



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

:: Present:: Smt. UDAYA GOURI
Tuesday the Ninth Day of June 2020

Appeal No. 42 of 2019-20

Preferred against Order dt:17.02.2020 of CGRF in
CG No. 570/2019-20 of Secunderabad Circle

Between

Sri. Aditya Kedia, Director of M/s. Aavya Industries Pvt.Ltd., P.No.B-71,
Balanagar, Secunderabad - 500 037. Cell: 9885335222, 9391033606

... Appellant

AND

1. The ADE/OP/Balanagar/TSSPDCL/Secunderabad.
2. The DE/OP/Bowenpally/TSSPDCL/Secunderabad.
3. The SAO/OP/Secunderabad Circle/TSSPDCL/Secunderabad.
4. The SE/OP/Secunderabad Circle/TSSPDCL/Secunderabad.

... Respondents

The above appeal filed on 25.02.2020, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 03.06.2020 at Hyderabad in the presence of Kum. Nishtha - On behalf of the Appellant Company and Sri. K. Raju - ADE/OP/Balanagar and Smt. J. Sridevi - SAO/OP/Secunderabad Circle for the Respondents and having considered the record and submissions of both parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a company registered under Companies Act under the name and style of M/s. Aavya Industries (P) Ltd. situated at B-71, Balanagar, Hyderabad - 500 037 and having a HT Consumer bearing No. HT No. SEC 1234 with CMD of 70 KVA.

That the Appellant aggrieved by the notice of disconnection under alleged Link Service issued by the Respondent No.1 approached before the Hon'ble CGRF -II vide CG No. 570/2019-20/Secunderabad Circle on 10.01.2020.

That the Respondent No.1 on 24.01.2020 disconnected the power supply to the HT SC No. SEC1234 of the Appellant even though the complaint along with interim prayer was pending before the Hon'ble CGRF-II which is a violation of Clause 2.61 of Regulation 3 of 2015.

Aggrieved by the disconnection this Appellant approached before the Hon'ble High Court for the State of Telangana vide WP No. 1707 of 2020 and due to delay in numbering the CG. The Hon'ble High Court for the State of Telangana vide its order dt.28.01.2020 directed the Appellant to file once again the same complaint along with a copy of order and directed the CGRF to pass orders in accordance with the law.

Accordingly the Appellant once again approached before the CGRF on 06.02.2020. Then only the CGRF conducted the hearing on 10.02.2020. The Respondent No.4 through SAO filed its counter vide Lr.No.SE/OP/Secunderabad Circle/HT/SAO/JAO(HT)/D.No.2448 dt 06.02.2020.

That the CGRF directed the Appellant to file the rejoinder separately. Accordingly the Appellant filed its rejoinder dt.12.02.2020 along with citations of Hon'ble High Court of AP passed in similar cases.

That the CGRF passed the award dt.17.02.2020 in CG No. 570/2019-20/Secunderabad Circle and dismissed the complaint without applying its legal mind properly and could not appreciate the citations of Hon'ble High Court which are decided in similar cases.

That the Respondents cannot demand the arrears of BTT industries from the Appellant i.e. AAvya Industries (P) Ltd. as the Appellant is a separate consumer with HT No.SEC1234 and BTT industries is a separate consumer with MBN847, both are having separate agreements with the Respondent and are situated in different circles.

That the grounds which are not considered by the CGRF are furnished hereunder once again for kind consideration of the Hon'ble Ombudsman:-

The relevant portion of the amended Clause 4.8.1 of Electricity Supply Code vide Regulation No. 7 of 2013 dt.07.08.2013 is extracted here under as follows;-

“4.8.1:- Where any consumer default in payments of charges for the supply of electricity, and or any other sums payable to the Company under the contract of supply agreement, the Company may without prejudice to its rights cause to disconnect all or any of the other services of the consumer with in the area of supply of licensee though such services be distinct and are governed by separate agreement and though no default occurred in respect thereof.”

