

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 109 OF 2024

In the matter of accumulated excess billing dispute between developer and society.

M/s. Karnavat & Associates..... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Thane – 1..... Respondent No.1  
(MSEDCL)

Sun Magnetica Premises Co-op. Society Ltd..... Respondent No.2

Appearances:

Appellant : Sagar Sandeep Karnavat

Respondent No. 1: 1. Chandramani Meshram, Ex. Engineer  
2. D.P. Gaikwad, Addl. Ex. Engineer  
3. Abhishri A. Tawade, Assistant Accountant

Respondent No. 2: 1. Vijendra Kumar Sharma, Chairman  
2. Naval Nirsariya, Treasurer  
3. R.K. Singh, Committee Member


**Coram: Vandana Krishna [I.A.S. (Retd.)]**

Date of hearing: 1. 23<sup>rd</sup> August 2024  
2. 23<sup>rd</sup> September 2024

Date of Order : 1<sup>st</sup> October 2024

## ORDER

This Representation was filed on 14<sup>th</sup> June 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 17<sup>th</sup> May 2024 in Case No. 96 & 122 of 2021-22 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum) which was a de novo decision on the directives of the Electricity Ombudsman. The Forum, by its order dated 17<sup>th</sup> May 2024 dismissed the grievance application in principle, directing the Respondent as below: -


*“2. The Respondent is entitled to recover the pending arrears of Rs.14,03,800/- from the Appellant, M/s. Karnavat and Associates along with applicable interest, DPC and penalty imposed thereon.”*

## PREAMBLE

2. The Appellant, Karnavat & Associates is the builder / developer of the building known as Sun Magnetica Premises Co-op. Society Ltd. There are four connections of the Society / Developer, which were claimed to be used for common purpose of the Society like water pump, lift, lighting of the common area of the Society as well as the so-called office of the Developer. The details of these connections are tabulated below as per data recorded in Consumer Personal Ledger (CPL) of these connections.

Table 1:

| Sr. No. | Name of Consumer                       | Consumer No. | San. Load /Cont. Demand | Address on Bill  | Date of Supply | Purpose                            |
|---------|--|--------------|-------------------------|--|----------------|------------------------------------|
| 1       | Sun Magnetica Premises Coop. Soc. Ltd. | 000028000162 | 48 KW/<br>38.4 KVA      | Common Service Sun Magnetica, Service Rd Nr Lic Thane  | 04/7/2006      | Common Service (Water Pump & Lift) |
| 2       | Sun Magnetica Premises Coop. Soc.Ltd.  | 000028000171 | 41 KW/<br>32.8 KVA      | Fire Panel Sun Magnetica, Comm Service Rd Nr Lic Thane | 04/7/2006      | Fire Pump System                   |
| 3       | M/s. Karnavat & Associates             | 400000414717 | 25 KW/<br>25 KVA        | Shop No 07, Sun Magnetica Comm Service Rd Nr Lic Thane | 13/08/2007     | Not mentioned                      |
| 4       | M/s. Karnavat & Associates             | 400000414733 | 25 KW/<br>25 KVA        | Shop No. 5, Sun Mgnetica Comm Service Rd Nr Lic Thane  | 13/08/2007     | Not mentioned                      |

  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai




3. Aggrieved by the order of the Forum, the Appellant has filed this Representation. An online hearing was held through video conference on 23<sup>rd</sup> August 2024. The Appellant and the Respondent No. 1 attended the online hearing; however, the Respondent No.2 (Society) was not present. Parties were heard at length. The Respondent No.1 filed a reply on 7<sup>th</sup> August 2024. The submissions and arguments of MSEDCL, the Respondent No.1 are stated first as below. *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' in brackets where needed.]*

- (i) As per directions from the Higher Authorities of MSEDCL, there was Special Drive for checking TD/PD consumers in the month of Oct. 2019. The Respondent No.1 inspected the premises of the Appellant on 03/10/2019, when it was observed that **the consumer (No. 400000414717) at Sr. No. 3 of Table 1 was unbilled having reading of 60521 KWH** on meter (No. 60117149). This Connection was permanently disconnected before Nov.2016. At that time, the Appellant paid the Outstanding Dues of Rs. 3560/- for this connection on **09/12/2016** under **"PD Amnesty Scheme"** which was in force. The Respondent No.1 installed a new meter (No. 60117149 of Kaifa Make with initial reading of 0 KWH) to this connection in Dec. 2016. The connection was physically made live, however, it mistakenly **remained unbilled and PD in the System from Dec. 2016** onwards till the date of inspection. The Voltage, Current & other Parameters of the meter and connected load was observed as below:

Table 2:

| Meter No.      | Meter Make | Capacity         | Reading     | KVA MD  | P. F.   |
|----------------|------------|------------------|-------------|---------|---------|
| 60117149       | Kaifa      | 3 Ph. 10-40 A    | 60521 KWH   | 16.4    | 0.8     |
| Voltage (V)    |            |                  | Current (A) |         |         |
| R Phase        | Y Phase    | B Phase          | R Phase     | Y Phase | B Phase |
| 237            | 239        | 239              | 19.95       | 21.39   | 21.29   |
| Connected Load |            |                  |             |         |         |
| Tube Lights    | CFL        | Air Conditioners | Computers   |         |         |
| 180            | 150        | 2                | 2           |         |         |

- (ii) As per the inspection report dated 03/10/2019, a supplementary Bill of Rs. 9,70,950/- was firstly issued to the Society, Respondent No.2 in the month Nov 2019


  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai



**for the period from Dec 2016 to Nov 2019.** [Note: It was verified that the initial supplementary bill was issued in the name of Society. This bill was transferred to the builder / Appellant in November 2021.]

- (iii) In the meantime, a Show Cause Notice was issued by Gadkari subdivision to Section Officer vide letter dated 18.11.2019, it was directed to take further necessary action due to non-feeding of PD to LIVE status of this consumer in the online system.
- (iv) After 2 months, it was observed that the consumer (Appellant) was not ready to pay the entire bill. Thus, notices for payment of arrears were issued to the consumer (Appellant) on 22.02.2020 and 20.01.2021, and a reminder letter was issued on 24.09.2021. Now, a total bill of Rs.14,03,800/- including interest, fixed charges and use of power supply from Jan 2020 to Aug 2020 was issued to the consumer. But the consumer declined to pay the arrears. Hence, it was disconnected permanently on 10.09.2020.[Note: the outstanding dues as on Oct. 2020 was Rs. 10,77,396.92 as principal amount, and Rs. 97,730.76 as interest, i.e. total of Rs. 11,74,727.68. it is not clear how a bill of Rs.14.03 lakh was issued.]
- (v) The second connection No. 400000414733 of M/s. Karnavat & Associates also had some outstanding dues of Rs. 54,837.89 which was already paid by the Appellant as per credit adjustment of Rs. 54,840/- on live connection of M/s. Reach Cargo with Cons. No. 000028000103 having the same ownership and premises as of M/s. Karnavat & Associates.
- (vi) The Respondent No.1 referred the Regulation 10.5/12.5 of Maharashtra Electricity Regulation Commission (Electricity Supply Code & Other Conditions of Supply) Regulation 2005 (Supply Code Regulations 2005) / Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021) respectively in support of its submissions. The Regulation 12.5 of Supply Code & SOP Regulations 2021 is reproduced as below:


