**VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA**
First Floor 33/11 kV substation, Hyderabad Boats Club Lane Lumbini Park, Hyderabad - 500 063

:: Present:: **Sri. NAGARAJ NARAM**

Monday the Twenty First Day of March 2022

**Appeal No. 10 of 2020-21**

Preferred against Order dt.18.02.2020 of CGRF in CG No. 392/2019-20 of Medchal Circle

Between

M/s.Oyster Medisafe Pvt. Ltd.,
Sy No.722, Dabilpur Village, Medchal Mandal,
Medchal- Malkajgiri Dist - 501401. ... Appellant

And

1. The ADE / OP / Medchal / TSSPDCL / Medchal Dist.
2. The DE / OP / Medchal / TSSPDCL / Medchal Dist.
3. The SAO / OP / Medchal Circle / TSSPDCL / Medchal Dist
4. The SE / OP / Medchal Circle / TSSPDCL / Medchal Dist. …..Respondents

The above appeal filed on 18.11.2020 having come up for final hearing before the Vidyut Ombudsman, Telangana State on 18.11.2020 at Hyderabad in the presence of Sri. B. K. DASH counsel for the appellant along with Sri. Ramesh Pawle for the appellant and Sri. G. Madhusudhan Reddy – SAO / Medchal / TSSPDCL for the respondents and having stood over for consideration, based on the record and submissions of both parties, the Vidyut Ombudsman passed the following;

**AWARD**

This is an appeal filed against the order dated 18.02.2020 of CGRF in C. G. No. 392 / 2019-20 of Medchal circle.

2. The appellant has stated and submitted in the appeal as follows. That the present appeal under clause 3.19 (a) of Regulation No. 3 of 2015 of TSERC is being filed against the impugned order 18.02.2020, passed by Consumer Grievance Redressal Forum (CGRF-II) of TSSPDCL at Greater Hyderabad in C. G. No. 392 / 2019-20 of Medchal circle, whereby and whereunder, the CGRF-II has rejected the complaint, thereby advising the appellant to pay the balance amount. That the brief facts for filing the present appeal are as under:

a) The appellant-industry had been availing power supply of 600 KVA at 11 KV

with high tension (HT-I) service connection No. RRN 1439 (now MCL 1439) from 02.09.2007.

b) In April, 2012 and onwards, the appellant got its factory expanded, resulting the necessity of increased power consumption. Therefore, the appellant sought before the respondents to enhance the sanction load from 600 KV to 950 KVA.

c) On 13.08.2012, the appellant for enhancement of the sanctioned load from 600 KVA to 950 KVA and approval for the same was granted by the respondents on 30.08.2012.

d) On 04.10.2012, by nature and process flow, the appellant industry falling under 'Multi Layer Plastic Blown / Polymer industries' was treated under the category of 'continuous process industry' with immediate effect vide amended notification dated 04.10.2012 in addition to HT industry sectors already notified, thereby permitting the appellant industry to avail 60% of contracted maximum demand (CMD) as permitted demand level (PDL) during off-peak and 30% CMD as PDL during peak hours with permitted consumption level (PCL) as approved by APERC vide proceedings No .14 dated 14.09.2012. Therefore, the appellant was ought not to have been levied the excess PDL and excess PCL charges for the month of October 2012 onwards.

e) On 22.10.2012, the appellant deposited of a sum of Rs. 8,82,520/- with the respondents vide deposit receipts of the respondents towards development charges and security deposit in compliance to the aforesaid approval dated 30.08.2012 for enhancement of the sanction load from 600 KVA to 950 KVA and also fulfilled other formalities a formal HT agreement was to be executed as per the format given by the respondents, which was submitted by the appellant on 04.12.2012 before the respondents.

f) In view of the power shortage, the respondents had approached the then Andhra Pradesh Electricity Regulatory Commission (APERC) seeking permission to impose restrictions on the power supply. The Commission had taken note of the energy deficit in the state and approved the restriction and control (R and C) measures.

g) On 01.11.2012, the then APERC vide its proceedings at serial No.19 (d) directed that the distribution licensee shall not release new additional load for the existing services, till the restriction are removed. Clause 19 (d) reads as:

”,,,,,,,,(d) The distribution licensee shall not release new additional loads

for the existing service till these Restriction are removed. However, the derated demand can be restored to original capacity on a request from a consumer …….”

Further last para of the said proceedings dated 01.11.2012 provides that

"....These orders shall come into force w.e.f,00:00 hrs on 07.11.2012 and will be in force till 31st March 2013”.

h) It is stated that the mandate of the aforesaid notification was not applicable to appellant because the additional load of 350 KVA was sanctioned 2 months prior to the order dated 01.11.2012 of APERC and on 22.10.2012 the appellant had also deposited a sum of Rs. 8,82,520/- towards development charges and security deposit and also fulfilled other formalities.

i) Despite the fact that the appellant industry falls under the category of continuous process industry with effect from 04.10.2012 the appellant was not treated in the said category and was slapped with punitive penalty charges of Rs. 2,66,93,339/- from September 2012 to july,2013 in an unfair manner even incorrectly taking into consideration CMD as 600 KVA. The respondents have admitted the said fact in para 4 of its written statements as

” The R & C penalty bills were issued to the consumer under non-continuous process industry from September 2012 to july-2013……”

More interestingly the mistakes on the part of the respondents was to such an extent for the month of January and February 2013 two bills were sent in the continuous process category and again from March 2013 till july 2013 were sent in the Non continuous process category. The said glaring and admitted mistakes committed by the respondent are summarized hereunder:

| Bill months | Amount of penalties imposed | Incorrect CMD | Incorrect Category | Correct CMD and Category should have been considered |
|---|---|---|---|---|
| Sept 2012 | 61,433 | 600 KVA | Incorrectly Considered in Non-continuous process category | 950KVA |
| Oct 2012 | 3,02,924 | 600 KVA | Incorrectly Considered in Non-continuous process category | 950 KVA and in continuous process category |

| | | | | |
|---|---|---|---|---|
| Nov 2012 | 25,72,587 | 600 kVA | Incorrectly Considered in Non-continuous process category | 950 KVA and in continuous process category |
| Dec 2012 | 44,74,332 | 600 KVA | Incorrectly considered in Non-Continuous Process Category | 950 KVA and in continuous process category |
| Jan 2013 | 42,05,580 | 600 kVA | Considered continuous process | 950KVA |
| Feb 2013 | 46,29,689 | 600 kVA | Considered continuous process | 950KVA |
| Mar 2013 | 33 ,00,039 | 600 kVA | Incorrectly considered in Non-Continuous Process Category | 950 KVA and in continuous process category |
| Apr 2013 | 16,40,424 | 600 kVA | Incorrectly considered in Non-Continuous Process Category | 950 KVA and in continuous process category |
| May 2013 | 48,06,600 | 600 kVA | Incorrectly considered in Non-Continuous Process Category | 950 KVA and in continuous process category |
| Jun 2013 | 4,39,615 | 950 kVA | Incorrectly considered in Non-Continuous Process Category | Continuous process category |
| Jul 2013 | 2,60,116 | 950 kVA | Incorrectly considered in Non-Continuous Process Category | Continuous process category |
| 2,66,93,339 (Total penalties levied on the Appellant) | | | | |

j) The appellant received the aforesaid high value penalties bills in the form of supplementary bills from the respondents with the above stated mistakes and even with threat of disconnection if such huge amount of penalties were not deposited. In the compelling circumstances, the appellant was constrained to deposit a sum of Rs. 1,14,21,084 under protest which was admitted by the respondents vide its letter dated 12.04.2017 stating that the total payment made by the consumer Rs. 1,14,21,084 against the penalties levied.

k) Vide order dated 08.08.2013 the then APERC relaxed the R and C penalties to the extent of 50% of the levied penalties and ordering for adjustment of the amount paid in excess of 50% in the future bills of the consumer and the said order was implemented with effect. from 08.08.2013. Whereas the respondents failed to implement the said order with effect from 08.08.2013 in the case of the appellant and even increased the penalty in an absurd manner. Interestingly after a period of about nine months that is on 30.04.2014 a sum of Rs. 1,14,21,084/- was adjusted in the running bill of the appellant in one go. The said glaring and admitted mistakes committed by the respondents are apparent from the statement of account of the respondents. The respondents has also admitted the said mistakes in its written statement dated 24.08.2019 at para 8 as

> "...It is to submit that as per the instruction of corporate office in LR. NO. CGM / (F) / GM (R) / SAO (R) / AO (HT) / D. NO. 1741 / 41 dated 16.04.2014, R & C 50% penalties for an amount of Rs. 1,14,21,084.00 as waived off……"

l) That in the aforesaid circumstance, several representations and follow up by way of reminders were submitted by the appellant before the respondents which were not considered and even mistakes on their part were never acknowledged. On the other hand, the appellant was directed to pay the alleged pending dues. The appellant was directed to pay the alleged pending dues. The appellant was, therefore constrained to issue legal notice dated 09.04.2019 upon the respondent. The respondent sent a reply dated 14.05.2019 to the said legal notice.

m) On 08.07.2019, the appellant filed the complaint before CGRF-2. Notice was issued to the parties for the date fixed. The respondents filed a written submission to the complaint and thereafter the appellant filed a replication to the written submission. On the date of hearing the counsel for the appellant as well as the officers concerned of the respondents appeared and made their respective submissions. The depositions of both the appellant as well as the respondents were recorded before CGRF-II.

n) That CGRF-II, while believing on the contention of the respondents to be true, rejected all the contention of the appellant in an arbitrary manner vide impugned award 18.02.2020.

3. The appellant stated that it is challenging impugned award on the following grounds:

a) The impugned award on the face of it is perverse and contrary to law. The appellant has a strong prima facie case against the respondents and its legal rights is directly affected by the impugned Award.

b) CGRF-II failed to appreciate that as the industry of the appellant was recognized as continuous industry with effect from 04.10.2012 ought not to have levied the excess PDL and excess PCL charges for the month of October onwards and the respondents should have implemented the said order with effect from 04.10.2012. Whereas the alleged credit of Rs. 42,10,406/- on account of 'continuous process category' was passed on to the consumer in January, 2014 that is after a period of 15 months from the date of entitlement of the appellant. Further, the appellant was also slapped with punitive penalty charges of Rs. 2,66,93,339/- from September, 2012 to July 2013 in and unfair manner, even incorrectly taking into consideration CMD as 600 KVA. The mistakes on the part of the respondents was to such an extent that for the month of January and February,2013 two bills were sent in the continuous process category and again from march 2013 till July bills were sent in the non-continuous process category.

c) The mandate of the notification dated 01.11.2012 of the then APERC vide its proceedings at serial No 19 (d) was not applicable to the appellant, because the additional load of 350 KVA was sanctioned 2 months prior to the order dated 01.11.2012 of APERC and on 22.10.2012, the appellant had also deposited of a sum of Rs. 8,82,520/- towards development charges and security deposit and also fulfilled other formalities.

d) CGRF-II failed to appreciate that vide order dated 08.08.2013, the then APERC relaxed the R and C penalties to the extent of 50% of the levied penalties and ordering for adjustment of the amount paid in excess of 50% in the future bills of the consumer and the said orders was implemented with effect from 08.08.2013. Whereas the respondents failed to implement the said order with effect from 08.08.2013 in the case of the appellant and even continued to enhance the penalties for some unknown reasons. Interestingly, after a period of about nine months, that is on 30.04.2014, a sum of Rs. 1,14,21,084/- was adjusted in the running bill of the appellant in one go and enhancement of the

penalties for some unknown reasons is apparent from the following calculations:

| SI. No | Description | Amount |
|---|---|---|
| 1 | R&C penal charges | 2,66,93,239 |
| 2 | Less alleged amount adjusted after considering the appellant industry in the continuous process category in January, 2014 | 42,10,406.0 |
| 3 | Balance as on January, 2014 | 2,24,82,933.0 |

Whereas, in April, 2014, the outstanding figure in the books of the respondents showed as Rs 2,28,42,166.37, thereby the difference of enhanced amount of Rs. 3,59,233.37 has never been explained by the respondents.