- a. As per Section 2(13) of Electricity Act,2003,”Company” means a company formed and registered under the Company Act,1986 and includes anybody corporate under a Central State or Provincial Act.
- b. As per Clause 2(15) “consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.
- c. Section 2(49) of Electricity Act 2003 (49) “person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.
- d. As per the format of BILL prescribed in Clause 4.2 of Regulation 5 of 2004 dt.17.03.2004 the bill should contain the amount which is payable by the consumer. As there is no claim in the bill of the Appellant no amount is payable by the Appellant.
- e. Upon the perusal of above provisions the Respondents cannot demand the arrears of BTT industries from the Appellant i.e. AAyva Industries, appellant is a separate consumer with HT SC No. SEC1234 and BTT Industries is a separate consumer with MBN 847 both having separate agreements with the Respondents and are situated in different circles. The consumer is defined as any person who is supplied with electricity by the Respondents, the Appellant is a company registered under the provisions of Companies Act likewise BTT Industries is also registered company under Companies Act and both are

separate and distinct entities, person is defined and includes any company. Hence the Appellant and the BTT industries are different persons.

- f. The Respondents have not raised any Bill or demand with the Appellant even as on today the Respondents have not disclosed their demand or dues of BTT industries. Without any bill or demand or disclosing the due amounts the Respondents have disconnected the power supply of the Appellant, which is unilateral, arbitrary, unlawful, misuse of powers and dominating position.
- g. As per the above stated provisions the Appellant and the BTT industries (I) Pvt. Ltd are separate establishments and cannot be treated as Link Service.
- h. That even though there are some common shareholders the Respondents cannot fasten liability of one company with another company. It is submitted that due to some common shareholders two companies do not become one and the same.
- i. It is pertinent to note also that the No bill demand has been raised against this Appellant towards the dues of BTT industries Pvt. Ltd till now. As per 56(2) of Electricity Act,2003 no sum due from any consumer is recoverable after the period of two years from the date when such amount became first due unless such sum is shown continuously as arrears and no such sums are shown against this Appellant. Hence the Respondents cannot claim the dues of the BTT industries Pvt. Ltd. against the Appellant.

The Appellant is relying on the judgements of Hon'ble High Court of Andhra Pradesh viz. a) LAWS (APH) 2002 1 1 (b) LAWS (APH) 2007 8 80 (C) LAWS (APH) 2008 8 69.

As per the above stated provisions and explanation the Appellant and the BTT industries (I) Pvt. Ltd are separate entity and cannot be treated as Link Service under the shelter of amended Clause 4.8.1 of GTCS which is already decided by the Hon'ble High Court of Andhra Pradesh in three different cases stated above.

Hence it is to be noted that the BTT Industries Limited and Aavya Industries (P) Ltd. both are separate independent companies (consumers in case of electricity supply) hence, will not fall under the concept of other services of the consumer as provided in provision of amended Clause 4.8.1 of GTCS. Hence the issue of notice for disconnection of link service dt.07.01.2020 issued by the Respondent No.1 is in violation of the amended Clause4.8.1 of the GTCS, illegal, arbitrary and liable to be set aside.

That if the power supply is not restored immediately the Appellant will be put into further huge irreparable losses as the Appellant has already put in to huge losses from 24.01.2020 to till date i.e. since 29 days.

In view of the above stated facts, the Appellant pray to this Hon'ble Ombudsman to pass and award/orders:-

Under Clause 3.41 of Regulation 3 of 2015.

To restore the power supply to the HT SC No. SEC1234 of the Appellant immediately pending final decision by this Hon'ble Authority in the present Appeal.

Under Clause 3.35 of Regulation 3 of 2015:-

- a. To set aside the award passed by the CGRF dt.17.02.2020 of CG No. 570/2019-20/Secunderabad Circle.
- b. To set aside the notice bearing No. ADE/OP/BLNG/D-XVI/C-VI/D.No.1507 dt.07.10.2020 issued by the Respondent No.1 and
- c. Any such order or orders as may deem fit by this Hon'ble Ombudsman in the circumstances of the Appeal in the interest of justice and fair play.

2. Written submissions of the Appellant.

With reference to the Appeal No. 42 of 2019-20, it is to submit that the HT SC No. SEC1234 of M/s. Aavya Industries Pvt. Ltd. P.No.B-71,APIE, Balanagar with a CMD of 70 KVA billed under Category HT Category -1(A) industrial is existing in Secunderabad Circle.