*“12.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased Consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



*law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be.”*

- (vii) The Respondent No.1 referred to the MSEDCL guidelines for recovery of PD Arrears vide letter no. P. com/Accts/No.19021 dated 06/07/2013, which says that if the premises of any PD consumer is in arrears, and if there is another live connection of the same PD consumer or of his legal successor, then the entire PD arrears with interest and DPC should be diverted on to such live connection. Based on this, Gadkari Subdivision issued a notice for transfer of PD dues to another connection of the same name vide letter no. ADD.EE/Gadkari/ Billing/ 01139 dated 24/09/2021. Accordingly, by giving notice, arrears of **Rs. 14,03,800/-** was transferred (debit adjustment) to the other live **consumer no. 000028000103 of M/s. Reach Cargo** having the same ownership and same premises as that of the Appellant, M/s. Karnavat & Associates, after confirming that the said shop belongs to M/s. Karnavat Associates, and a bill was generated.
- (viii) Also, a letter was received from Sun Magnetica society dated 10/11/2021 that the builder's both PD connections, 400000414717 & 400000414733 were used in the Stilt car parking area office which was allotted to Mr. Karnavat on rental basis. The letter from the Society is kept on record. *[Note: Basically, there seems to be a dispute between the builder and the society as to who is responsible to pay the arrears.]*
- (ix) The Appellant filed a grievance application in the Forum on 24/09/2021. The Forum by its order dated 02/02/2023 dismissed the grievance application. The Appellant filed a review application on 01/03/2023 which was also dismissed by the Forum by its order dated 27/07/2023.
- (x) Since the first order passed by the Forum, the Appellant was paying installments from Feb 2023 till Oct 2023.
- (xi) Not satisfied with the above orders of the Forum, the Appellant filed representations before the Electricity Ombudsman (Mumbai) which was registered as Rep. 96 & 97 of 2023. It was then observed that since the society, Sun Magnetica Premises Co-op. Society Ltd. was an affected party, the Forum ought to have made this society a party to the proceedings before it. Hence as per directions from the Electricity Ombudsman, a

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



letter dated 08/12/2023 was issued that Sun Magnetica Premises Co-op. Society Ltd, being occupier of the premises, be made a party, and a rehearing be conducted accordingly. The Forum, by its order dated 17<sup>th</sup> May 2024 has dismissed the grievance application in principle.


- (xii) The Respondent No.1 cited Judgment of High Court in W.P. No. 6194 & 7950 of 2003 dated 25/09/2003 Vijaya Laxmi V/S. Assistant Engineer before Hon'ble Madras High Court. The Hon'ble High Court had passed order that

*“Where any consumer having more than one service connection, default in payment of dues relating to any one of the service connections, the Board may cause other service connections in the same name of the appellant to be disconnected till all the arrears due for all the service connection are paid, notwithstanding the fact that the service connections are covered by separate agreements”.*

- (xiii) The Respondent No. 1 referred an Appeal No. 188 of 2003 dated 04/10/2004 in M.P. Electricity Board VS. Akhtan before Hon'ble Madhya Pradesh State Consumer Disputes Redressal Commission. The Hon'ble State Commission passed order that


*“It will be thus seen that the licensee Board is entitled to disconnect any electricity supply line or other works, through which energy may be supplied & may discontinue the supply of the defaulter consumer until the amount due from him is paid off. Section 24 does not restrict power of the appellant - Board to invoke this provision only in respect of the electric connection for which the consumer has fallen into arrears. The works “Any electric supply line” used in section 24 makes it abundantly clear that a person having more than one supply lines suffer disconnection of any or all those lines if he falls into arrears in payment of dues in respect of any one or more such lines.”*

- (xiv) The Respondent No.1 referred to the Judgment dated 19<sup>th</sup> May 2023 of Hon'ble Supreme Court in Civil Appeal No 2109- 2110 of 2004 in Case of K C Ninan V/s Kerala State Electricity Board & Ors. The Hon'ble Supreme Court of India has passed the following judgment.

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



- a. *The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity.*
- b. *The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities.*
- c. *For an application to be considered as a 'reconnection', the Appellant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection.*
- d. *A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character.*
- e. *The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners.*
- f. *The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act.*
- g. *The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of provision in the plenary statute providing for creation of such a charge.*
- h. *The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act.*
- i. *The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



*dues, like service charges, electricity dues for power connection, and taxes of the local authorities ; and*

*j. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.*

(xv) The Respondent No.1 referred an Order dated 19/02/2021 of the Hon'ble Electricity Ombudsman (Mumbai) in Rep. No. 9 in Case of Mussadik Ab. K, Bubere V/S MSEDCL, Bhiwandi regarding past electricity dues & transfer thereof. The Hon'ble Electricity Ombudsman has passed the following order :

*(a) Action of the Respondent in transferring the electricity dues of the Appellant's PD Connection No. 13010729593 to his own other live Connection No. 13010435018 is upheld.*

*(b) The Respondent to recover the total arrears including that of the PD connection from the other live connection of the Appellant without DPC and interest.*

*(c) The Respondent may grant suitable instalments if the Appellant so desires. These shall be without interest and along with the current bill.*


*(d) Respondent not to release fresh connection at the PD connection site until the arrears are paid.*

*(e) Respondent is specifically directed not to allow the use of power from the adjacent premises of the PD connection site by way of submerging the premises which is a practice normally seen at many places.*

*(f) The Respondent is directed to submit action taken report in this matter at the end of six months from the date of issue of this order.*

(xvi) The above referred cases are related to PD arrears which are transferred on to other live connections in the same name, or same plot, or same owner, by respective licensees. All the orders are in favor of the Licensee.