e) CGRF-II failed to give any finding on the fact that during the course of proceeding held on 23.08,2019 before the forum, the respondents produced the aforesaid HT agreement, wherein for the first time, it has come to the knowledge of the appellant that the date on the said agreement was altered by the opposite parties by putting correction fluid on the top of the agreement and overwriting therein by putting a date as per their choice that is 20.05.2013. Moreover, the respondents had never communicated the aforesaid alteration to the appellant and no acknowledgement was also taken from it. Interestingly, the date at the end of the agreement has remained the same that is 06.01.2012.

f) CGRF-II failed to appreciate that despite there are glaring and admitted mistakes and lapses committed by the respondents in the aforesaid manner, it has failed to award compensation in favour of the appellant in terms of the prescribed laid down for the functioning of CGRF, which reads as:

> '.....compensation will be adjusted in the future bills, if any lapse of department is seen, as per guaranteed standards of performance of Schedule - I and II……..”

g) CGRF-II failed to appreciate that the order dated 01.11.2012 passed by APERC, was not limited to the restriction on consumers but carried few control measures, which was to be followed by the distribution licensee. As per sub-clause (a) of para 18 of the order, the distribution licensee was directed to issue a warning notice for first violation in a month and in case of subsequent violation, respondent was to disconnect the service of the said consumer for next 24 hours. Whereas, the said directions were also not compiled by the

respondents.

h) The DE and ADE failed to implement these restriction by not providing clear guidance of usage and correct readings on appropriate time in terms of para 20 of the order dated 01.11.2012, which reads as

'.....The Divisional Engineer and ADE operation shall be made responsible for effective implementation of these restriction and control measures.'

i) The findings of CGRF-II in deciding the complaint is perverse, as vide last para of the impugned award, CGRF-II has directed the appellant to deposit the balance amount. For the sake of argument and without prejudice to the rights and contentions of the present appeal and presuming the stand of the respondents to be correct, the appellant is still entitled for refund / adjustment to and amount of Rs. 1,79,667.5/- as per the following calculations:

| Sl. No | Description | Amount |
|---|---|---|
| 1 | R & C penal charges | 2,66,93,239.0 |
| 2 | Less alleged amount adjusted after considering the appellant's industry in the continuous process category | 42,10,406.0 |
| 3 | Balance | 2,24,82,933.0 |
| 4 | Less waiver of 50% penal charges in terms of orders dated 08.08.2013 of APERC | 1,12,41,416.5 |
| 5 | Less amount paid under protest, as admitted by the respondents vide its letter dated 02.04.2017 | 1,14,21,084.0 |
| 6 | Balance | 1,79,667.5 |

4. The appellant has sought the following relief:-

"In view of the facts mentioned in above mentioned paras, the appellant pays for the following relief(s):

a) Allow the present appeal and that the impugned award dated 18.02.2020 passed by CGRF-II may kindly be quashed / set aside.

b) The respondents may please be directed to recalculate the amounts duly taking into consideration the appellant's Industry in continuous process category and CMD @ 950 KVA and to adjust the excess amount paid including towards unknown enhanced charges

in the future bills as expeditiously as possible. The respondent may please be directed to refund / adjust the said amount so incorrectly charged.

c) The respondents may be directed to pay interest on extra amount charged from the appellant at the rate of 12% p.a for the period of holding the funds."

5. The officers of the licensee have filed written submissions on the representation and stated as below vide letter dated dt.17.08.2020 stating as follows:-

a) The supply was released in respect appellant with SC No. RRN 1439 (now MCL1439) with a CMD of 600 KVA at 11 KV voltage under HT Category-1 tariff with effect from 22.09.2007. Subsequently the load was enhanced to 1150 KVA as detailed here under:-

| Sl. No. | CMD | Date of agreement | Date of release of supply | Remarks |
|---|---|---|---|---|
| 1 | 350 KVA | 20.05.2013 | 22.05.2013 | Making total CMD 950 KVA |
| 2 | 200 KVA | 10.03.2014 | 24.03.2014 | Making total CMD 1150 KVA |

b) It is stated that the R and C measures was implemented in the year 2012 with effect from September 2012 and R and C penalties were levied accordingly as per usages of the quotas fixed and as per option exercised under non continuous process industry. The R and C penalty bills were issued to the consumer under non-continuous process industry from September'2012 to July, 2013.

c) The consumer has requested for change in type of industry as continuous process industry in their R and C bills issued from September 2012 to July 2013, as their industry comes under plastic / polymer industries as per APERC orders. In this connection the concerned DE / OP / Medchal had inspected the premises of the consumer and submitted the report vide Lr. No. DEE / OP / MDCL / F. Oyster Medisafe / D. No. 2462 / 13 dated 16.09.2013 wherein it was reported that the consumer is utilising supply of manufacturing of medical disposables that is syringes, IV sets, PM lines, injection needles, BT sets, urine bags etc., in a controlled environment. The basic raw materials that are being used are polyproline, PVC, elastomer, plasticizers, etc. The major part of the load available in the factory are 22 Nos. injection molding machines extrusion

machinery and cannula processing machinery. The total load of these three processing units is about 1000 KW. In addition to this load, the unit has syringe assembly, needle assembly and sterilization which are also automated machinery with heating load. Accordingly, a detailed report was furnished to the SE / LMRC / Corporate Office / Mint Compound / Hyderabad with a request to issue necessary clarification whether to consider the consumer as continuous process industry or not vide letter No. SE / OP / RRC (N) / SAO / HT / D. No. 614 / 13, dated. 30.10.2013. In response the SE / LMRC had issued clarification in letter No. SE (LMRC) / DE (LMRC) / F. No. CR-RRN-50 / D. No. 261 dated 26.11.2013 as follows:-

> "Can be treated as HT-I continuous process industry under Multilayer plastic blown / polymer industry category with applicable PDL and PCL limits with effect from 04.10.2012."

d) It is stated that as per the clarification issued by the SE / LMRC / Corporate Office / Mint Compound / Hyderabad to treat the consumer service under continuous process industry with effect from 04.10.2012, it was decided to revise the R and C penalty bills under continuous process industry. Hence it is was requested the CGM (Finance) Corporate Office / Mint Compound / Hyderabad to issue revised R and C bills for the above HT consumer from September 2012 to July 2013 under continuous process industry vide this office Lr. No SE / OP / RRC (N) / SAO / HT / D. No. 734 / 13 dated 11.12.2013. The R and C bills were revised from September 2012 to July'2013 and an amount of Rs 42,10,406/- was arrived as excess billed and withdrawn and adjusted to the consumer account vide journal entry (JE) No. 58 of January 2014 dated 01.01.2014. The details of revision of R and C bills are as follows:-

| Month / Year | CMD | Already raised | Revised R and C bill | Balance to be withdrawn |
|---|---|---|---|---|
| Sep'2012 | 600 | 61433 | 987 | -60446 |
| Oct'2012 | 600 | 302924 | 3234 | -299690 |
| Nov'2012 | 600 | 2572587 | 1890580 | -682007 |
| Dec'2012 | 600 | 4474332 | 3847960 | -626372 |

| | | | | |
|---|---|---|---|---|
| Jan’2013 | 600 | 4205580 | 4205580 | 0 |
| Feb’2013 | 600 | 4629689 | 4629689 | 0 |
| Mar’2013 | 600 | 3300039 | 2596333 | -703726 |
| April’2013 | 600 | 1640424 | 931262 | -709162 |
| May’2013 | 600 | 4806600 | 3895950 | -910650 |
| Jun’2013 | 950 | 439615 | 420411 | -19204 |
| July’2013 | 950 | 260116 | 60947 | -199169 |
| Total | | 26693339 | 22482933 | -4210406 |

The consumer had made a representation to the corporate office with a request to waive off the entire penalties levied under R and C measures on the grounds of sanction additional load of 350 KVA.

e) Based on the consumer representation dated 06.04.2017, the CGM / Commercial / Corporate Office / Mint Compound / Hyderabad in Memo No. CGM (Comml) / SE (C) / DE (C) / ADE-1 / D. No. 74 / 2014 dated 10.04.2017 had directed furnishing of report for taking necessary action. Accordingly, the detailed report was submitted to the CGM / Commercial vide Lr. No. SE / OP / RRC / N / SAO / AO (HT) / JAO (HT) / D. No. 19 / 17 dated 15.04.2017 and Lr. No. SE / OP / RRC / N / SAO / AO (HT) / JAO (HT) / D. No. 24 / 19 dated 15.04.2017. In addition to the above it is stated that the consumer had applied for additional CMD of 350 KVA. An estimate was sanctioned for the said additional CMD vide memo No.SE / OP / RRCN / Comml / DR. No. 440 / 12-13 / D. No. 1274 / 12 dated 30.08.2012. As per estimate the consumer has paid security deposit Rs. 3,50,000/- vide DOC No. 6020 / 40562 dated 23.10.2012 and development charges Rs. 4,92,480/- vide DOC No. 6000 / 116975 dated 23.10.2012. Accordingly, the CGM / Commercial / Corporate Office / Mint Compound / Hyderabad had not considered the case of the consumer vide Lr. CGM (Comml) / SE (C) / DE (C) / ADE-I / D. No. 759 / 17 dated 08.06.2017 due to the agreement for additional load was not concluded by the consumer before the R and C notification on 01.11.2012 to stop sanctioning of additional loads as per APERC.

f) The consumer has submitted the agreement for additional load of 350 KVA on 06.12.2012 but the then APERC has issued proceeding vide proceeding No. APERC / Secy / 16 / 2012-13 dt. 01.11.2012 to stop release of additional load for existing services until these restrictions are removed. Hence the additional load was not released as per clause No. 19 (d) for the said proceeding. After lifting of ban in May'2013 vide proceeding No. APERC / Secy / 37 / 2013 dated 10.05.2013 the HT agreement for an additional CMD of 350 KVA was concluded with effect from 20.05.2013 and supply was released with effect from 22.05.2013. The R and C penalties were levied for the period from September 2012 to May 2013 on the CMD of 950 KVA as the additional CMD was taken into consideration based on the agreement concluded by the consumer on 20.05.2013. There is no delay on the part of the TSSPDCL in releasing additional load. The copies of the proceedings of APERC, agreement of additional load and MRT test report are enclosed.

g) That the consumer had made a representation to special Chief Secretary to the Government Energy Department, Government of Telangana (GoTS) for waival of balance 50% R and C penalties, The same was referred to the CGM / Commercial vide Lr. No. 1203 / PR (AI) / 2017, dt. 16.09.2017 for necessary action. In response the CGM / Commercial has negatived the request of the consumer and intimated vide Lr. No. CGM (Comml) / SE (C) / DE (C) / ADE-1 / D. No. 2934 / 17 dated 30.10.2017. This office also informed to the consumer for non consideration of balance 50% of R&C penalties vide Lr. No. SE / OP / MCL / SAO / AAO (HT) / JAO (HT) / D. No. 802 dated 06.06.2018. Further it is stated that as per the instruction of the corporate office in Lr. No. CGM (F) / GM (R) / SAO (R) / AO (HT) / D. No. 1741 / 41 dated 16.04.2014, R and C 50% penalties for an amount of Rs 1,14,21,084/- was waived off and adjusted by the consumer and the details are furnished hereunder. Now the consumer is requesting for waiver of 100% R and C penalties is not considered by the corporate office. The details are furnished hereunder:-

| Sl. No. | Month / Year | 100% penal | Withdrawn (50%) |
|---|---|---|---|
| 1. | Sep-12 | 32432.26 | 16216.13 |
| 2. | Oct-12 | 211300 | 105650 |
| 3. | Nov-12 | 1959095.02 | 979547.51 |

| | | | |
|---|---|---|---|
| 4. | Dec-12 | 3917959.02 | 1958979.6 |
| 5. | Jan-13 | 4275580 | 2137790 |
| 6. | Feb-13 | 4697189.6 | 2348594.8 |
| 7. | Mar-13 | 2505750.78 | 1252875.39 |
| 8. | Apr-13 | 940031.41 | 470015.705 |
| 9. | May-13 | 3821470.43 | 1910735.215 |
| 10. | Jun-13 | 420411 | 2102015.5 |
| 11. | Jul-13 | 60946.67 | 30473.335 |
| Total | | 22842166.37 | 11421083.19 |

h. Then the consumer has filed the grievance before the CGRF-II vide CG No. 392 / 2019-20. The CGRF has passed the orders as follows:-

"The Forum agreed with the contention of the Respondents that as per the instructions of the Corporate Office vide Lr. No. CGM (F) / GM (R) / SAO (R) / AO (HT) / D. No. 1741 / 41, dated 16.04.2014 an amount of Rs. 1,14,21,083/- has been withdrawn and credited to the service account of the Consumer Company. And as per the instructions of SE, the service connection of the Consumer Company was considered as Continuous Process and withdrawn an amount of Rs. 42,10,406/- for the period from September, 2012 to July, 2013 and the same was credited to the service account of the Consumer Company vide JE No. 58 of January 2014 dated 01.01.2014 as per the orders of the Honorable APERC Orders. The balance amount was imposed based on the quotas crossed by the consumer including PDL & PCL Limits as per the calculation sheet enclosed by the licensee in their para-wise remarks. Hence the Consumer Company is liable to pay the balance amount. Hence the point no. (i) answered accordingly in favour of the Licensee and against the Consumer Company.