That the disconnection notice issued on Dt.07.01.2020 to SC No. SEC 1234, M/s. Aavya Industries (P) Ltd. P.No.B-71,APIE,Balanagar, due to non payment of outstanding amount of Link service of SC No. MBN847, M/s. BTT Industries Ltd in Appajipally (V) Balanagar(M), Mahaboobnagar Circle.

That the Hon'ble CGRF has passed final orders in Appeal filed by the HT SC No. MBN610, M/s. Reactive Metals of India Pvt. Ltd, Appajipally (V) directing the TSSPDCL to initiate necessary proceedings for recover of dues from M/s. BTT Industries, Appajipally (V), Balanagar (M) Mahabub Nagar Dist.

M/s. Reactive Metals of India Pvt. Ltd has made representation duly furnishing the share holding pattern of M/s. BTT Industries as on 31.03.2018. It is observed that M/s. Aavya Industries Pvt Ltd has 49.9% of shareholding in M/s. BTT

Industries bearing HT SC No. MBN 847 in Mahabubnagar Circle. Further Sri. Anand Kumar Kedia is the director in both the entities.

That the Clause 4.8.1 of the Electricity Supply Code vide Regulation No. 7 of 2013(Second amendment of the Regulation No. 5 of 2004) says as follows:-

“Where any consumer defaults in payments of charges of supply agreement the company may without prejudice to its rights cause to disconnect all or any of the other services of the consumer within the area of supply of the Licensee. Though such services are distinct and are governed by separate agreements and though no default occurred in respect thereof.”

In this regard the following points shall be considered with reference to the Clause discussed above:-

- a. M/s. Aavya Industries Pvt. Ltd is a major shareholder with 49.98% in M/s. BTT Industries Pvt Ltd., the same was revealed in an independent auditors report done by V.S.Rao & Co., Chartered Accountants and who is also auditor of M/s. BTT Industries Pvt. Ltd.
- b. Sri. Anand Kedia is the Director in both the entities i.e. M/s. Aavya Industries and M/s. BTT Industries. Further holding a share of 4.12% in M/s. BTT Industries.
- c. It is ascertained through the website of ministry of corporate affairs that M/s. Reactive Metals India Ltd has provided corporate guarantee to State Bank of Hyderabad, Sanath Nagar Branch for M/s. BTT Industries Pvt. Ltd to the extent of Rs 29.20 crore by enhancing earlier limit of Rs 27 crores.
- d. The land bearing SY NO.33/A,33/41/E,41EE,41/U.,41,40/A/2.34/E,34/EE at Appajipally Village of Bodajanampet Gram Panchayat belongs to M/s. Reactive Metals India Pvt Limited as per the Stamps and Registration Department. But the industry is constructed and activities are being carried out by M/s. BTT Industries Pvt. Ltd.
- e. Further M/s. BTT Industries has submitted the agreement for sale with M/s. Reactive Metals India Pvt. Lyd to which the former has issued 4.40.133 No. of equity shares @ Rs 10/- each towards purchase consideration to M/s. Reactive Metals India Pvt. limited. But the land to the extent of 33.01 guntas was still in the name of M/s. Reactive Metals India Ltd.

- f. Further, as per the Independent Auditors Report, the value of plant and machinery is Rs 16.69 crores but the same was sold for Rs 1.88 crores without disclosing the reasons for selling property at huge loss during FY 2018-19.

In this regard, it is provided that all the industries mentioned above are related to one and each. The act of the complainant clearly depicts as a wilful defaulter and has no intention to make the payment of dues M/s. Reactive Metals India Ltd. and M/s. Aavya Industries Pvt. Ltd. suppressed the facts and figures and deceived the judicial authorities i.e. CGRF, Further CGRF has studied the case vide CG No.974/2018-19 and set aside the petitions filed by them.

That on dt.24.02.2020 disconnected power supply on SC No. SEC1234 M/s. Aavya Industries (P) Ltd. P.No.B-71,APIE,Balanagar, due to Non Payment of outstanding amount of Link Service of SC No. MBN847, M/s. BTT Industries Ltd in Appajipally(V), Balanagar(M) Mahabubnagar Circle. That in Appeal No. 3 of 2019-20, orders issued against the consumer company. The CGRF dismissed the complaint filed by the Appellant company.