(xvii) The Respondent No.2 Sun Magnetica CHS Ltd. filed a letter dated 12/01/2024 stating that, the charges raised by MSEDCL amounting to Rs.14,03,800/- belong to the meters which were personally used by M/s Karnavat and Associates who is the developer of the building. Sun Magnetica CHS Ltd. has specifically denied any consumption of power

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai





from their meters/ connections for the society purpose. The Sun Magnetica CHS Ltd. contended that:

- a. The Society was proposed in the year 2015 and registered in 2018.
- b. In this period, the Society verified the meter, of the common area and lifts, and started paying the bills from the Society's account.
- c. Sun Magnetica CHS Ltd. affirms that, the arrears of Rs.14,03,800/- are on the connection which was personally used by M/s Karnavat and Associates, the developer of the building, and the society has no concern with this, and also has not consumed any power from the same. The Society stated that, both the connections bearing consumer No. 400000414717 and 400000414733 belong to M/s. Karnavat and Associates only, and he should pay the pending dues for the same.


(xviii) As per the directions from Hon'ble Electricity Ombudsman in the e-hearing held on 23/08/2024, a Spot Verification Report dated 23/08/2024 was submitted, and the year wise average unit consumption for both common connections no. 000028000162 & 000028000171 of the Society, as per CPL before & after disconnection of the disputed PD connections no. 400000414717 & 400000414733, is as follows:

Table 3:

| Period  | Cons. No.<br>000028000162 | Cons. No.<br>000028000171 |
|---------|---------------------------|---------------------------|
| 2016-17 | 1522                      | 1451                      |
| 2017-18 | 1776                      | 358                       |
| 2018-19 | 2320                      | 290                       |
| 2019-20 | 2058                      | 543                       |
| 2020-21 | 3242                      | 1651                      |
| 2021-22 | 3582                      | 1186                      |
| 2022-23 | 3189                      | 35                        |
| 2023-24 | 3231                      | 14                        |

*[Note: There seems to be a jump in consumption of about 1200 units per month of the Society's common area connections from 2020-21.]*

Considering all the above facts and evidence, the Respondent No.1 prays that the representation of the Appellant be rejected.


  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



4. The Appellant's submissions and arguments are as below:
- (i) The Appellant filed the representations before the Electricity Ombudsman (Mumbai) which was registered as Rep. 96 & 97 of 2023. The hearing was conducted on 23/11/2023. During hearing, the EO observed that the Forum did not make Sun Magnetica Premises Co-op. Society Ltd. a party to its hearing. The EO (Mumbai) directed that Sun Magnetica Premises Co-op. Society Ltd, being occupier of the premises, be made a party, and a rehearing be conducted accordingly.
  - (ii) Accordingly, the Original Case No. 96 of 2021-22 and Case No. 122 of 2021-22 was reopened, only to record the new submissions on behalf of Sun Magnetica CHSL. The matter was heard on 04/04/2024. The Forum, by its order dated 17<sup>th</sup> May 2024 again dismissed the grievance application. The Forum failed to understand the basic issue, and the second hearing was just a formality for rejecting the grievance of the Appellant.
  - (iii) Aggrieved by the aforementioned order dated 17/05/2024, the Appellant has filed this Representation before the Hon'ble Electricity Ombudsman (Mumbai).
  - (iv) The Appellant framed the following issues for consideration of his grievance.
    - a. Is it the Appellant or Sun Magnetica CHS, who is the user of the Connections of Cons. No. 40000414717 and Cons. No. 400004144733, as confirmed in the Spot Inspection Report dated 03/10/2019 and the Letters dated 18/02/2020 and 22/02/2020 of MSEDCL Engineer?
    - b. Is the final Demand of MSEDCL to the Appellant, 'correct' or in contradiction to MSEDCL's internal letter dated 16/12/2021 and its circular (No. PR-3 /Tariff/ No. 24156 dated 18.06.2009)?

**A. Facts:**

1. The Appellant is the Developer of the Building, Sun Magnetica, Thane. In the year 2006-2007, he obtained meter of Cons. No. 40000414717 with 20 other connections as the Developer of Sun Magnetica. **Four of these 21 meters were used for common area services like lights, water pumps, lift etc. Two of the four common area meters were transferred by Sun Magnetica Society to its name in 2015. The**

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai




remaining two meters remained to be transferred in the name of Sun Magnetica Society, who was the actual consumer, as the said two meters were not made 'LIVE' in MSEDCL system. Therefore, the meters LT 400000414717 and 400000414733 remained to be transferred to the name of Sun Magnetica Society.

| Sr. No. | Connection No.      | Purpose                  |
|---------|---------------------|--------------------------|
| A.      | 000028000162        | Water Pump and Lift      |
| B.      | 000028000171        | Fire Panel               |
| C.      | <b>400000414717</b> | <b>Common Area Light</b> |
| D.      | <b>400000414733</b> | <b>Common Area</b>       |

*[Note: As per the CPL, connections no. 4717 and 4733 were in the name of the Appellant from 2007 when he took the connections. He has not clarified why he did not get the names changed on these connections, if they were used for the common area. This issue of not being made Live in the system arose only in Dec. 2016]*


- From Dec 2016 to-Dec 2019, Respondent No.1 (MSEDCL) failed to make Cons. No. 400000414717 'Live' in its system. Suddenly, in a PD/TD Drive of December 2019, MSEDCL issued a bill for the period Dec. 2016 to Nov. 2019 for **60,521 units amounting to Rs. 9,70,950/- to Respondent 2 (Sun Magnetica CHS Ltd.)**. The Respondent 1 (MSEDCL) then sent notices to Sun Magnetica CHS Ltd. requesting payment, as the supply was used for common area light purposes. **As a result of the Society's refusal to pay the aforementioned dues, the Respondent 1 (MSEDCL) illegally transferred the total arrears of PD Connection No. 400000414717 of Rs.14,03,800/- vide bill dated December 2021 on to the Appellant's office premises** having Connection No. 000028000103, because M/s. Karnavat and Associates was the building's Developer. The said dues were shown as a debit bill adjustment of Rs.14,70,000/- in the Nov-2021 bill of the consumer.
- As per the Spot Inspection Report dated 03/10/2019, prepared by the Representative of Respondent No.1 (MSEDCL) and Assistant Engineer, Mr. S.D Papadkar for PD Cons. 400000414717, the Load of over 180 Tube Lights, 150 CFL's, 2 AC's and 2 PC's, on

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



the said connection as shown in Table 2, it can be easily deciphered that the said Meter was being used for the 'Common Area Light' for the Huge Common Areas of Sun Magnetica Society, and not for the consumption of an individual (the Appellant) who has an office of only 224 Sq. Meter, as seen in Index II of office of Appellant in the said building, Sun Magnetica. The Index II is kept on record. Furthermore, the above observations and the investigation Letters dated 18/02/2020 and 22/02/2020, were issued by the Respondent No.1 to Sun Magnetica CHS Ltd. informing them that the said Connection No. 400000414717, "are being used for supplying electricity to Common Area Light".