With regard to release of additional 350 KVA CMD on the service connection of the Consumer, the Forum feels that as per the test report the estimate was sanctioned for release of additional CMD of 350 KVA to the service connection of the Consumer Company vide Lr. No. SE / OP / RRCN / Comml / DR. No. 440 / 12-13 / D. No. 1274 / 12, dt:

30.08.2012. On that the Consumer was made Security Deposit of Rs. 3,50,000/- on 23.10.2012. The Hon'ble APERC has issued instructions on R & C on 01.11.2012 vide Proceedings No. APERC / Secy / 16 / 2012-13, dt: 01.11.2012 wherein it was directed the Licensee to not release the additional load for the existing services. After lift of ban the additional load of 350 KVA was released on 22.05.2013 on the service connection of the Consumer Company as per the Hon'ble APERC instructions vide Proceedings No. APERC / Secy / 17 / 2013, dt: 10.05.2013. And the bills are being issued to the service connection of the Consumer from June, 2013 with load of 950 KVA. The Agreement was concluded vide SE / OP / R.R. (North) / Comml. / F. HT / D. NO. 231/16, dt: 20.05.2013 wherein it has clearly given power of Attorney to Sri. Bharat Vasi Reddy who is signed on the Agreement. The CEIG approval was given vide letter dt: 05.01.2013. Therefore there is no delay on the part of the Licensee through the Respondents for release of additional load on the service connection of the Consumer Company. Hence the point no. (ii) is answered accordingly in favour of the Licensee and against the Consumer Company.

In the result the grievance complaint dt: 27.07.2019 filed by the Consumer Company through its authorized person is hereby rejected."

Hence it is requested to kindly consider the above facts and dismiss the appeal filed by the consumer and issue orders for taking necessary action.

6. The appellant has filed a rejoinder to the submission of the licensee. It is stated therein as below:-

a) The Rule 1 Order VI of code of Civil Procedure 1908 (CPC) provides 'pleading', which includes a written statement. As per Rule 15 (4) of CPC, the person verifying the written statement shall also furnish an affidavit in support of its written statement. Whereas, in the written statement filed by the respondents, it has neither filed an affidavit nor verified the written statement in accordance with the provision of CPC. There is also no resolution, passed by the respondents, authorizing the alleged Superintending Engineer, to sign the written statement on behalf of the respondents. Therefore, the written statement should not be taken on record and the facts of the appeal shall also be deemed

to be admitted and on the basis of which admission, the Vidyut Ombudsman may kindly allow the prayer made in the appeal.

b) The law provides that the written statement must deal specifically with each allegation or facts in the appeal. (Reliance: The law laid down by the Hon'ble Supreme court of India in the matter of Badat & Co.Vs East India Trading Co. (Supra) and Sushil Kumar Vs Rakesh Kumar, and the law led down by Hon'ble High Court of Delhi in the matter of Rajiv Saluja Vs Bhartia Industries Limited). Since, the written statement filed by the respondents does not deal with the grounds of the appeal, the same shall be taken to be admitted. The following are the specific averments submitted in the grounds of the appeal have been specifically dealt in the written statement of the respondents.

c) The appellant had applied for the enhancement of sanctioned load from 600 KVA to 950 KVA on 13.08.2012 and the same was lawfully sanctioned / approved on 30.08.2012. Pursuant to the said sanction and approval of the respondents, the appellant deposited a sum of Rs. 8,82,520/- on 22.10.2012 towards development charges, as well as security deposits followed by completion of others formalities. The formal HT agreement submitted by the appellant is disputed as it was manipulated by the respondents and therefore it has no legality in the eyes of law. Therefore, the date of enhancement of sanction load of 600 KVA to 950 KVA was to be treated with effect from 22.10.2012 pursuant to clause 19 (c) of the revised order dated 01.11.2012 passed by APERC on R and C measures. The respondents have laid emphasis on clause 19 (c) of the said order dated 01.11.2012, ignoring the clause 19 (c). Moreover, the onus on the part of the appellant was fulfilled in time and the delay, if any, as on the part of either the respondents or the government. for which the appellant should not be penalized.

d) Admittedly, the industry of the appellant was approved by the CPDCAPL in the category of 'continuous process', vide order dated 04.10.2012 which was to be implemented with immediate effect despite the aid order, the respondents continued to raise R and C penalty bills considering the industry of the appellant in the category of 'non-continuous process', thereby imposing a huge penalty of Rs. 2,66,93,339/-. Admittedly, the said order was implemented after a period of 15 months that is on January, 2014 and passing and alleged benefits of a meager amount of Rs. 42,10,406/- that too without interest on account of delay

and holding for a period of 15 months and also considering the CMD 600 KVA instead of 950 KVA to which the appellant was entitled with effect from 22.10.2012 that is date of deposit of development charges and security deposit, pursuant to the sanction of extended CMD from 600 KVA to 950 KVA on 30.08.2012.

e) The respondents have relied on clause 19 (d) of the order / proceeding dated 01.11.2012 of the Hon'ble APERC. Whereas the written statement is silent and no explanation is being given to the non applicability of clause 19 (c) of the notification, which reads as under:

> ’19 (c) the Distribution Licensee shall not Collect Additional Consumption Deposit during the period covered by these Restriction and control (R & C) measures.’

Since, deposit of development charge and security deposit was collected by the respondents 22.10.2012 that is much prior to the said notification the restrictions was not applicable to the case of the appellant.

f) The written statement has not dealt with as to the reasons for manipulating the HT - agreement by applying correction fluid and putting an alleged date that is 22.05.2013. In case the respondents had any objection to the agreement at the time of its submission, the same should not have been accepted by the respondents and returned to the appellant. The validity of the agreement is dependent upon the concurrence of both the parties. Since, the agreement was manipulated by the respondents without concurrence / knowledge / consent of the appellant, the said alleged agreement should not be considered for the benefit of the respondents.

g) The written statement is silent with reference to the implementation of order dated 08.08.2013 passed by APERC, thereby waiving 50% penalty. There is no explanation as to why the delay of 9 months was caused by the respondents for implementation of the said order and passed on the same on 16.04.2014.

h) The written statement is also silent as to why a sum of Rs. 3,59,233/- was enhanced that is from Rs. 2,24,82,933/- to Rs. 2,28,42,166/- when the money deposited by the appellant under protest was in the possession of the respondents the written statement is also silent as to why the interest will not be passed on to the appellant on its deposit of the alleged penalty when the interest as charged by the respondents from the appellant in the aforesaid

manner.

i) The written statement is also silent as to why the prescribed procedure was not followed in terms of para8) of the proceedings dated 01.11.2012 wherein the respondents was to issue warning notice for first violation and in case of subsequent violation to disconnect the service. In the present case, the respondents, instead of following the said procedure, preferred to impose heavy penalty on the appellant.

j) The written statement is also silent to the submissions of the appellant with reference to the failure of CGRF-II to appreciate the law procedure laid down in the functioning of CGRF-II when there are glaring mistakes and lapses on the part of the respondents that is

> '.....Compensation will be adjusted in the future bills , if any lapse of department is seen, as per guaranteed standards of performance of schedule-I and II…….".

CGRF-II instead of awarding compensation in favour of the appellant in terms of the said procedure rejected the contentions of the appellant.

k) Both the impugned orders as well as the written statement is silent with reference to the stand take by the appellant regarding the alleged direction to the appellant to deposit the balance amount. The alleged balance amount was neither disclosed by the respondents nor any finding were given by the CGRF-II. Therefore, the impugned award is perverse.

l). For the sake of arguments and without prejudice to the rights of the appellant and presuming the entire stand taken by the respondents to be correct, the appellant is still entitled for refund of Rs. 1,79,667.5 in terms of calculator submitted in para (i) of the grounds to the present appeal. In the circumstance, the direction given by CGRF-II, for alleged deposit is perverse.

m. The contents of para 1 of the written statement to the effect it specifies the appellant's connection number and initial CMD is a matter of record and needs no reply. However, the details mentioned in column 1 of the table are incorrect and therefore denied. In reply, it is submitted that the formal HT - agreement dated 04.12.2012 was signed on 06.12.2012 but the respondents had illegally and in an unfair manner altered the same by putting correction fluid and overwriting on the same, without the knowledge and consent of the appellant.

n. The written statements are wrong and its is vehemently denied that the

respondents had levied R and C penalties in accordance with the usages of the quota fixed. The appellant craves leave of that the contents of the relevant para of the preliminary objections may please be read and treated as part and parcel to the reply to the present para.

o. The written statement to the effect they explains the appellant's request is a matter of record and needs no reply. It is further submitted that the respondents had made delay of 15 months in passing the alleged benefits of Rs. 42,10,406/- that too without interest.

p. The written statement is incorrect and therefore denied. It is denied that the appellant's request was based on grounds of 'Sanctioned Additional Load' only. It is pertinent to mention that vide letter dated 06.04.2017, the said request was inter alia based on the following:-

I. The appellant had received the sanction for increase in CMD.

II. The appellant had deposited the development charges and security deposit.

III. Submitted all the necessary documents.

IV. Appellant industry falls under the category of continuous process industry.

V. APERC had ordered to waive off 50% R and C penalties for all customers.

q The written statement is wrong and therefore denied. It is denied that the agreement for additional load was not concluded by the consumer / appellant before the R and C notification dated 01.11.2012.

r. The written statement is incorrect and therefore denied in view of the following. The respondent has misinterpreted para 19 (d) of the order dated 01.11.2012, which is reproduced hereunder. (elsewhere extracted in the order) It is further denied that there was no delay on the apart of the TSSPDCL in releasing additional load. In reply to this it is stated that the proceeding dated 01.11.2012 had not clarified or classified the alleged priorities / categories, but the same were heard much later on 10.05.2013. The responsibility to create awareness amongst the consumer including the appellant, was of the regional Divisional Engineer (DE), the Assistant Engineer (AE) and the DISCOM as per proceedings dated 01.11.2012, which was grossly failed by the respondents.

s. The written statement to the effect it explains several requests made by the

appellant to the CSGED, is a matter of record and needs no reply. Whereas, rest of the para is incorrect. The revised R and C bills as stated in para 4 is amounting to Rs. 2,24,82,933 as on January, 2014 but the figures that shown in para 8 for the said period is Rs. 2,28,42,166. There is no clarification with reference to the enhancement. Presuming the enhancement towards interest, the respondents has not considered to pay interest for the delayed adjustment and holding the amount for a considerable period.

t. The written statement to the effect it cites the extracts of the impugned Award dated 18.02.2020 passed by the CGRF is a matter of record, which is perverse and impugned in the present appeal.

u. In view of the above facts and circumstances, the stand taken by the respondent is not sustainable in the eyes of law and liable to be rejected and this authority may allow the prayers as made in the appeal.