3. Written submission of the SE/OP/Secunderabad Circle.

That the SC No. SEC1234 of M/s. Aavya Industries Pvt. Ltd with CMD of 70 KVA billed under Category HT Cat-I(A) industry is utilising supply at P.No.71, APIE, Balanagar, Hyderabad.

That the Hon'ble Vidyut Ombudsman issued orders in Appeal No. 3 of 2019-20 on 28.05.2019 filed by HT SC No. MBN610, M/s. Reactive Metals of India Pvt. Ltd, Appajipally (V) directing the TSSPDCL to initiate necessary proceedings for recovery of dues from M/s. BTT Industries, Appajipally (V), Balanagar (M), Mahabubnagar Dist.

M/s. Reactive Metals of India Pvt. Ltd. has made representation duly furnishing the share holding pattern of M/s. BTT Industries as on 31.03.2018. It is observed that M/s. Aavya Industries Pvt. Ltd has 49.98% of shareholding in M/s. BTT Industries bearing HT SC No.MBN847 in Operation Circle, Mahabubnagar. Further, Sri. Anand Kumar Kedia is the director in both the entities and holding a share of 4.12% in M/s. BTT Industries Pvt. Ltd.

Sri. Anand Kumar Kedia and family members are having a share of 16.45% in M/s. BTT Industries and Sri. Aravind Kumar Kedia and family members are having a share of 16.41% and M/s. Aavya Industries is having a share of 49.98%. The company share details were submitted by the consumer itself during the time of hearing before Hon'ble Vidyut Ombudsman in M/s. Reactive Metal Case in Appeal No.3 of 2019-20.

The SE/OP/Secunderabad Circle is requested by the SE/OP/Mahabubnagar Circle to issue a link service notice requesting the consumer to make the payment of pending dues and to disconnect the service on failure as per Clause 4.8.1 of the Electricity Supply Code vide Regulation No. 7 of 20133 (Second amendment of the Regulation No. 5 of 2004).

In continuation to the above, the ADE/OP/Balanagar served the link service notice to the consumer and disconnected the service on 24.01.2020 as the consumer failed to pay the dues and submitted the final readings to this office.

The clause 4.8.1 of the Electricity Supply Code vide Regulation No. 7 of 2013 says as follows:-

“Where any consumer defaults in payments of charges for the supply of Electricity and /or other sums payable to the company under the contract of supply agreement the company may without prejudice to its rights cause to disconnect all or any of the other services of the consumer within the area of supply of the Licensee. Though such services be distinct and are governed by separate agreements and though no default occurred in respect thereof.”

In this regard the following points shall be considered with reference to the Clause discussed above:-

- a. M/s. Aavya Industries Pvt. Ltd is a major shareholder with 49.98% in M/s. BTT Industries Pvt Ltd., the same was revealed in an independent auditors report done by V.S.Rao & Co., Chartered Accountants and who is also auditor of M/s. BTT Industries Pvt. Ltd.
- b. Sri. Anand Kedia is the Director in both the entities i.e. M/s. Aavya Industries and M/s. BTT Industries. Further holding a share of 4.12% in M/s. BTT Industries.
- c. It is ascertained through the website of ministry of corporate affairs that M/s. Reactive Metals India Ltd has provided corporate guarantee to State Bank of Hyderabad, Sanath Nagar Branch for M/s. BTT Industries Pvt. Ltd to the extent of Rs 29.20 crore by enhancing earlier limit of Rs 27 crores.

- d. The land bearing SY NO.33/A,33/41/E,41EE,41/U.,41,40/A/2.34/E,34/EE at Appajipally Village of Bodajanampet Gram Panchayat belongs to M/s. Reactive Metals India Pvt Limited as per the Stamps and Registration Department. But the industry is constructed and activities are being carried out by M/s. BTT Industries Pvt. Ltd.
- e. Further M/s. BTT Industries has submitted the agreement for sale with M/s. Reactive Metals India Pvt. Ltd to which the former has issued 4.40.133 No. of equity shares @ Rs 10/- each towards purchase consideration to M/s. Reactive Metals India Pvt. limited. But the land to the extent of 33.01 guntas was still in the name of M/s. Reactive Metals India Ltd.
- f. Further, as per the Independent Auditors Report, the value of plant and machinery is Rs 16.69 crores but the same was sold for Rs 1.88 crores without disclosing the reasons for selling property at huge loss during FY 2018-19.

