai)