7. The officers of the licensee have filed further written submissions on the rejoinder of the appellant vide letter dated dt.29.09.2020 stating as follows:-

i. The contents in para 1 and 2 of replication submitted by the appellant is not correct and as per the summons received from of the authority. The SE / OP / Medchal has submitted the written statement in the appeal against the order of CGRF in C G No. 392 / 2019-20. The written statement is in accordance with law only.

ii. The appellant has filed this appeal without any grounds and challenging the orders of the CGRF.

iii. The contents in para 2 (a) of replication submitted by the appellant is not correct and the consumer of MCL1439 has applied for enhancement of load from 600 KVA to 950 KVA and the Superintending Engineer / Operation / RR (North) has accorded the permission for enhancement of load from 600 KVA to 950 KVA vide Lr. No. SE / OP / RRCN / Coml / D. No. 440 / 12-13 D. No. 1275 / 12 dated 30.08.2012 and also mentioned the conditions in the sanction letters to submit the CEIG approved, occupancy certificate before release of load and to enter HT agreement for enhancement of load. The consumer has deposited Rs. 8,82,520/- on 22.10.2012 as per estimate sanctioned for enhancement of load, but the consumer has submitted the HT agreement for 950 KVA load on 06.12.2012 that is after receipt of R and C measure form APERC on

01.11.2012. The APERC has issued proceeding on the R and C measures vide proceedings No. APERC / Secy / 16 / 2012-13 dated 01.11.2012 and specified the conditions under clause 19 (C) and 19 (D) (elsewhere extracted in the order)

iv. The consumer has delayed submitting the HT agreement hence the additional load of 350 KVA was not released during R and C measures as per clause 19 (d) of APERC proceedings. After lifting of ban in May-2013 vide proceedings No. APERC / Secy / 37 / 2013 dated 10.05.2013, the HT agreement was signed by Superintending Engineer / Operation / RR North and communicated to the consumer vide Lr. No. SE / OP / RR (North) / Comml / F. HT / D. No. 231 / 13 dated 20.05.2013. Then the Divisional Engineer / Operation has released the additional load 350 KVA on 22.05.2013 and representative of consumer had also signed on the HT test report received from the Divisional Engineer / Operation / Medchal vide Lr. No. DEE / OP / MDCL / Comml / F. HT test report / D. No. 1105 / 13 dated 15.06.2013. The date mentioned in HT test report (that is 22.05.2013) was the criteria for release of additional load but not sanction date or payment date. There is no delay on part of DISCOM in release of additional load.

v. The contents in para 2 (b) in the replication is not correct and initially the R and C penalty bills were issued to the consumer under non-continuous process industry from Sep'2012 to July'2013. The consumer has represented on 26.08.2013 to change of type of industry as continuous process industry. Then the Divisional Engineer / Operation / Medchal has inspected the premises of the consumer and submitted the report on 16.09.2013 as the consumer is utilising supply of manufacturing of medical disposables. The Superintending Engineer / LMRC has issued clarification on 26.11.2013 to consider the industry of consumer as continuous process industry. Accordingly, the R and C bills were revised from September 2012 to July 2013 and an amount of Rs. 42,10,406/- was arrived as excess billed amount and credited to consumer service in January 2014. The process of revision was done immediately after receipt of consumer representation dated 26.08.2012 for change of type of industry into continuous process industry. Hence the allegation of the appellant for delay is not correct.

vi. The appellant has repeatedly mentioned the clause 19 (C) of APERC, R and C proceedings. The APERC has specified clause 19 (C) and stated that the

DISCOM shall not collect additional consumption deposit during R and C period. The consumer has paid the consumption deposit for additional load on 22.10.2012 but not ACD. The DISCOM has not collected the ACD from the consumer during R and C period. Hence the allegations of appellant is not correct.

vii. The HT agreement was signed by the consumer on 06.12.2012 that is after banning on the release of additional load by the APERC during R and C period. Hence, HT agreement was signed by the Superintending Engineer / Operation / RR North on 20.05.2013 and communicated to the consumer in Lr. No. SE / OP / RR North / Comml / F. HT / D. No. 231 / 13 dated 20.05.2013. Hence HT agreement has come into force after signing of both parties only. Further HT agreement is mandatory is not formal. Hence the allegation of the consumer is not correct.

viii. The APERC has issued orders on 50% waiver of penal charges levied during R and C period and as per minutes of APPCC meeting held on 24.04.2014, it was decided to refund the penal charges collected in excess of 50% of R and C penalties. As per the instructions of the corporate office in Lr. No. CGM (R) / GM (R) / SAO (R) / AO (HT) D / No. 1741 / 41 dated 16.04.2014, the 50% of R and C penalties was waived off and adjusted to all the consumer in April 2014. Accordingly, the 50% of R and C penalties for amount of Rs. 1,14,21,084/- was credited to consumer of MCL 1439 in January 2014. Hence, the allegation of appellant is not correct.

ix. The revised bills under continuous process industry from September 2012 to July 2013 were issued to the consumer. The total R and C penalties from September 2012 to July 2013 was Rs. 2,28,42,166/- and 50% of R and C penalties Rs. 1,14,21,083.19 was credited the consumer account in April 2014.

x. The DISCOM has followed the procedures laid in the APERC R and C proceedings. The APERC also specified the clause 18 (b) in the proceedings to levy the penal charges for non-compliance of R and C measures. The notices for first violation was issued to the consumer by the Assistant Divisional Engineer / Operation / Medchal and the consumer has availed the supply during R and C measures. Hence penal charges for non compliance of R and C measures for the period from September 2012 to July 2013 was levied by the DISCOM. Hence the allegation of appellant is not correct.

xi. The CGRF has passed the order in C G No. 392 / 2019-20 in favour of DISCOM and ordered that there is no delay on the part of the licensee for release of additional load on the service connection of the consumer company. Hence the CGRF has not awarded the compensation in favour of the consumer.

xii. The consumer has paid the R and C bills hence no balance amount is pending and no notice issued to the consumer to pay balance amount is per the orders of CGRF.

xiii. That no excess payment during R and C period is available with DISCOM for refund. Hence refund may not arise to all.

xiv. In view of the above facts and circumstances, the objections raised in the replication and appeal filed by the consumer against order of CGRF is not correct and this authority may kindly dismiss the Appeal.

8. The appellant has filed a final rejoinder to the submission of the licensee. It is stated therein as below:-

a) The impugned award on the face of it is perverse and contrary to law. CGRF –II failed to appreciate that as the industry of the appellant was recognized as continuous process industry with effect from 04.10.2012, it ought not to have levied the excess PDL and excess PCL charges for the month of October onwards and the respondents should have implemented the said order with effect from 04.10.2012. Whereas the alleged credit of Rs. 42,10,406/- on account of 'continuous process category was admittedly passed on to the consumer in January 2014 that is after a period of 15 months from the date of entitlement of the appellant and that too without interest and also considering the CMD 600 KVA instead of 950 KVA to which the appellant was entitled with effect from 22.10.2012 that is date of deposit of development charges and security deposit, pursuant to the sanction dated 30.08.2012.

b) Both award and written statement are also silent, as to why two bills that is for the month of January and February 2013 were sent in the continuous process category and again from March, 2013 till July, 2013, bills were sent in the non - continuous process category.

c) CGRF – II failed to appreciate that vide order dated 08.08.2013, the APERC relaxed the R and C penalties to the extent of 50% of the levied penalties in the

future bills of the consumer and the said order was implemented with effect from 08.08.2013. Whereas the respondents failed to implement the said order with effect 08.08.2013 in the case of the appellant and even continued to enhance the penalties for some unknown reasons. Interestingly, after a period of about nine months that is on 30.04.2014, a sum of Rs. 1,14,21,084/- was adjusted in the running bill of the appellant in one go.

| Sl. No. | Description | Amount |
|---|---|---|
| 1 | R and C Penal Charges | 2,66,93,239 |
| 2 | Less alleged amount adjusted after considering the Appellant's Industry in the continuous process category in January, 2014 | 42,10,406.0 |
| 3 | Balance as on January, 2014 | 2,24,82,933.0 |

d) Whereas, in April 2014, the outstanding figure in the books of the respondent showed as Rs. 2,28,42,166.37, thereby the difference of enhanced amount of Rs. 3,59,233.37. The written statement is silent as to why the delay of 9 months was caused by the respondents for implementation of the said order and passed on the same on 16.04.2014.

e) The written statement is also silent, as to why a sum of Rs. 3,59,233/- was enhanced that is from Rs. 2,24,82,933/-(balance as on Jan, 2014 to Rs. 2,28,42,166/-, when the money deposited by the appellant was under protest and already in the possession of the respondents.

f) CGRF-II failed to give any finding on the fact that during the course of proceedings held on 23.08.2019 before the forum, the respondents produced the HT agreement, wherein for the first time, it has come to the knowledge of the appellant that the date on the said agreement was altered by the opposite parties by putting correction fluid on the top of the agreement and overwriting therein by putting a date as per their choice that is 20.05.2013. Moreover, the respondents had never communicated the aforesaid alterations to the appellant and no acknowledgement was also taken from it. Interestingly, the date at the end of the agreement has remained the same that is 06.12.2012.

g) The written statement had not dealt with as to the reasons of manipulating the 'HT - agreement' by applying correction fluid and putting an alleged date that is 22.05.2013. In case the respondent had any objection to the agreement

at the time of its submission, the same should not had been accepted by the respondents and returned to the appellant. The validity of the agreement is dependent upon the concurrence of both the parties. Since, the agreement was manipulated by the respondent without concurrence / knowledge / consent of the appellant, the said alleged agreement should not be considered for the benefit of the respondents.

h) Mandate of the notification dated 01.11.2012 of the APERC vide its proceedings at serial No.19 (d) was not applicable to the appellant, because:

i. Appellant had applied for the enhancement of Sanctioned load from 600 KVA to 950 KVA on 13.08.2012.

ii. The same was lawfully sanctioned/ approved on 30.08.2012.

iii. Pursuant to the said sanction and approval of the respondents, the appellant deposited a sum of Rs. 8,82,520/- on 22.10.2012 towards development charges, as well as security deposits followed by completion of other formalities.

iv. The HT agreement was manipulated by the respondent without concurrence / knowledge / consent of the appellant, the said alleged agreement should not be considered for the benefit of the respondents.

v. Therefore, the date of enhancement of sanction load of 600 KVA to 950 KVA was to be treated with effect from 22.10.2012 pursuant to clause 19 (c) of the revised order dated 01.11.2012 passed by APERC on R and C measures.

vi. Since, deposit of development charges and security deposit was collected by the respondents on 22.10.2012 that is much prior to the said notification, the restrictions was not applicable to the case of the appellant.

vii. The respondents have laid emphasis on clause 19 (d) of the said order dated 01.11.2012, ignoring the clause 19 (c) (extracted elsewhere in the order). Written statement is silent and no explanation is being given to the non applicability of clause 19 (c) of the notification. Whereas the respondents had already collected additional consumption deposit. The written statement is silent to that effect.

viii. Moreover, the onus on the part of the appellant was fulfilled in time and the delay, if any, was on the part of either the respondents or the

government. for which the appellant should not be penalized.

i. CGRF - II further failed to appreciate that the order dated 01.11.2012 passed by APERC, was not limited to the restriction on consumers but carried few control measures, which was to be followed by the distribution licensee / respondents. As per sub-clause (a) of para 18 of the order, the distribution licensee was directed:

a. To issue a warning notice for first violation in a month.

b. In case of subsequent violation, respondent was to disconnect the service of the said consumer for next 24 hours.

c. Written statement is also silent as to why the prescribed procedure was not followed in terms of para 18 (a) of the proceeding dated 01.11.2012, wherein the respondent was to issue warning notice for first violation and in case of subsequent violations, to disconnect the service. In the present case, the respondents, instead of following the said procedure, preferred to impose penalty on the appellant.

j. Divisional Engineer (DE) and Assistant Divisional Engineer (ADE) further failed to implement these restrictions by not providing clear guidance of usage and correct readings on appropriate time in terms of para 20 of the Order dated 01.11.2012, which reads as

"….The Divisional Engineer (DE) and Assistant Divisional Engineer (ADE) operation shall be made responsible for effective implementation of these restriction and control measures".