In this regard, it is provided that all the industries mentioned above are related to one and each. The act of the complainant clearly depicts as a wilful defaulter and has no intention to make the payment of dues M/s. Reactive Metals India Ltd. and M/s. Aavya Industries Pvt. Ltd. suppressed the facts and figures and deceived the judicial authorities i.e. CGRF and Hon'ble Vidyut Ombudsman. Further, the Hon'ble Vidyut Ombudsman has studied the case vide Appeal No. 3 of 2019-20 and dismissed the Appeal by the Appellant.

It is requested to note that as per SE/OP/Mahabubnagar the detailed report of insolvency resolution petition was reviewed and found that M/s. Reactive Metals India Pvt. Ltd and M/s. BTT Industries are relative parties vide CP(IB).No.341/7/HDB/2019 dt.15.10.2019, M/s. Aavya Industries Pvt. Ltd is a major shareholder with 49.98% in M/s. BTT Industries Pvt. Ltd. Also the directors of M/s. Aavya Industries Pvt. Ltd Mr. Anand Kumar Kedia and Mr. Aditya Kedia are holding a share of 4.12% and 5.47% respectively in M/s. BTT Industries. Mr. Anand Kumar Kedia is found to be the director in both the entities.

4. Written submissions of the SAO/OP/Secunderabad Circle

As per the interim order dt.10.03.2020 passed by the Hon'ble Vidyut Ombudsman for the State of Telangana in the Appeal No. 42 of 2019-20 of HT SC No. SEC1234, M/s. Aavya Industries Pvt. Ltd. It is to submit that the consumer has paid an amount of Rs 5,00,000/- vide PR No. 116057094 dt.11.03.2020 and the Feb'2020 CC

bill of Rs 42,430/- along with Reconnection Fees of Rs 1000/- vide PR No. 116057095 dt.11.03.2020 and PR No.13032011340028 dt.12.03.2020 and the supply has been restored.

That the HT SC No. MBN847, M/s. BTT Industries Ltd existing in the Mahabubnagar Circle has defaulted to the tune of Rs 23,87,64,451/- as on 31.10.2019 to TSSPDCL.

M/s. Aavya Industries Pvt Ltd is a major shareholder with 49.98% in M/s. BTT Industries Pvt. Ltd. Also the directors of M/s. Aavya Industries Pvt. Ltd i.e. Mr. Anand Kumar Kedia and Mr. Aditya Kedia are holding a share of 4.12% and 5.47% respectively in M/s. BTT Industries. Mr. Anand Kumar Kedia is found to be the director in both the entities.

In view of the above, it is prayed to issue necessary directions to M/s. Aavya Industries Pvt. Ltd to clear the dues of M/s. BTT Industries to avoid financial loss to the TSSPDCL.

5. Rejoinder of the Appellant.

In reply to Para No.1

In this regard, the issue of disconnection notice dt.07.01.2020 assuming the service connection of Appellant bearing No.SEC1234 as link service to MBN847 is illegal, in violation of amended Clause 4.8.1 of GTCS. The interpretation and assumption of amended clause 4.8.1 of GTCS by the Respondents is not correct. More specifically in the light of the order passed by the Hon'ble High Court of Andhra Pradesh in WP No.1335 of 2001.

In reply to Para No.2

In this regard please note that the Hon'ble CGRF II has not applied its legal mind properly before passing the said final order in CG No. 570/2019-20/Secunderabad Circle also on the amended Clause 4.8.1 of GTCS and without appreciating the orders passed by the Hon'ble High Court of Andhra Pradesh dt.31.01.2002 in WP No. 16092 of 1996, order dt.29.08.2007 in WP No.5157 of 2005 and order dt.13.08.2008 in WP No. 1335 of 2001. Hence, the said order is not correct, illegal and liable to be set aside. The Hon'ble CGRF-II is also well aware/known the fact that the said order passed by them is not correct, illegal and liable to be set aside. Hence Hon'ble CGRF-II in the

last para of the order directed this Appellant to approach this Hon'ble Vidyut Ombudsman for the State of Telangana against its order for justice.