4. Also, in the said Report **"there was no load"** connected on PD Cons. No. 40000414733. However, the amount Rs. 66,360/- with applicable DPC and interest was recovered from the Appellant, Consumer No. 000028000103 towards the said arrears of PD Cons. No. 4733.
5. Respondent 1 (MSEDCL) unlawfully transferred the load of PD Cons. No. 400000414717 and 400000414733 to the Appellant's connection instead of the society's meter.
6. **Since August 2015, Sun Magnetica ad hoc CHS, suo-moto took on the responsibility of paying common area bills (light, water, etc.) as seen from their letter to the Appellant dated 14<sup>th</sup> August 2015. Therefore, the responsibility of Common Area Light Bills from Nov 2016 to Nov 2019 was that of Sun Magnetica CHS Ltd.**
7. Cons. No. 400000414717 was disconnected on 22<sup>nd</sup> February 2020. The consumption pattern of Cons. No. 000028000162 (M/s Sun Magnetica Premises CHSL) in the years 2019 and 2021, i.e. before and after this PD is kept on record. After the removal of PD meter of Cons. No. 400000414717, the consumption on Consumer No. 000028000162 increased by an average of 1500 units per month. Such an increase of consumption is because all loads of common area light connected to Consumer No. 400000414717

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



were diverted to Consumer No. 000028000162 (Sun Magnetica Common Meter). The consumption pattern and CPL of Sun Magnetica Society Common Area are kept on record.


8. As per MSEDCL's CPL of PD Cons. No. 400000414717, the disputed connection; consumption of 60521 KWh units was accumulated over a period of 37 months (i.e. November 2016 to November 2019). This provides an average of approximately **1700 units/ per month**. [Note: Actually, the average over 36 months comes to 1681 units per month.] As per submission of the CPL of Consumer No. 0000280000162 Sun Magnetica CHSL by the Respondent No.1 with their response dated 15/04/2024 to the Forum:

Consumption Pattern (Consumer No. 000028000162 : Common areas of Sun Magnetica Premises CHS Ltd.)

Comparison between 2019 and 2021: -


Table 4:-

| Year                                  | Units | Bill Amount | Year      | Units | Bill Amount | Difference Between Consumption Of Units |
|---------------------------------------|-------|-------------|-----------|-------|-------------|---|
| May 2019                              | 1815  | 27330.00    | May 2021  | 3355  | 57210.00    | 1540                                    |
| June 2019                             | 1997  | 31840.00    | Jun 2021  | 3433  | 58160.00    | 1436                                    |
| Jul 2019                              | 2170  | 41190.00    | Jul 2021  | 3697  | 62750.00    | 1527                                    |
| Aug 2019                              | 1789  | 35176.04    | Aug 2021  | 3499  | 59910.00    | 1710                                    |
| Sept 2019                             | 1890  | 37400.00    | Sept 2021 | 3266  | 55626.78    | 1346                                    |
| Dec 2019                              | 2289  | 45030.00    | Dec 2021  | 4030  | 43010.39    | 1741                                    |
| <b>Average Consumption Difference</b> |       |             |           |       |             | <b>1550 Units</b>                       |

  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai




9. It is critical to emphasize that the 60521 units used over the course of three years (2016–2019) amount to consumption of 1500 units each month. Since Cons. No. 4000004717 was made TD in Mar. 2020, there was an increase in consumption of 1500 units/month on the common area Cons. No. 000028000162 of Sun Magnetica Society, which is comparable to the consumption recorded on Cons. No. 400000414717 between 2016 and 2019 (roughly 1500 units/per-month). This demonstrates that once meter LT 400000414717 was made T.D. in Mar 2020, Sun Magnetica Society unlawfully connected the connections to their other existing Cons. No. 000028000162. This is because Cons. No. 400000414717 was unknowingly being utilized for common area services before it was declared T.D. in Mar 2020. After this realization, Sun Magnetica society illegally diverted the connection of Cons. No. 400000414717 to their Cons. No. 000028000162.
10. In its reply to the Respondent No.1 (MSEDCL) dated 02/03/2020, Sun Magnetica CHS Ltd. stated that Cons. No. 400000414717 and Cons. No. 400000414733 were being used for Shop No. 05 and Shop No. 07 of the Society. However, they were aware that Shop No. 05 (ownership of Mr. Chaphekar) and Shop No. 07 (ownership of Mr. Ramji Singh and 01 other) were responsible and paid their electricity bills. In another reply to the Respondent 1 (MSEDCL) **dated 10/11/2021**, Sun Magnetica CHSL alleged that both PD cons. nos. were being used by the Appellant in the "stilt car parking office area allotted to Mr. Karnavat on a rental basis". It is important to note the inconsistent stance of Sun Magnetica CHSL regarding the usage of electricity from PD Cons. Nos. 400000414717 and 400000414733. Actually, they were being used for Common Area Light.
11. The Forum has relied on false representations made by Society Manager Mr. Joseph Abraham that aforesaid PD meters bearing consumer no. 400000414717 and 400000414733 were used by M/s Karnavat & Associates, the developer of the building. The responsibility to ascertain which load is connected to which meter is only with Respondent No. 1 (MSEDCL). The report of the Assistant Engineer dated 03/10/2019,

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



Mr. Papadkar should have been considered instead of a verbal reply given by biased Society Manager Mr. Joseph Abraham, who has no technical knowledge.

12. The Respondent No.1 has submitted a contrarian stand vide their submissions dated 15/04/2024. The Respondent No.1 has mentioned that the said PD Meters of Cons. Nos. 400000414717 and 400000414733 “was consumed by Shop no. 05 and Shop no. 07, which were of the ownership of M/s. Karnavat and Associates”. As per the Index II of Shop no. 05 and Shop no. 07 (legal ownership documents) **Shop No. 05 is of ownership of Mr. Mahesh Chaphekar and Shop no. 07 is of ownership of Mr. Ramji Singh and 01 other.** Why was M/s. Karnavat and Associates billed for consumption of PD Meter of Cons. No. 4717 and Cons. No. 4733? The Index II of the Shop No. 05 and Shop No. 07 are kept on record. *[Note: It was not clear why the Appellant did not get the name change on the above connections, which were being billed on his name since 2007]*
13. The existing consumer no. for the meter connected to Shop No. 05 is Cons. No. 000011643388 and its existing tenant is SVC Bank. The existing meter connected to Shop No. 07 is Cons. No. 000011643434 and its existing tenant is Federal Bank, not M/s. Karnavat and Associates. The bills of the aforementioned consumer no’s are kept on record.
14. Furthermore, the stand of Respondent 1 in the previous submissions is inconsistent with the latest submission on 15/04/2024. As per its previous submission, the said consumption was being used in the parking space. However, the respondent 1 in its submission dated 15/04/2024 stated that the said load was connected to Shop No. 05 and Shop No. 07 of Sun Magnetica CHSL, which is not of the ownership of the Developer, M/s. Karnavat and Associates.
15. The Respondent No. 1 had ascertained that the said load was connected to the common area light as per spot inspection report dated 03/10/2019. However, because Sun Magnetica CHSL denied paying the huge bill of approx. Rs. 10,30,000/- (Rupees Ten


  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



Lakhs Thirty Thousand Only), the Respondent No. 1 harassed the consumer (being the developer on record of bills) for recovery of the said huge PD arrears of PD Meter of Cons. Nos. 400000414733 and 400000414717.