There is no communication in this regard from the respondent on record.

k. CGRF – II instead of awarding compensation in favor of the appellant in terms of the said procedure rejected the contentions of the appellant. The written statement is also silent to the submissions of the appellant with reference to the failure of CGRF - II to appreciate the law / procedure laid down in the functioning of CGRF - II, when there are glaring mistakes and lapses on the part of the respondents that is

"……Compensation will be adjusted in the future bills, if any lapse of Department is seen, as per guaranteed standards of performance of Schedule-I and II……"

l. Judgements relied:

i. Appeal No. 36 of 2015 titled as Sr. K Srinivas Rao V/s TSSPDCL,

decided by this authority at relevant paras: 4 and 28.

ii. Appeal No.- 33 of 2015 titled as M/s Haryana Steel Center Pvt. Ltd. V/s TSSPDCL, decided by this authority relevant paras: 26 and findings para 8 at page 20.

m. Findings of CGRF II in deciding the complaint is perverse, as vide last para of the impugned award, CGRF II has directed the appellant to deposit the balance amount. For the sake of argument and without prejudice to the rights and contentions of the present appeal and presuming the stand of the respondents to be correct, the appellant is still entitled for refund / adjustment to an amount of Rs. 1,79,667.5/-, as per the following calculations:

| Sl. No. | Description | Description |
|---|---|---|
| 1 | R & C Penal Charges | 2,66,93,239.0 |
| 2 | Less alleged amount adjusted after considering the Appellant's Industry in the continuous process category | 42,10,406.0 |
| 3 | Balance | 2,24,82,933.0 |
| 4 | Less waiver of 50% penal charges in terms of order dated 08.08.2013 of APERC | 1,12,41,416.5 |
| 5 | Less amount paid under protest, as admitted by the Respondents vide its letter dated 12.04.2017 | 1,14,21,084.0 |
| 6 | Balance to receive by the Appellant | -1,79,667.5 |

n. The written statement should not be taken on record and the facts of the appeal shall be deemed to be admitted in view of the following:

a. Rule 1 Order VI of CPC provides 'pleading', which includes written statement. As per Rule 15 (4) of CPC, the person verifying the written statement shall also furnish an affidavit in support of its written statement.

b. The written statement filed by the respondent is neither supported with an affidavit nor verified in accordance with CPC.

c. There is also no resolution passed by the respondents, authorizing the alleged Superintending Engineer to sign the written statement.

d. The law provides that the written statement must deal specifically with each allegations or facts in the appeal.

i. The law led down by the Hon'ble Supreme Court of India in

the matter of Badat & Co. Vs East India Trading Co. (supra) 1964 AIR 538, 1964 SCR (4) 19.

ii. The law led down by the Hon'ble High Court of Delhi in the matter of Rajiv Saluja vs Bhartia Industries Limited.

> "Para 8. As is apparent from the denials made in the written statement, these are unspecific and evasive and therefore no denials in the eyes of law. Order 8 Rule 5 of Code of Civil Procedure lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.
>
> Para 9. The observations of the Supreme Court in this regard made in Badat and Company, Bombay v. East India Trading Company need to be quoted and are as under: "Rules 3, 4 & 5 of Order 8 of CPC form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary……."

o. In view of the above facts and circumstances, the stand taken by the respondents is not sustainable in the eyes of law and liable to be rejected and this authority may kindly allow the prayer as made in the appeal.

9. The appellant filed its additional written submission stating as follows:-

a. On 30.09.2020, both appellant and respondents advanced their respective final arguments and submitted their written submissions before this authority and the appeal was reserved for order. As informed by the registry, today the matter has been fixed for further arguments.

b. As per the written arguments submitted by the respondents on 30.09.2020, it brought on record the following fact, which was never submitted in any of its pleadings and CGRF-II passed the impugned award on the basis of the said incorrect submissions. In paragraph 11, the respondent has submitted that:

> "11. It is to submit that the consumer has paid the R and C bills hence no balance amount is pending and no notice issued to the consumer to pay balance amount as per the orders of CGRF."

c. The submissions contrary to the aforesaid fact, made in the pleadings of the respondents are as under:

i. Vide its reply dated 14.05.2019 to the legal notice of the appellant, it was stated that:

> "x. Hence, M/s Oyster Medisafe Pvt. Ltd. Sy.No.722, Dabilpur (V), Medchal Mandal, Ranga Reddy District has to pay all the R and C dues against the HT Sc. No. RRN. 1439 at the earliest."

ii. Vide written Statement dated 24.08.2020 filed before the CGRF-II, the respondent submitted that

> "9. Hence it is requested to kindly consider the above facts and dismiss the petition filed by the consumer and issue order for taking necessary action……"

(Note: In the first prayer in the Complaint filed before CGRF-II, it was prayed to set aside the above letter dated 14.05.2019, demanding to pay all the R and C dues. Whereas, the respondent has prayed for the dismissal of the prayer).

iii. CGRF-II relying upon the incorrect submissions of the respondents, vide impugned award dated 18.02.2020 (page-32) directed the appellant to pay the balance amount as:

> ***"…..Hence the Consumer Company is liable to pay the balance amount……."***

The respondents in their written statement dated 17.08.2020 before the Ombudsman has relied upon the findings of the CGRF-II to the aforesaid directions of payment and has prayed that

***"10. Hence it is requested to kindly consider the above facts and dismiss the appeal filed by the consumer and issue orders for taking necessary action. …."***

d. The appellant further stated as to how the award passed by CGRF-II is perverse and liable to be set aside:

i. Admittedly, the appellant had applied for the enhancement of sanctioned load from 600 KVA to 950 KVA on 13.08.2012 and the same was sanctioned on 30.08.2012. Consequently, the appellant deposited a sum of Rs. 8,82,520/- on 22.10.2012 towards development charges, as well as security deposits followed by completion of other formalities. For any delay on the part of the respondents / govt., the appellant should have not been penalized, leading to deposit of Rs. 1,14,21,084/- under protest.

ii. The benefits under continuous process category were passed on after a period of 15 months that is 31.01.2014 instead of 04.10.2012, that too without interest and considering the CMD 600 KVA instead of 950 KVA. The alleged amount of Rs. 42,10,406/- was arrived on by the respondent on an incorrect and baseless calculation.

iii. The submission of the respondents are contrary to records, as to why two bills that is for the month of Jan and Feb, 2013, were sent correctly in the 'continuous process category' and the bills from October – December, 2012 and Mar-July, 2013, were sent in the 'non-continuous process category'. The alleged benefits under continuous process category were passed on after a period of 15 months that is 31.01.2014 instead of 04.10.2012, that too without interest.

iv. The 50% relaxation in R and C penalties as per order dated 08.08.2013 of APERC, was unreasonably passed with a delay of 9 months that is on 30.04.2014 and that too without interest.

v. Respondents charged interest on the R and C bills, (balance of Rs. 2,24,82,933/- as on Jan, 2014, enhanced to Rs.2,28,42,166/- in Apr,

2014), when a sum of Rs. 1,14,21,084/- was already in the possession of the respondents.

vi. HT - agreement was unilaterally altered by the respondents, putting correction fluid and overwriting a date as per their choice that is 20.05.2013.

**Note:**

a) Interestingly, in the written argument dated 30.09.2020 at page - 2, the respondents further attempted to mislead that the HT- **Agreement was signed by SE after lifting ban in May, 2013, and communicated the same to the appellant vide letter dated 20.05.2013.**

b) The unilateral alteration in the HT agreement by putting correction fluid and overwriting a date as per their choice i.e. 20.05.2013 was never communicated to the appellant.

c) The appellant had deposed the same fact before CGRF-II, at page - 109.

d) The appellant had deposed that they had the alleged communication in their possession.

e) More interestingly, there was a specific direction form CGRF-II to file the alleged communication on record.

f) Whereas, the respondent failed to do so.

vii. The mandate of notification dated 01.11.2012 of APERC at serial no. 19 (d) was not applicable to the appellant in view of clause 19 (c).

viii. The notification dated 01.11.2012 was not limited to the restriction on consumers but was also to be followed by the respondents that is to issue a warning notice for the first violation in a month and disconnect the services on subsequent violations. The respondent failed to do so.

ix. The aforesaid glaring mistakes are apparent from the records and no compensation was awarded for violations of SOP of schedule 1 and 2.

x. Even if the alleged stands taken by the respondents are considered to be true for the sake of arguments only, the appellant is still entitled for a refund of Rs. 1,79,667/-.

xi. The written statement should not be taken on record being contrary to the provisions of CPC, as submitted in detail in the final written submission dated 30.09.2020.

**CONCLUSION:**

e. From the pleadings and arguments the following facts have remained admitted:

i. The false stand taken by the respondents were contrary to records, leading to a long legal battle fought by the respondents thereby causing harassment, mental agony and heavy monetary burden.

ii. Admittedly, the appellant is not liable to pay any dues as no balance amount is pending.

iii. CGRF-II blindly supported the version of the respondents and arbitrarily rejected the genuine submissions of the appellant, thereby, taken a perverse view and directed to pay the balance amount. Therefore, the award dated 18.02.2020 is perverse and liable to be set aside by this authority in terms of the prayer 1 of the present appeal.

**PRAYER**

a) Direct the respondents to refund / adjust in future bills of the appellant, a sum of Rs. 1,14,21,084/-, which was paid by the appellant under protest.

b) The respondents be directed to pay / adjust in future bills the interest at the rate they were charging from the appellant.

c) The respondents be directed to pay the cost and expenses of the entire proceedings and dragging the appellant to an avoidable litigation.

10. The officers of the licensee have filed additional written argument in addition to the written submissions already filed. It is stated as below.

a) The written argument submitted on 30.09.2020 were proper and no incorrect submission. This office has never issued the demand notice to pay any R and C dues from May-2014 to till date as the pending R and C dues were set off with credit of waival of 50% R and C amount Rs. 1,14,21,084 in April-2014. The copy of consumer account is submitted for ready reference. Hence the argument of applicant is not correct.

b) It is stated that the detailed reply to the legal notice received from the applicant was given on 14.05.2019 in which it was informed that the 50% R and

C penalties for an amount Rs. 1,14,21,084.00 was waived and adjusted to consumer account in April- 2014 and TSSPDCL did not consider to waival of balance 50% R and C penalties. Hence the argument of applicant in para 3 (a) is not correct since the TSSPDCL has not demanded in reply dated 14.05.2019 to the consumer to pay R and C dues. The consumer has filed the grievance before the CGRF-II vide C. G. No. 392 of 2019-20 and prayed for waival the balance 50% R and C penalties. Hence, the TSSPDCL has requested the CGRF-II to dismiss case filed by the consumer. The CGRF has passed the order in favour of TSSPDCL based on the facts. There is no contradiction either in replies or in written arguments submitted by the TSSPDCL. Hence, TSSPDCL has prayed to this authority in the written submission to dismiss the appeal field by the consumer.

c) That the consumer of MCL 1439 has applied for enhancement of load from 600 KVA to 950 KVA and the Superintending Engineer / Operation / RR (North) has accorded the permission for enhancement of load from 600 KVA to 950 KVA vide Lr No. SE / OP / RRCN / Coml / D. No. 440 / 12-13 D. No. 1275 / 12, dated 30.08.2012 and also mentioned the conditions in the sanction letters to submit the CEIG approved, occupancy certificate before release of load and to enter HT agreement for enhancement of load. The consumer has deposited Rs. 8,82,520/- on 22.10.2012 as per estimate sanctioned for enhancement of load. But the consumer has submitted the HT agreement for 950 KVA load on 06.12.2012 that is after receipt of R and C proceedings from APERC on the ban of release of additional load with effect from 01.11.2020. The APERC has issued proceeding on the R and C measures and banned the release of additional load during R and C period vide proceedings No. APERC / Secy / 16 / 2012-13, dated 01.11.2012. The consumer has delayed submitting the HT agreement. The HT agreement is mandatory for release of additional load for HT consumers as per GTCS rules and the HT agreement is not formality. Hence the additional load of 350 KVA was not released during R and C measures as per clause 19 (d) of APERC proceedings. After lifting of ban in May-2013 vide proceedings No. APERC / SEC / 37 / 2013, dated 10.05.2013, the HT agreement was signed by Superintending Engineer / Operation / RR North and communicated to the consumer vide Lr. No. SE / OP / RR (North) / Comml / F. HT / D. No. 231 / 13 dated 20.05.2013. Then the Divisional Engineer

/ Operation had released the additional load 350 KVA on 22.05.2013 and representative of consumer had also signed on the HT test report received from the Divisional Engineer / Operation / Medchal vide Lr. No. DEE / OP/ MDCL / Comml / F. HT test report / D. No. 1105 / 13 dated 15.06.2013. The date mentioned in HT test report (that is 22.05.2013) was the criteria for release of additional load but not sanction date or payment date. There is no delay on part of DISCOM in release of additional load.

d) That the consumer has represented to the Divisional Engineer / Operations / Medchal for change of Industry type from non continuous process industry to continuous process industry on 26.08.2013. the Divisional Engineer / Operations / Medchal has submitted the inspection report to this office on 16.09.2013. The SE (O) Medchal sought for clarification from Superintending Engineer/ LMRC / Corporate Office / Mint Compound / Hyderabad and as per the clarification issued by the said office on 26.11.2013 to treat the consumer service under continuous process industry with effect from 04.10.2012 it was decided to revise the R and C penalty bills under continuous process industry. Hence SE (O) Medchal had requested the Chief General Manager (Finance) / Corporate Office / Mint Compound / Hyderabad to issue revised R and C bills for the above HT consumer from September-2012 to July-2013 under continuous process industry vide SE Lr. No. SE / OP / RRC (N) / SAO / HT / D. No. 734 / 13, dated 11.12.2013. The R and C bills were revised from September-2012 to July-2013 as per the APERC guidelines and an amount of Rs. 42,10,406.00 was arrived as excess billed which is correct and withdrawn and adjusted to the consumer account vide JE No.58 of January-2014 dated 01.01.2014. The details of revision of R and C bills are as follows:-

| Month / Year | CMD | Already Raised | Revised R and C Bill | Balance to be withdrawn |
|---|---|---|---|---|
| Sep-2012 | 600 | 61433 | 987 | -60446 |
| Oct-2012 | 600 | 302924 | 3234 | -299690 |
| Nov-2012 | 600 | 2572587 | 1890580 | -682007 |
| Dec-2012 | 600 | 4474332 | 3847960 | -626372 |
| Jan-2013 | 600 | 4205580 | 4205580 | 0 |
| Feb-2013 | 600 | 4629689 | 4629689 | 0 |
| Mar-2013 | 600 | 3300039 | 2596333 | -703706 |

| | | | | |
|---|---|---|---|---|
| Apr-2013 | 600 | 1640424 | 931262 | -709162 |
| May-2013 | 600 | 4806600 | 3895950 | -910650 |
| Jun-2013 | 950 | 439615 | 420411 | -19204 |
| July-2013 | 950 | 260116 | 60947 | -199169 |
| Total | | 26693339 | 22482933 | -4210406 |

e) The R and C bills under continuous process industry for the period from September - 2012 to July-2013 were revised as per APERC R and C proceedings and the copies were also sent to the consumer. The process of revision was done immediately after receipt of consumers representation dated 26.08.2013 for change of industry into continuous process industry and difference amount Rs. 42,10,406.00 was credited to consumers account in January-2014 soon after approval from Chef General Manager / Commercial. Hence the argument of the consumer is not correct.

f) The APERC has issued orders on 50% waiver of penal charges levied during R and C period and as per minutes of APPCC meeting held on 24.04.2014, it was decided to refund the penal charges collected in excess of 50% of R and C penalties. As per the instructions in Lr. No. CGM (R) / GM (R) / SAO (R) / AO (HT) / D. No. 1741 / 41, dated 16.04.2014, the 50% of R & C penalties was waived off and adjusted to all the consumers in April-2014. Accordingly, the 50% of R and C penalties for amount of Rs. 1,14,21,084/- was credited to consumer of MCL1439 in April-2014.

g) The delayed payment of surcharge was levied as per tariff orders and the Hon'ble High Court has directed the TSERC and DISCOM to consider to waivel 50% R and C penalty only but not delayed payment surcharge. Hence the argument of applicant is not correct on DPS.

h) That the HT Agreement was signed by the consumer on 06.12.2012 that is after banning on the release of additional load by the APERC during R & C period. Hence, HT agreement was signed by the Superintending Engineer / RR North on 20.05.2013, the copy of the HT agreement is enclosed and the same was communicated to the consumer in Lr. No. SE / OP / RR North / Comml. / F. HT / D. No. 231 / 13 dated 20.05.2013. Hence the allegation of consumer is not correct.

i) The appellant has repeatedly mentioned the clause 19 (c) of APERC R and

C proceedings. The APERC has specified the clause 19 (c) and stated that the DISCOM shall not collect additional consumption deposit during R and C period. The annual consumption deposit (ACD) is collected yearly based on the previous year average consumption for a month taken for 2 months. ACD and consumption deposit on additional load are two different aspects. The consumer has paid the consumption deposit for additional load on 22.10.2012 but not ACD. The DISCOM has not collected the ACD from the consumer during R and C period. Hence the allegation of appellant is not correct.

j) The DISCOM has followed the procedures laid in the APERC R and C proceedings. The APERC also specified the clause 18 (b) in the proceedings to levy the penal charges for non-compliance of R and C measures. The notices for first violations was issued to the consumer by the Assistant Divisional Engineer / Operation / Medchal and the consumer has availed the supply during R and C measures. Hence penal charges for non-compliance of R and C measures for the period from September-2012 to July-2013 was levied by the DISCOM. Hence the allegation of appellant is not correct.

k) The consumer has delayed submitting the HT agreement and the additional load of 350 KVA was not released during R and C measures as per clause 19 (d) of APERC proceedings. Hence there was no violation of SOP and the CGRF-II has passed the order in favour of TSSPDCL

l) That no excess payment during R and C period is available with DISCOM for refund. Hence, refund may not arise.

m) The written submission is not contrary to provision of CPC. In view of the above facts and circumstances, the allegations raised in the written argument and appeal filed by the consumer against the order of CGRF is not correct and it is requested to dismiss the appeal filed by the consumer.

11. This authority has heard the submission of the parties through the counsel for the appellant and the representatives of the licensee. The matter was kept reserved for order for a long time for the reason that the voluminous documentation that has been made part of the record needed thorough examination coupled with certain old orders and proceedings which were hitherto essential for arriving at the solution in the matter, as the same were not part of the record.

12. As the orders were yet to be pronounced, the appellant memo and stated as below.

**a.** That the present appeal was filled by the appellant on 06.07.2020, challenging the award dated 18.02.2020, passed by CGRF-II. The impugned award, on the face of it, is perverse and contrary to law. The appellant has a strong prima facie case against the respondents and its legal rights/ interest is affected by the impugned award.

**b.** That the final arguments in the appeal were advanced by both the parties on 18.11.2020 and this authority was pleased to hear the appeal in depth. Both the appellant and the respondent have also submitted their respective final written submissions. After conclusion of the final arguments, this authority, reserved it for order.

**c.** The appellant, is anxiously waiting for the Judgement since 18.11.2020. The advocate for the appellant also contacted the registry several times, about the status of pronouncement of judgement and was informed that due to COVID - 19, the judgement could not be pronounced.

**d.** From the information available on the website, it is possible to see that this authority was pleased to pronounce the following judgments after 18.11.2020.

| **APPEAL NOS.** | **DATE OF PRONOUNCEMENT** |
|---|---|
| Appeal No. 10 of 2020-21 (Filed by the Appellant) | Pending (Arguments concluded on 18.11.2020) |
| Appeal No. 14 of 2020-21 | Monday, 18.01.2021 |
| Appeal No. 15 of 2020-21 | Wednesday, 03.02.2021 |
| Appeal No. 17 of 2020-21 | Friday, 15.01.2021 |
| Appeal No. 19 of 2020-21 | Saturday, 07.08.2021 |
| Appeal No. 21 of 2020-21 | Thursday, 25.03,2021 |
| Appeal No. 28 of 2020-21 | Saturday, 07.08.2021 |
| Appeal No. 26 of 2020-21 | Monday, 06.09.2021 |
| Appeal No. 33 of 2020-21 | Saturday, 07.08.2021 |

**e.** That the aforesaid circumstances has constrained the Appellant to file the present application to pronounce the Judgement in Appeal No. 10 of 2020, at the earliest.

**PRAYER**

**f.** In the aforesaid facts and circumstances, this Hon'ble Vidyut Ombudsman may graciously be pleased: To pronounce the Judgement in Appeal No. 10 of 2020 filed by the appellant, at the earliest.

13. The appellant has filed this appeal to revise the R and C bills under continuous process category instead of non-continuous process industry by taking the contracted maximum demand (CMD) at 950 KVA instead of 600KVA. By doing so, the excess amount paid along with the interest on extra amount charged at the rate of 12% P.A. for the period of holding the funds should be returned. During the R and C period from September 2012 to July 2013, the Hon'ble Commission had given orders from time to time with regard to imposing restrictions in usage of supply and penal charges towards excess usage than permitted. Certain industries were given relaxation based on their pattern of usage of supply. Similarly the industries falling under Continuous Process were given certain benefits towards PDL and PCL. It was alleged that the benefits of under R and C billing were not given to the appellant's service even though the said industry falls under continuous process industry. That the appellant had received a high penalty notice from the DISCOM in the form of supplementary bills on the ground of a non-continuous Process industry. Further it was also alleged that the increase in sanctioned load from 600 KVA to 950 KVA was not effected in the billing resulting in huge penalties. That the appellant was threatened with disconnection of power supply. Therefore the appellant paid the penalties under protest without prejudice to its rights and contentions. The Hon'ble Commission's order towards waiver of 50% R and C penalties was also not given effect to while raising the bills in respect of the appellant. An amount of Rs. 1,14,21,084/- was waived and adjusted in the bills. The CGM / Commercial has rejected the request towards revision of R and C bills and directed the appellant to pay all the pending dues against the subject service connection up to 08.06.2017. After several representations followed by legal notice of the appellant the TSSPDCL, vide its letter dt.14.05.2019, stated that 50% R and C penalties for an amount of Rs 1,14,21,084/- was withdrawn and adjusted in the bills but did not consider the waiver of the balance 50% R and C penalties.

14. The SE / OP / Medchal in their written submissions against the pleadings of the appellant stated that the service connection bearing No. HT SC No. MCL1439 was

released under HT Category I with a CMD of 600 KVA at 11 KV voltage with effect from 22.09.2007. Subsequently the load was enhanced to 1150 KVA as per the details given below:-

| Sl. No. | CMD | Date of agreement | Date of release of supply | Remarks |
|---|---|---|---|---|
| 1 | 350 KVA | 20.05.2013 | 22.05.2013 | Making total CMD 950 KVA |
| 2. | 200 KVA | 10.03.2014 | 24.03.2014 | Making total CMD 1150 KVA |

15. The R and C measures were implemented as per the quota fixed in terms of the option exercised under non-continuous process industry. The R and C penalty bills were issued to the appellant under non-continuous process Industry from Sep'2012 to July'2013. The appellant had requested for change in type of industry in the R and C billing to that of continuous process industry as their industry falls under plastic / polymer industries and to revise the bills issued under R and C measures from Sep'2012 to July'2013. Subsequently an inspection was conducted by the DE / OP / Medchal and a report vide Lr.No. DEE / OP / MDCL / F. Oyster Medisafe / D.No. 2462 / 13 dated.16.09.2013, which shows that the supply was utilized for manufacturing medical disposables that is syringes, IV Sets, PM lines, injection needles, BT sets, urine bags etc. in a controlled environment. Based on the said report the Superintending Engineer / LMRC gave a clarification vide Lr. No. SE / (LMRC) / DE (LMRC) / F. No. CR – RRN - 50 / D. No. 261 dated. 26.11.2013 treating that the said industry as HT-I continuous process industry under multi-layer plastic blown / polymer industry category with applicable PDL and PCL limits with effect from 04.10.2012. Based on the clarification, the R and C bills were revised from Sep'2012 to June 2013 and an amount of Rs. 42,10,406/- was found to be additionally billed and accordingly the bills have been adjusted in favour of the appellant vide JE No. 58 of Jan'2014 dt.01.01.2014. The details of the revised bills are as follows:-

| Month/Year | CMD | Already raised | Revised R&C bill | Balance to be withdrawn |
|---|---|---|---|---|
| Sep'2012 | 600 | 61433 | 987 | -60446 |
| Oct'2012 | 600 | 302924 | 3234 | -299690 |
| Nov'2012 | 600 | 2572587 | 1890580 | -682007 |
| Dec'2012 | 600 | 4474332 | 3847960 | -626372 |
| Jan'2013 | 600 | 4205580 | 4205580 | 0 |

| | | | | |
|---|---|---|---|---|
| Feb'2013 | 600 | 4629689 | 4629689 | 0 |
| Mar'2013 | 600 | 3300039 | 2596333 | -703726 |
| April'2013 | 600 | 1640424 | 931262 | -709162 |
| May'2013 | 600 | 4806600 | 3895950 | -910650 |
| Jun'2013 | 950 | 439615 | 420411 | -19204 |
| July'2013 | 950 | 260116 | 60947 | -199169 |
| Total | | 26693339 | 22482933 | -4210406 |

16. The appellant has claimed for waiver of the entire penalties under R and C measures on the ground of sanction of additional load of 350 KVA over 600 KVA. The said request was not considered by the respondents based on their action that the agreement for additional load was not concluded by the appellant due to the R and C notification dated 01.11.2012, which had restricted the release of additional loads during the R and C period. The Hon'ble Commission vide its proceeding No. APERC / Secy / 16 / 2012-13 dated 01.11.2013 under Clause 19(D) had restricted the release of additional load for the existing services until such restrictions are removed. After lifting the ban in May'2013 vide proceeding No. APERC / Secy / 37 / 2013 dated 10.05.2013, the HT agreement for the additional CMD of 350 KVA was concluded with effect from 20.05.2013 and additional load was released with effect from 22.05.2013. Therefore, R and C penalties were levied whenever the appellant availed the supply over the limitations corresponding to 600 KVA CMD from Sep'2012 to May'2013. Similarly, penalties were levied for availing supply over the CMD of 950 KVA from June'2013 to July'2013.