**B. Legal Points:**

- i. The first bill issued to the Appellant during Nov. 2019 was for the period from Nov 2016 to Nov.2019. It was admitted by the Respondent No. 1 that “there was a slight mistake of Section Engineer of the said connection not made ‘live’ after payment under amnesty scheme, and an explanation has been called for by the Higher Authority”.
- ii. The Forum has not considered, ‘Limitation’ to raise the recovery as per the High Court larger bench order dated 12/03/2019 in W.P.No.10764 of 2011, and also not considered that arrears were not shown ‘continuously accruable’ by Respondent No.1(MSEDCL). Respondent No.1 (MSEDCL) has in violation of the EA 2003 been recovering dues from consumer, when it never reflected these dues as continuously recoverable from 2016-2019. MSEDCL never even raised the bills from 2016-2019 for the said dues, as admitted by them in internal letter dated 18/11/2019.
- iii. As per Electricity Ombudsman Mumbai order in case no. 85 of 2008 dated 16/12/2008, i.e., after permanent disconnection, Respondent 1 (MSEDCL) can only recover arrears which are reflected in CPL without charging interest. Thereby recovery of arrears, if any, is to be recovered from the actual consumer who has consumed the electricity (Sun Magnetica Society) in line with the above EOM order and the Appellant should be refunded with applicable Interest.
- iv. The Appellant has paid to date under protest a huge amount of **Rs. 18,35,507/- (Eighteen Lakhs Thirty-Five Thousand Five Hundred Seven Only)** with DPC and interest towards the total charges of Rs. 14, 70,000/-, [14,03,080/- (PD Cons. No. 400000414717) and 66,060/- (PD Cons. No. 400000414733)].

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai





- v. As per the Internal Letters of Respondent utility (MSEDCL) from the Additional Exec. Engineer to the Executive Engineer of Respondent No.1 (MSEDCL), THANE-1 vide Letter AKA/GOV/BILLING/ 1485 and 1488 dated 16/12/2021, the B80 prepared for recovery from the Appellant Meter 0000280000103 was **incorrectly charged**. Instead of charging Rs.11,74,730/-, the B-80 was prepared for Rs. 14,03,080/-. Recovery of Rs. 14, 08,300/- is being carried out against the Appellant of the incorrect amount, with DPC and interest on the incorrect amount of Rs. 14, 03,080/- for all these years. Because of this mistake of the Respondent No. 1, the consumer has had to pay Rs. 18,35,700/- (Rupees Eighteen Lakhs Thirty-Five Thousand Seven Hundred) on the amount of Rs. 14,03,080/- with DPC and Interest.

### **C. Violation of Supply Code:**

No bill was raised by the Respondent No. 1 (MSEDCL) for three years. It means that the Respondent No. 1 did not take any meter reading for 3 years, which is breach of duty and as per **Regulation 14.3 of the Electric Supply Code 2005:**


*“Meter reading shall be undertaken by the authorized representative at least once in every two months”. It means it is **violation of principles of said Code**. And for this reason, the concerned staff shall be held responsible for the economic loss to the Government and such amount **shall be recovered from the concerned staff and not from the third party who is not even the consumer.**”*

### **Violation of Act:**

Under Section **56 (1) and 56 (2)** of the Act, the mandatory procedure was not followed by the Respondent No. 1. Section 56 is related to the **Disconnection of supply in default of payment**. Under Section 56 (1), the Respondent No.1 **failed to issue a fifteen days'** clear notice in writing, before disconnection of Meter.

Under Section 56(2) of the Electricity Act:

*“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*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai




*unless such sum has been shown continuously as recoverable as an arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.*

In the present case although the PD Meter of Cons. No. 4717 was claimed to be Live from November 2016, it became first due in December 2016. The bill for the period could only be recovered until December 2018 as per the Section 56(2). In this case, bills of December 2016 – 2019 for PD Meter of Cons. No. 4717, cannot be recovered as the period of recovery has lapsed.

The arrears were created due to the dereliction of duty of concerned officers. Transferring of arrears to the wrong consumer, and recovering incorrect dues from the consumer by harassing the consumer and disconnecting their electric supply three times, is unjust.

Furthermore, from the Spot inspection Report of the Additional Executive Engineer, Mr. S.D Papadkar dated 03/10/2019 and the subsequent letters dated 18/02/2020 and 22/02/2020 to Sun Magnetica CHS Ltd., it is evident that the said supply was being used for Common Area Light of the society and not by M/s. Karnavat and Associates (consumer) for his personal consumption.

- (v) In view of the above, the Appellant prays that the Respondent No.1 be directed
- a) to refund to the consumer, (Consumer no. 000028000103, M/s. Karnavat and Associates) all amounts paid by the consumer under protest amounting to **Rs.18,35,507/- (Eighteen Lakhs Thirty-Five Thousand Five Hundred Seven Only) with DPC & interest** towards arrears of PD Meter of Cons. No.400000414717 and PD Meter of Cons. No. 4000004733.

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai




- b) to set aside the debit bill adjustment shown Rs. 14,03,800/- with Consumer No. 000028000103 in Nov-21 bill.
- c) to recover arrears, if any, from the actual consumer who has used the actual supply, Sun Magnetica Society (Consumer No. 000028000162) as per MSEDCL letter dated 22/02/2020 limited to 24 months period without DPC and interest in twelve monthly instalments.

5. After the hearing, this office has received an e-mail from Respondent No. 2, Sun Magnetica Premises CHS Ltd. on 30/08/2024. The Society apologized for not attending the hearing on 23/08/2024 and requested to give an opportunity for next hearing. As per the Society's request, the concerned case papers were sent by e-mail dated 30/08/2024 at 5.39 PM. This office e-mail dated 04/09/2024 reminded the Society to submit written arguments within seven days. Accordingly, the Respondent No. 2 by its e-mail dated 09/09/2024 has submitted its written reply. The Respondent No.2, Sun Magnetica Co.op. Hsg. Society was given an opportunity for hearing and a physical hearing was scheduled where the Respondent No. 1, MSEDCL and the Respondent No. 2 attended the hearing. The Appellant was not able to attend due to his busy schedule outstation. A summary of the case was put before the Respondent No. 2, and it being an affected party was asked to submit the following:

- (i) Photos of the building including the shops and the common area.
- (ii) Its written say regarding the common area being used by whom? If parking, whether for customers / members?
- (iii) The society to provide an explanation regarding jump of 1200 units in the common area connections No. 000028000162 and no. 000028000171.


The Respondent No. 2's (Society's) submissions and arguments are stated as below:

- i) The Respondent No. 2 has no concern with the present dispute, which is purely between the Appellant and MSEDCL. The Appellant has maliciously and unnecessarily arrayed the Respondent No. 2 as a party to the present proceedings. Respondent No. 2 ought to be deleted/discharged from the present proceedings.

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



- ii) The Respondent No. 2 was proposed as a registered Society in 2015 and was registered in 2018. *[Note: It was informed during the hearing that the Appellant / builder has got the registration of the society cancelled and it is under dispute, to be heard before the concerned Minister / C.M.]*
- iii) There are two common connections in the name of the Society i.e. Connection No. 000028000162 and Connection No. 000028000171 which were originally in the name of the Appellant, but were duly and legally transferred in the name of Respondent No. 2 in the records of MSEDCL. Both these connections were used by Respondent No. 2 to supply power to its common areas and lifts. Till today, the said connections are in the name of the Respondent No. 2 wherein the Respondent No. 2 pays its electricity bills without any default.
- iv) The dispute in question involves two electricity connections bearing Connection No. 400000414717 and Connection No. 400000414733 which were obtained in the name of the Appellant, and were used solely by the Appellant for its personal/commercial usage i.e. running his office space etc. Even till date, as per records of MSEDCL, the said two electricity connections in dispute are in the name of the Appellant.
- v) The Appellant is trying to shift its burden of payment on the Respondent No. 2 without any just and legal ground. The Appellant's contentions are baseless for the following reasons:
- (i) The Appellant has given no justification as to why the two electricity connections in dispute are still in the name of the Appellant, and why the two electricity connections in dispute, if allegedly were used by the Respondent No. 2, were never transferred to the name of Respondent No. 2, while the other two connections bearing Connection No. 000028000162 and Connection No. 000028000171 were duly and legally transferred.
- (ii) The Appellant has not provided any documentary evidence that it ever requested either MSEDCL or the Respondent No. 2 to transfer the two electricity connections in dispute, in the name of the Respondent No. 2.
- (iii) As per the spot inspection report dated 03/10/2019 prepared by MSEDCL, it is clearly established that commercial shops and office space was being run by the Appellant, and the two electricity connections in dispute were used by

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai




the Appellant. As per this spot inspection report it is clearly established and admitted by the Appellant that there was usage of 180 TL, 150 CFL, 2 ACs and 2 PCs through the two electricity connections in dispute. The usage of these appliances reveals that the two connections were used by the Appellant for running commercial shops and office space, as such a large number of appliances cannot be used for Society's common areas and lifts.

- (iv) As per the spot inspection report, it is revealed that 2 ACs and 2 PCs were being used through the two electricity connections in dispute. It is quite baffling as to how AC's and PC's can be used for common areas and lifts.
- (v) MSEDCL has time and again visited the premises, taken photographs and confirmed the fact that the two electricity connections in dispute were used by the Appellant for running commercial shops and office space. *[Note: During the hearing MSEDCL was asked to clarify its stand in this regard. It clarified that as per its inspection; the majority load of the disputed connections was due to the AC's and not the lights]*
- vi) The Respondent No. 2 has preferred Civil and Criminal cases against the Appellant before various Courts in Mumbai for acts of omissions, commissions and wilful defaults w.r.t several issues regarding the society in question. The Appellant therefore, in order to harass the Respondent No. 2 is wrongly arraying and impleading the Respondent No. 2 in the present proceedings.

6. In reply to the additional queries raised by the EO, the Respondent No. 2 stated as below:


- (i) The Respondent No.2 described the building, which is divided into two parts,
  - Ground + 1 consisting of 10 shops mainly of 4 to 5 banks, furniture shop, etc. with terrace and basement. The terrace consists of two restaurants with garden. The basement has parking space for upto 10 cars, and also has a cash depot of one of the banks, i.e. Federal Bank.
  - Ground + 6 consisting of a podium with no basement.
- (ii) The Appellant, Karnavat Associates (developer of the Society) had made an office measuring about 1200 sq.ft. carpet area in the parking area i.e. the basement which

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



is illegal. When the billing issue arose, the Appellant demolished the said office. This was his sale office at the time of construction of the said building.

- (iii) There is an open parking in the compound where car parking space is allotted to the members.
- (iv) The society also stated that there is an (unauthorised) restaurant / hotel in the name of 'Harbour' in the premises of the Society, namely in the stilt portion (podium) and garden above it. At present, its (illegal) electricity connection has been disconnected. Its electricity connection as well as that of 1 or 2 offices like Bajaj Alliance is also in the name of Karnavat Associates.
- (v) The construction of the building started in 2006. In 2015 the proposed society was formed, and registered in 2018. However, the developer / builder got it cancelled. The society was paying higher maintenance charges to the builder from 2006 to 2015, hence it was interested in forming the independent society as soon as possible. However, the builder is interested in retaining control and monopoly of the complex, as he gets huge unauthorised 'transfer / sale' charges for giving his NOC.
- (vi) On cancellation of the registration, the society filed a petition with the Hon'ble Bombay High Court which was diverted to the government to give a decision. The case is pending at the government level.
- (vii) Regarding the jump in consumption of connections no. 000028000162 and no. 000028000171, the society explained that earlier one lift was kept in disuse by the Appellant, by not paying the maintenance charges of the lift company OTIS. The Society cleared the dues and re-started this lift, which might have led to increased consumption. Also, earlier the lighting in the common area was inadequate hence the society increased the lighting. Similarly, water pumps were not maintained properly earlier; the society started 24-hour water supply. Due to all these factors, the consumption of the society would have increased from 2020-21.
- (viii) The Society also claimed that at that time, the keys to the meter room were with the Appellant. Society has received the keys just 2 years ago. The Appellant retained the keys to the meter room and the society had no access to it. It cannot be ruled out that he was diverting some connections for his own interests.

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



## Analysis and Ruling

7. Heard the parties and perused the documents on record. The Appellant is the developer of the building known as Sun Magnetica Premises Society Ltd. There are four connections of the Society and Developer which were claimed to be used for common purpose of the Society like water pump, lift, lighting of common area of the Society. The details of these four connections are tabulated in Table 1. The dispute in this case relates to connections No. 400000414717 and 400000414733, specifically no. 400000414717, as to who is responsible to pay the arrears of this connection. The Appellant (builder / developer) claims that the said connection is that of common areas of the society, while the society claims that it is a private connection used by the Appellant for running commercial shops and office space.