17. With regard to waiver of balance 50% R and C penalties, the respondents had stated that they considered the request of the appellant and an amount of Rs 1,14,41,084/- was adjusted in the bills, the details of which are shown in the table below:-

| Sl. No. | Month/Year | 100% penal | Withdrawn (50%) |
|---|---|---|---|
| 1. | Sep-12 | 32432.26 | 16216.13 |
| 2. | Oct-12 | 211300 | 105650 |
| 3. | Nov-12 | 1959095.02 | 979547.51 |
| 4. | Dec-12 | 3917959.02 | 1958979.6 |

| | | | |
|---|---|---|---|
| 5. | Jan-13 | 4275580 | 2137790 |
| 6. | Feb-13 | 4697189.6 | 2348594.8 |
| 7. | Mar-13 | 2505750.78 | 1252875.39 |
| 8. | Apr-13 | 940031.41 | 470015.705 |
| 9. | May-13 | 3821470.43 | 1910735.215 |
| 10. | Jun-13 | 420411 | 2102015.5 |
| 11. | Jul-13 | 60946.67 | 30473.335 |
| Total | | 22842166.37 | 11421083.19 |

18. The appellant in its written submissions stated that the amount of Rs. 42,10,406/- on account of continuous process industry category was passed on to the consumer only in Jan'2014 that is after a period of 15 months from the date of entitlement and that too without interest. Further it was claimed that the contracted maximum demand of 950 KVA is to be given effect from 22.10.2012 that is the date of deposit of development charges and security deposit pursuant to the sanction dated 30.08.2012. The CGRF order is silent on the question of interest and compensation against the delay of 15 months. The CGRF order did not dwell into the written submissions of the respondents as to why two bills for the month of January and February 2013 were sent in the continuous process category and again from March 2013 till July 2013 bills were sent in the non-continuous process category. The CGRF had failed to appreciate the orders of the Hon'ble Commission towards relaxation of the R and C penalties to the extent of 50%. The respondents did not give the effect of the above said order and continued to enhance the penalties for some unknown reasons. It is also alleged that the date of HT agreement was altered by the opposite party by putting correction fluid on the top of the agreement and overwriting therein by putting a date of their choice that is 20.05.2013, but it is noticed that the date mentioned at the end of the agreement remained the same that is 06.12.2012. Since the agreement was manipulated by the respondents without concurrence / knowledge / consent of the appellant, the said alleged agreement should not be considered for the benefit of the respondents.

19. The appellant contended that its case does not fall under the clause 19 (d) of the Hon'ble Commissions proceedings dated 01.11.2012, since it had applied for the enhancement of contracted load from 600 KVA to 950 KVA on 13.08.2012, which was

sanctioned on 30.08.2012 and payments were also made by 22.10.2012. It is the case of the appellant that in terms of the order of the Commission the respondents are liable to issue a notice of warning for first violation and in case of subsequent violation, they have a right to disconnect the service. In the present case, the respondents, instead of following the said procedure, preferred to impose penalty on the appellant.

20. The appellant has relied on the following judgements rendered by this authority:-

i. Appeal No. 36 of 2015 titled as Sri. K Srinivas Rao V/s TSSPDCL, decided by this authority, Telangana, relevant paras: 4 and 28.

ii. Appeal No.- 33 of 2015 titled as M/s Haryana Steel Center Pvt. Ltd. V/s TSSPDCL, decided by this authority, Telangana, relevant paras: 26 and findings para 8 at page 20.

Based on the above submissions, the Appellant claimed that he is entitled for refund / adjustment to an amount of Rs. 1,79,667.50/- for which a calculation is shown in the table below:-

| Sl. No. | Description | Amount |
|---|---|---|
| 1. | R and C penal charges (para of 4 of the written statement) | 2,66,93,239.0 |
| 2. | Less alleged amount adjusted after considering the Appellant's Industry in the continuous process category (para of 4 of the written statement) | 42,10,406.0 |
| 3. | Balance | 2,24,82,933.0 |
| 4. | Less waiver of 50% penal charges in terms of order dated 08.08.2013 of APERC | 1,12,41,416.5 |
| 5. | Less amount paid under protest, as admitted by the Respondents vide its letter dated 12.04.2017 (Annexure – A9) (page – 70) | 1,14,21,084.0 |
| 6. | Balance to receive by the appellant | -1,79,667.50 |

21. The order of this authority in Appeal No. 36 of 2015 of relied by the appellant is irrelevant for the purpose of deciding this appeal. Neither facts nor circumstances are in any way connected or identical to this case. As such the said judgment of this authority is no precedent in this case and accordingly rejected. Likewise the Appeal

No. 33 of 2015 referred by the appellant also stands to be rejected for the reason that the subject though deals with R and C measures and penalties, yet does not fit into the facts and circumstances of this case, as the claim in this case is with reference to refund of penalty and not its calculation as also the non consideration of the load for R and C measures including continuous process industry. Thsu the reliance placed on the orders fails against the appellant.

22. It is the case of the appellant that the officers who filed the written arguments have not filed it in accordance with the cpc and do not have a proper authorization to do so from their management. The appellant in support of its submissions relied on the following decisions of the Hon'ble Supreme Court and High Court of Delhi.

i. The law laid down by the Hon'ble Supreme Court of India in the matter of Badat & Co. Vs East India Trading Co. AIR 1964 SC 538, 1964 SCR (4)

ii. The law laid down by the Hon'ble Hon'ble High Court of Delhi in the matter of Rajiv Saluja vs Bhartia Industries Limited.

Based on the above judgements, it is the case of the appellant that the stand taken by the respondents is not sustainable in the eyes of law and liable to be rejected and this authority may allow the prayer as made in the appeal.

23. The above submission of the appellant is irrelevant for the reason that the authority is holding summary proceedings and that to it is not a court for the purpose of invoking CPC. Thus, the judgments relied upon by the petitioner are either irrelevant or not appropriate to the proceedings before this authority. The Act, 2003 or regulations thereof do not provide for appeal by the aggrieved consumer but only contemplates making a representation to this authority and not appeal as is generally understood. Though this authority termed as appeal for the sake understanding, it in itself does not constitute or amount to entertaining an appeal. Thus, the judgments are rejected for purpose of considering the appeal as ther is no application of CPC.

24. The respondents have filed additional submissions in their letter dated 29.09.2020 stating that the earlier submissions were made as per the notice received from this authority and is accordance with Law only. Whereas the claim of the appellant on delay in release of additional load from 600 KVA to 950 KVA, it is stated that the sanction was accorded subject to submission of CEIG approval and occupancy certificate before the release of additional load and to enter into HT agreement for

such enhancement. The appellant has filed HT agreement for 950 KVA load on 06.12.2012 beyond the orders issued by the Hon'ble Commission under R and C measures on 01.11.2012 which restricted the release of additional load. The relevant clauses in the said proceedings are extracted elsewhere in this order.

25. Thus it is stated that the cause of delay for release of additional load is on the of the appellant, due to non-submission of HT agreement in time. The release of additional load of 350 KVA over existing 600 KVA was not released consequent to restrictions under clause 19 (d) of the Hon'ble Commission's proceedings. After lifting of the restriction on release of additional load in May 2013 vide proceedings bearing No. APERC / Secy / 37 / 2013 dated 10.05.2013, the HT agreement was finalized by the SE / OP / RR North and the same was communicated vide Lr.No. SE / OP / RR North / Comml. / F.HT / D.No.231 / 13 dt.20.05.2013. Consequently, the additional load was released on 22.05.2013. The representative of the appellant also appended his signature on the HT test report vide DE / OP / Medchal / Comml / F.HT Test report / D.No.1105 / 13 dt.15.06.2013. The date mentioned in the test report that is 22.05.2013 was considered for release of additional load, but the sanctioned date and the payment date are not relevant for this purpose. Accordingly, there is no delay on the part of the DISCOM in release of additional load.

26. The contention of the respondents that the release of additional load was held back due to the proceedings of the Commission restraining the release new and additional loads from 01.11.2012 due to imposition of R and C measures which were in operation by that time. Applying said a principle to the facts of this case may not be appropriate, as the licensee by its own actions as seen from the record had sanctioned the additional load and also received the payment for the same. It is stated that the supply of additional load could not be effected before 01.11.2012, as the appellant has failed to submit the HT agreement. Inasmuch as the licensee ought to have hastened the agreement process having received the necessary amounts towards the same, instead reasons have been attributed that the consumer has submitted the agreement belatedly and by that time the Commission had restrained it from releasing new and additional loads. Also it is alleged that the CEIG approval was required. This authority is flummoxed that for an existing connection the licensee seems to have thought of insisting CEIG approval and also occupancy certificate. Or else it appears to thwart

the lapses on their part to the same is shown that the appellant is at fault. Further, it is also worth mentioning that the interpretation that the Commission has restricted the release of supply cannot be countenanced against the appellant for the order of the Commission came subsequent to the order of release of supply, for which action has already been set in motion. At best the order of the Commission can be said to be applicable to the request that may be made for new and additional loads after the said order and not to the earlier orders. Thus, the action of the licensee is erroneous and uncalled for.

27. In so far as billing under non-continuous process industry it is stated that initially the R and C penalty bills were issued to the appellant under non continuous process industry from Sep'2012 to July'2013. It is stated that the appellant has represented the matter on 26.08.2013 regarding change in type of industry as continuous process industry. After inspection and submission of a report by the DE / OP / Medchal on 16.09.2013, the SE / LMRC clarified that the said industry falls under continuous process industry on 26.11.2013. The R and C bills were revised from Sep'2012 to July 2013 and an amount of Rs. 42,10,406/- was credited in the account of the appellant in January 2014. The process of revision was done immediately after receipt of consumer representation and hence the allegation of the appellant for delay is denied. The appellant has relied on the clause 19 (c) of the Commissions' R and C proceedings which mandates non collection of additional consumption deposit during R and C measures period. The appellant is under wrongful impression that additional consumption deposit claimed against the paid consumption deposit for the additional load on 22.10.2012 which is different to each other. The DISCOM has not collected the ACD from the consumer during the R and C period. Hence the allegation of the appellant is not correct.

28. It is noticed that waiver of penal charges levied during the R and C period is in compliance to instructions of the management vide Lr. No. CGM (R) / GM (R) / SAO (R) / AAO (HT) / D.No.1741 / 41 dated 16.04.2014 which was adjusted to all the consumers in April 2014. Accordingly, Rs 1,14,21,084/- was credited in favor of the consumer.

29. The appellant has originally requested for additional load in the year 2012 by letter dated 13.08.2012, however the actual test report for enhanced load came to be

issued on 22.05.2013. The main grievance in this appeal is with reference to imposition of penalties for non compliance of R and C measures for the period September 2012 to July 2013.