8. The following issues are framed for determination of the case.


**Issue 1: Whether MSEDCL is within its legal right to recover the outstanding dues of a permanently disconnected Cons. No. 400000414717 (Outstanding Dues of Rs. 11,74,727.68 as on Oct. 2020) and Cons. No. 400000414733(Outstanding Dues of Rs. 54837.89 as on Oct. 2020).**

The connection No. 400000414717 remained unbilled from December 2016 to November 2019, as it was mistakenly reflected as PD in the system. It was made live in the month of Oct. 2019. A provisional supplementary bill of Rs. 9,70,950/- was issued for 60521 units in Nov. 2019. This amount remained disputed and unpaid. The connection was made PD finally on 10.09.2020 with a final reading of 67208 units, with outstanding dues of Rs.11.74 lakhs.

### **Part A: Considering the connection as Permanently Disconnected from Oct. 2020:**

- The Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 came in force from 25.02.2021. The regulations relating to old outstanding dues of permanent disconnection (PD) cases is reproduced below:

### **16. Billing**

.....  
  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



16.9.2 *No sum due from any Consumer shall be recoverable after the period of Two (2) 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 as per Section 56 (2) of the Act except for permanently disconnected consumer.*  
..... **(Emphasis added)**

16.9.3 *In case of premises which are permanently disconnected or demolished for reconstruction, the liability of the arrears, if any, shall be passed on to the owners / occupiers.*


**It is clear from the above provision that the Respondent No.1 is entitled to recover arrears even beyond 2 years, in the case of a PD consumer.** The electricity dues, where they are statutory in character under the Electricity Act, 2003 and as per the terms and conditions of supply, cannot be waived of in view of the provisions of the Act itself, more specifically Section 56 of the Electricity Act, 2003. The period of limitation under Section 56(2) is applicable to the sum due under **Section 56 for live consumers and not PD consumers.**

Hon'ble Supreme Court by its Judgement dated 19th May 2023 in Civil Appeal No 2109- 2110 of 2004 in Case of K C Ninan V/s Kerala State Electricity Board & Others has concluded regarding the recovery of PD arrears as below:

*"I. Conclusions*

328. *The conclusions are summarised below:*

- a. *The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;*
- b. *The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;*


  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai





- c. *For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;*
- d. *A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;*
- e. *The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;*
- f. *The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;*
- g. *The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;*
- h. *The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;*
- i. *The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and*
- j. *In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.*

329. *Pending applications, if any, shall stand disposed."*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai




**Part B: If we consider the connection No. 400000414717 as 'live' on site, however, not billed as the Connection was mistakenly recorded as 'PD' in the Billing System:**

- The unbilled period of this connection was from Dec. 2016 to Nov. 2019 i.e. 36 months. If the connection is treated as 'live' and not PD, then the recovery period discussed above would be restricted to 3 years, as per the judgement of the Hon'ble Supreme Court mentioned below.
- 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.
- 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*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



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

- The Hon’ble Supreme Court in its Judgment 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. for recovery of **escaped billing**. The important paras of this Judgement 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. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that it is a case of “escaped assessment “and not a case of “deficiency in service”. Aggrieved by the said Order, the appellant is before 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*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai




*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*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



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.

27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. .... ”


- It is important to note that in the above Judgment, the assessment period for escaped billing is applied for **about three years**. In the instant case also, the Respondent has issued a supplementary bill towards accumulated consumption **for the period from Dec. 2016 to Nov. 2019 which is three years**.
- 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—

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



- (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) *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) *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 | <i>Any suit for which no period of limitation is provided elsewhere in this Schedule</i> | <i>Three years</i> | <i>When the right to sue accrues</i> |
|-----|--|--------------------|--------------------------------------|

- 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 **in Nov. 2019 in the presence of the Appellant**. Hence, **the cause of action arose in Nov. 2019**. The Respondent immediately issued the supplementary bill in **Nov. 2019** to the Appellant. The Limitation Act, 1963 describes that the suit can be filed within 3 years from the date of cause of action. In the instant case, a suit has not been filed; however, it similarly applies that action has **to be taken at least within the prescribed period of limitation of three years**.

  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai



- Hence, we hold that retrospective recovery towards accumulated consumption should be **limited to three years counting from the date of detection of mistake / cause of action.** Therefore, we hold that in the instant case, the valid recovery period will be three years period retrospectively from Nov. 2019 i.e., **from December 2016 to Nov. 2019. This is also the actual period of recovery.**
- Considering all these aspects, Issue 1 is answered in the affirmative.


9. So far as the connection No. 400004144733 is concerned, there is no spot inspection report and the outstanding dues of Rs. 54837.89 in Oct. 2020 as fixed charges were paid by the Appellant. We hold that this bill is justified, and the Appellant has correctly paid it. The amount paid towards connection No. 400004144733 is correct which is not refundable, and the issue of the second connection is totally closed.

10. **Issue 2: Whether it is the Appellant or Respondent No. 2, Sun Magnetica CHS Ltd. which has consumed the electricity of Cons. No. 40000414717 during the period from Dec. 2016 to Nov. 2019? Which party is liable to pay the arrears?**

11. **Issue 3: What is the proportionate consumption of electricity by the parties?**

This office has charted the consumption patterns of the common area connections no. 000028000162 and no. 000028000171 of Sun Magnetica Premises CHS Ltd.as per data available in CPL.

Table 5:

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



| Consumption Pattern of Sun Magnetica Premises CHS Ltd. Cons. No.000028000162 |   |               |               |               |               |               |               |               |
|--|---|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Year   | 2016-17   | 2017-18       | 2018-19       | 2019-20       | 2020-21       | 2021-22       | 2022-23       | 2023-24       |
| Month  | Cons. (Units)   | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) |
| Apr  | 1964  | 1300          | 1750          | 2021          | 238           | 3697          | 3068          | 3209          |
| May  | 2325  | 1416          | 1890          | 1815          | 238           | 3499          | 3158          | 3077          |
| Jun  | 1483  | 1465          | 2171          | 1997          | 238           | 3266          | 2938          | 2988          |
| Jul  | 1658  | 1411          | 1850          | 2170          | 13342*        | 3480          | 3039          | 3416          |
| Aug  | 1246  | 1696          | 2235          | 1789          | 2784          | 3695          | 2735          | 3375          |
| Sep  | 1579  | 1855          | 2367          | 1890          | 2769          | 4030          | 2701          | 3330          |
| Oct  | 1248  | 1629          | 2206          | 2155          | 2969          | 3735          | 3150          | 3359          |
| Nov  | 1437  | 1854          | 2944          | 1844          | 3151          | 3442          | 3072          | 2996          |
| Dec  | 1292  | 2196          | 2612          | 2289          | 3313          | 3337          | 4096          | 3307          |
| Jan  | 1296  | 3028          | 2807          | 2196          | 3389          | 3355          | 3439          | 3373          |
| Feb  | 1732  | 2066          | 2506          | 2667          | 3046          | 3433          | 3335          | 3073          |
| Mar  | 1006  | 1397          | 2511          | 1867          | 3433          | 4014          | 3547          | 3270          |
| Total  | 18265   | 21313         | 27849         | 24700         | 38196         | 42983         | 38278         | 38773         |
| Avg./Month   | 1522  | 1776          | 2321          | 2058          | 3183          | 3582          | 3190          | 3231          |
| Note   | 1*. Accumulated consumption of April to July 2020 due to Covid-19 Pandemic. |               |               |               |               |               |               |               |