30. Prima facie the issue is amenable to consumer grievance redressal forum being a billing dispute, however the core issue as stated above is regarding the actions or inactions in respect of the R and C measures.

31. Turning to the facts in this particular case, the appellant applied for additional load and the same was sanctioned by the licensee in the month of August 2012. Thereafter, in the month of October 2012 the appellant paid the necessary charges for the release of supply. However, it failed to execute the agreement necessary for release of supply and it did so on 04.12.2012. In that regard this authority has taken view above and such the same is not discussed again here.

32. In the meantime, the licensees as they were then approached the then APERC seeking to impose R and C measures and to limit the drawl of energy by various consumers to the extent of quantities approved by the Commission. The Commission as it then was had allowed the licensees as on that date to impose R and C measures by its order dated 14.09.2012 and amended it from time to time up to the end of July 2013.

33. While notifying the R and C measures, the then Commission had identified the certain industrial consumers as non-continuous process and continuous process industries.

34. Before proceeding further, it is trite to notice that the appellant claimed the status of continuous process and the same was clarified initially in October 2012 itself and further confirmed in November 2013 as seen from the records before this authority. The crux of the issue now boils down to treating the appellant as continuous process industry and giving credit for the additional load. Initially the licensee as it then was did not give effect to the status of the appellant as a continuous process industry, but subsequently while arriving at the contracted capacities for the purpose of billing, the R and C quantities that is PDL and PCL gave consideration to the same. The licensee did not treat the appellant as a continuous process industry for few months.

At the same time while billing for few months it has given effect to the aspect of continuous process in favor of the appellant and in few other months it did not do so. Also it is worth mentioning that the appellant was not given the benefit of additional load from the date the appellant had paid the amounts and the penalties have been levied consequent upon exceeding the PDL and PCL as fixed by the Commission at that time.

35. It has been contended by the licensee that the appellant unit was treated as continuous process unit only after receipt of clarification from its management in November 2013 and therefore the benefit was given to it for the period subsequent to the enhancement of load according to their records.

36. In fact the appellant had paid the necessary charges for enhancement of load, but the licensee did not follow it up with revised agreement forthwith. The appellant as stated above gave the revised agreement only on 04.12.2012, but that was taken on record by the licensee only on 18.05.2013. In as much as it is alleged by the appellant that the agreement placed by it with the licensee has been tampered with and it was treated as having been given only in May 2013. In this regard this authority finds that the record is emphatic and clear that the appellant duly submitted its revised agreement though belatedly after payment of amount in December 2012, the licensee surruptuosly brushed the same under the carpet for its extraneous reasons and due to misinterpretation of the orders of the Commission. The said aspects have been discussed elaborately elsewhere in the order.

37. As stated above, the licensee was relying on the orders of the Commission in the matter of release of additional load. The background for this reasoning is that the Commission initially imposed R and C measures in September 2012 and modified from time to time. In its modification on 01.11.2012, the Commission had imposed a condition that the additional load request shall not be considered till the Commission allows the same or modifies the R and C measures. The relevant provision in the order dated 01.11.2012 is reproduced below at the cost of repetition.

> "The distribution licensees shall not release new additional loads for existing services till these restrictions are removed. However, the de-rated demand can be restored to original capacity on a request from a consumer."

Subsequently, by proceedings dated. 10.05.2013 of the Commission, the release of

additional loads has been relaxed and the conditions are at paragraph 3 of the said proceedings. The same is extracted below:-

> "The Commission examined the Licensees proposal and has decided to permit release of additional loads and hereby permits release of additional loads for all existing consumers. The DISCOMs shall adopt the following priorities for release of additional loads;
>
> a. First Priority:-The Discoms shall release the additional loads to all the consumers who have paid Development charges, Service Line charges and Security Deposits as on 07.11.2012.
>
> b. Second Priority:- Applications registered and sanctioned as on 07.11.2012 but not paid the required charges.
>
> c. Third Priority:- Applications registered as on 07.11.2012, which are under process of sanction.
>
> d. Fourth Priority:- Applications registered after 07.11.2012, shall be addressed after further review of R&C measures.

Pursuant to this modification only, the appellant's request for additional load was considered and treated as released. This is the reason the appellant did not get the benefit of additional load in some of the bills. But at the same time penalty was levied for the entire load.

38. The above condition of the Commission with regard to payment does not speak of the agreement aspect. However, the licensee had failed to state whether Commission included the conclusion of the agreement for release of supply or not and restriction was imposed on all activity. Moreover, there is no clarity in the order on 01.11.2012. The Commission had considered all the payments made upto 07.11.2012 as the cut off date as 1st priority in order while relaxing the restriction on release of supply. Alas the licensee has a responsibility also to quickly takeup the release of supply by inviting the agreement appellant is an existing consumer. The lapses on part of the licensee cannot be to the bane of the appellant and the like consumers who complied with the payment and were ready to avail supply.

39. The interpretation that additional load should not be released as directed by the Commission cannot be applied to the appellant as the appellant made a request prior to imposition of Restriction and Control measures and also paid the amounts even

prior to Commission's restriction on release of such supply. This authority is afraid that such a narrow interpretation would amount to and constitute overreaching the orders of the Commission. Consequent upon such interpretation only, the levy of penalty has been wrongly applied and also retention of the amounts beyond the period was also an issue that also falls for consideration in this appeal.

40. The Commission as it then was had required the licensee to impose penalty in case of exceeding the PDL and PCL quantities applicable to each of the category of consumers other than domestic category. The Commission from time to time had been modifying those penalties and accordingly the then licensees had levied the same. The Commission had occasion to consider the issue of penalties in its order dated 08.08.2013 as submitted by the licensee. While withdrawing the imposition of Restriction and Control measures, the Commission had restricted the collection of penalties from the consumers to the extent of 50% of the same which is already paid and to adjusted the balance in future bills. The appellant had paid the amounts in accordance with the bills raised by the licensee and subsequently requested for withdrawal of penalties to the extent the Commission had allowed. This was not given effect to by the licensee. Thereafter, the appellant had a protracted correspondence in the matter and ultimately approached the CGRF for mitigation of its grievance for refunding the excess penalty paid by it towards the Restriction and Control measures penalties.

41. The licensee contended that the penalties have been levied in accordance with the orders of the Commission and as per the applicable tariff including the status of the appellant with regard to load and continuous process. It is also their case that the petitioner is bound by the levies made by the licensee and it cannot escape from payment of the same. However, it has been reported by them that the 50% of the penalty retained by them was adjusted in April 2014, much after the order of the Commission was passed. The catch in this matter is that had they considered the additional load for continuous process industry, they would have realised more revenue and the appellant would have attracted less penalty. Unfortunately the licensee did not cast eye on the same. It lost revenue of Rs. 4,37,500 for 5 months and Rs. 4,90,000 for 4 months of the Restriction and Control measures due non release of 350 KVA as also treating it as continuous process industry, these being

demand charges calculated based on the tariff orders.

42. The licensee also stated that the appellant is not entitled to the benefit of additional load and continuous process unless and until it was clarified by its management. That is to say the additional load is said to be released only from May 2013 and continuous process industry status is clarified in November 2013. Both these aspects are on contrary to the material available on record in this appeal. As such both these aspects are not in accordance with the observation made above and need a relook by the licensee, as it is against interest of the consumers including itself.

43. This authority judicially notices the fact that the licensees at the relevant time had approached the then Commission seeking review of the order dated 08.08.2013 with regard to reduction of penal charges to 50% of the penalty already in vogue. The Commission having conducted extensive public hearing on the review petition refused to entertain the review and modify the order dated 08.08.2013. This order came to be passed on 04.04.2014. The relevant portion is extracted below:-

> "All the issues identified have been answered by the Commission. Notwithstanding, lack of authorization by APNPDCL, APSPDCL and APEPDCL, the petition filed on 10.10.2013 is examined from the point of view of limitation as well as on merits. After careful consideration of submissions and the material available on record, the Commission is of the opinion that the petition filed for recall of the order dt.08.08.2013 is barred by limitation. Even otherwise, the Commission is of the opinion that the R and C order dated 01.11.2012 was distinct and independent of the Tariff Order dated.30.03.2012 and the former order does not amount to amendment of the latter order. Further, the Commission is of the considered opinion that there is no nexus between the public hearing conducted on 11.01.2012 and the R and C order dated.01.11.2012. Lastly, the Commission is of the opinion that the petitioners were not adversely affected by waiver of penal charges by the order dated 08.08.2013, without issuing notice to the petitioners."

44. Suffice it to state the licensee ought to have given effect to the order of the Commission subject to the legal coourse that has been adopted by them at the relevant time. Instead, the licensee kept the issue pending to the detriment of the consumers till it suffered orders at the hands of the Commission. This in itself

constitutes unjust enrichment on its part. Therefore, refunding the amounts belatedly after 8 months as alleged by the appellant is uncalled for and liable for compensation thereof.

45. Be that as it may, the appellant is entitled to a relief and should have been given the same as early as 2017 and avoid the need to approach the CGRF for settlement of the issue. Alas the appellant has been driven to the forum that too by giving a reply in the year 2019 and thereafter this appeal. This authority, though reserved the matter way back in 2020 had to give careful thought and thorough examination as to various proceedings and orders which have to be digged out from the empirical data of the Commission's orders and proceedings. The same has occasioned delay in deciding this matter, apart from voluminous set of facts which had to be collaborated several times based on material available on record.

46. This authority is of the unequivocal view that while adjustment has already been given effect to in so far as penalties and also status of continuous process, the aspect of availing additional load should unanswered properly due to misinterpretation rendered by the licensee. In as much as the licensee has to rework out the whole aspect of giving benefit of release of supply from 22.10.2012 onwards and also treating the industry as continuous process industry from 04.10.2012.

47. This authority therefore directs the following:-

a. Treat that additional load has been released on 22.10.2012.
b. Treat the industry as continuous process industry from 04.10.2012 until the R and C measures are in vogue for calculation of PDL and PCL for the period.
c. Re-workout the penalties keeping in view the points a and b above until the R and C measures withdrawn.
d. Claim only to the extent of 50% of the penalties if any after giving credit of the payments already made in view of the revision of calculation as per (c) above.
e. Pay compensation / interest at the rate of simple prime lending rate applicable for the period from August 2013 to the date of settlement of the amount if any is to be refunded to the appellant apart from the amounts already refunded.

f. If any amount is to be paid by the appellant upon such a revision towards penalty, the same shall be collected in monthly instalments as reasonably decided which may not exceed six and which will not bear any interest.

g. If the amounts are paid at one go by the appellant if any there shall not be any levy of delayed payment surcharge, otherwise if the appellant misses any installments then the same will be attracted after completion of the installment period.

h. Directions given herein above are specific to this particular case in view of the facts and circumstances narrated any other case of this nature will be dealt with in the facts and circumstances of that case the principles cannot be directly applied unless the licensee is completely satisfied that there exists a complete similarity to the situation available in this case.

i. Compliance of the above directions shall be done within a period of 4 weeks and report shall be placed before this authority on or before six weeks from the date of the order. This period is in relaxation of the regulation due to peculiarity of this case.

j. In the absence of any report on the subject matter, this authority will be constrained to refer the matter to the Hon'ble Commission for noncompliance.

48. With these observations and directions the appeal is disposed of without any costs. It is also made clear this order came to be passed in the facts and circumstances obtaining in this appeal and it does not constitute a precedent for any other case which shall be examined upon being brought before this authority with reference to the facts and circumstances of that particular case only.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 21st day of March, 2022.

Sd/-

VIDYUT OMBUDSMAN (FAC)

To,
1. Sri. B.K.Dash, Advocate, Hon'ble Supreme Court of India.
2. The ADE / OP / Medchal / TSSPDCL / Medchal Dist.
3. The DE / OP / Medchal / TSSPDCL / Medchal Dist.
4. The SAO / OP / Medchal Circle / TSSPDCL / Medchal Dist.
5. The SE / OP / Medchal Circle / TSSPDCL / Medchal Dist.

Copy to :
6. The Chairperson, CGRF-GHA, TSSPDCL, GTS Colony, Vengal Rao Nagar, Hyd.