Table 6:

| Consumption Pattern of Sun Magnetica Premises CHS Ltd. Cons. No.000028000171 |   |               |               |               |               |               |               |               |
|--|---|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Year   | 2016-17   | 2017-18       | 2018-19       | 2019-20       | 2020-21       | 2021-22       | 2022-23       | 2023-24       |
| Month  | Cons. (Units)   | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) | Cons. (Units) |
| Apr  | 2567  | 0             | 216           | 380           | 86            | 1611          | 260           | 17            |
| May  | 2429  | 798           | 0             | 277           | 86            | 1631          | 5             | 23            |
| Jun  | 2415  | 391           | 670           | 353           | 86            | 1616          | 11            | 23            |
| Jul  | 2146  | 287           | 288           | 394           | 6534*         | 1678          | 20            | 15            |
| Aug  | 1548  | 328           | 277           | 0             | 1617          | 1194          | 18            | 10            |
| Sep  | 2068  | 0             | 0             | 0             | 1596          | 1065          | 18            | 8             |
| Oct  | 890   | 507           | 0             | 1000          | 1587          | 1034          | 17            | 19            |
| Nov  | 931   | 416           | 0             | 600           | 1644          | 1039          | 16            | 18            |
| Dec  | 724   | 0             | 0             | 129           | 1690          | 1113          | 17            | 23            |
| Jan  | 726   | 857           | 1446          | 1098          | 1701          | 1070          | 17            | 9             |
| Feb  | 667   | 0             | 361           | 1348          | 1539          | 877           | 15            | 0             |
| Mar  | 304   | 716           | 222           | 944           | 1653          | 315           | 17            | 0             |
| Total  | 17416   | 4299          | 3480          | 6523          | 19561         | 14243         | 431           | 165           |
| Avg./Month   | 1451  | 358           | 290           | 544           | 1630          | 1187          | 36            | 14            |
| Note   | 1.* Accumulated consumption of April to July 2020 due to Covid-19 Pandemic. |               |               |               |               |               |               |               |

The total consumption per month of the above connections is tabulated as below:


  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai






Table 7:

| Year    | Cons. No.000028000162 | Cons. No.000028000171 | Total       |
|---------|-----------------------|-----------------------|-------------|
|         | Units/Month           | Units/Month           | Units/Month |
| 2016-17 | 1522                  | 1426                  | 2948        |
| 2017-18 | 1776                  | 299                   | 2075        |
| 2018-19 | 2321                  | 272                   | 2592        |
| 2019-20 | 2058                  | 465                   | 2523        |
| 2020-21 | 3243                  | 1514                  | 4756        |
| 2021-22 | 3582                  | 1161                  | 4743        |
| 2022-23 | 3190                  | 35                    | 3224        |
| 2023-24 | 3231                  | 14                    | 3245        |

From the above Table 5, it is seen there was a considerable rise in consumption from the year 2020-2021 onwards.

The unbilled consumption for consumer no. 400000414717 was 60521 units for the period of Dec. 2016 to Nov. 2019 (36 months) i.e. 1681 units per month. The question is, who was consuming these units? We have examined the spot inspection report to determine this issue. However, it is not clear on this aspect. The load comprises of 180 tube lights, 150 CFLs, 2 ACs and 2 PCs. It can be reasonably inferred that the ACs and PCs were being used by the Appellant's office. However, it is difficult to determine who was using the lights and in what proportion. We are inclined to hold that both the parties share in this usage. It is very difficult to determine the exact share of M/s. Karnavat & Associates and Sun Magnetica Premises CHS Ltd. as per the Spot inspection report dated 03/10/2024 of the Respondent No. 1, as the lighting load of both the users were common and not bifurcated in the report.

12. During the hearing MSEDCL clarified that the major portion of this load belongs to the use of ACs, hence this burden would fall on the Appellant / developer. We also take note of the fact that the Appellant did not come before this Forum with clean hands. There is a disputed consumption on account of a 'Harbour Hotel / Restaurant' which the builder has allowed. He initially filled A-1 Forms for shops no. 5 & 7, but used it for his office and / or alleged common connections. He again took fresh connection for shop no. 5 & 7, thus

  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai



there were double connections for these shops. MSEDCL also pointed out during the hearing that there are signs of the Appellant's demolished office in the basement, with an area of around 1200 sq. ft.

13. Also, the Appellant kept silent on not receiving any bill to his office during the period of Dec. 2016 to Nov. 2019 (36 months). This is the period when the connection was actually 'live', but mistakenly recorded as 'PD' in the system. He was fully aware of this meter becoming 'live' as he had himself paid its arrears under the P.D. amnesty scheme. For all these reasons, we hold that out of the outstanding dues of Rs. 11,74,728/-, the Appellant, M/s. Karnavat & Associates, cons. no.400000414717 is liable to pay 80%, i.e. Rs.9,39,782.4. Considering the depth of the grievance, it is not necessary to levy interest and delayed payment charges for this amount.


**Issues 2 & 3 are answered as discussed above.**

14. The Forum failed to understand the intricacies of the issue and hence the order of the Forum dated 17/05/2024 is partially modified. The Respondent No.1 is directed

- (a) to issue a revised recovery bill of Rs. 9,39,782.4 to the Appellant towards connection no. 400000414717 (instead of outstanding dues of Rs. 11,74,728/-) without interest and DPC.
- (b) to reconcile the account of the Appellant (M/s. Reach Cargo with Cons. No. 000028000103) and necessary credit be passed on without any interest.
- (c) Other prayers of the Appellant are rejected.
- (d) The compliance report be submitted within a period of two months from the date of issue of this order.

15. The Respondent No.1 is advised

- (A) to issue a revised recovery bill of Rs. 2,34,945/- to Sun Magnetica Society Ltd. towards 20 % portion of connection no. 400000414717 without any interest and be added in the bill of Consumer No. 000028000162.


  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



(B) The Respondent 2, Society may be granted three equal monthly instalments without any DPC and interest for payment facility.

16. The representation of the Appellant is disposed of accordingly.

Sd/  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