In reply to Para No.3

In this regard please note the Hon'ble High Court of Andhra Pradesh in its orders dt.31.01.2002 in WP No. 16092 of 1996, order dt.29.09.2007 in WP No.5157 of 2005 and order dt.13.08.2008 in WP No. 1335 of 2001 established as follows:-

“That being so, I have no hesitation to hold that the Board is not entitled to proceed with the disconnection of other services relating to a partnership firm in which the consumer had been one of the partners.”

“ The Division Bench of this Court in the case of T. Chenchiah V A.P.E. board, AIR 198-- AP 12 held that even though the petitioner was a partner of the firm, the consumer was the firm and not the petitioner. The petitioner was consumer only in respect of his personal and private service connection. Simply because he was a partner of the firm, which was a consumer in relation to the other service, he cannot be called consumer in respect of the service standing in the name of the firm.

In reply to Para No.4

In this regard please note that the admission made by the Respondent No.2 is not relating to the present issue. However the explanation given is to be considered here apart from the following facts:-

The present Directors of the Appellant company are Sri. Anand Kedia and Sri. Aditya Kedia. Sri Aditya Kedia never Director in BTT Industries and at present Sri. Anand Kedia is also not director in BTT Industries w.e.f. From 20.03.2019.

In reply to Para No.5

As per interim directions of this Hon'ble Ombudsman dt.10.03.2020 the power is restored on 11.03.2020 by the Respondents after depositing Rs 5,00,000/- by the Appellant.

In reply to Para No.6

In this regard please note that against the order of Appeal No.3 of 2019-20 the Hon'ble High Court for the State of Telangana vide its Order dt.10.07.2019 of WP No.13580 of 2019 restored the power supply of Reactive Metal of India Pvt. Ltd.

In Reply to Para No.7

In this regard please note the explanation of Para No.2 above.

6. Written submissions of the SE/OP/Mahabubnagar

The HT SC No. MBN847, M/s. BTT Industries Ltd. which is existing in Mahabubnagar Circle has defaulted to tune of Rs 23,87,64,451/- to TSSPDCL. The CGRF-I, Hyderabad has passed orders in CG No. 974/2018-19 filed by M/s. BTT Industries Pvt Ltd. as follows:-

1. *There is a link between the two entities i.e. M/s.BTT Industries Pvt Ltd and M/s.Reactive Metals Pvt Limited as power of attorney assigned to Sri Anand Kumar Kedia to sign the H.T. Agreements of both the companies and be held responsible for payment of dues of c.c. charges.*

2. *Relying on the Regulation No.7 of 2013 of ERC, vide clause No.10, the action taken by the Respondents in issue of 15 days notice of disconnection against M/s. Reactive Metals Pvt. Ltd. for recovery of long pending dues of M/s.BTT Industries Limited treating as link service is in order.*

3. *The Respondents are directed to initiate necessary proceedings for recovery of dues from M/s.BTT Industries and compliance reported to the forum.*

The complaint is disposed of accordingly.

Further it is also informed that the Hon'ble Vidyut Ombudsman has passed orders on 28.05.2019 in Appeal No. 03 of 2019-20 filed by MBN610, M/s. Reactive Metals India (P) Ltd. Appajipally(V) in the matter of payment of CC dues pertaining to M/s. BTT Industries Pvt. Ltd. as follows:-

"The contention of the Appellant that a similar subject was dealt by Vidyut Ombudsman in Appeal No. 14 of 2018 pertaining to One Sri. P. Ramesh and the Appeal was disposed of stating that the payment of outstanding dues of One consumer shall not be imposed on the services existing under his wife's name. This office is of the view that the said order in the above appeal is not applicable to the present case.

Hence in the face of the above discussions this issue is decided against the Appellant and in the result the Appeal is dismissed confirming the

orders of the CGRF in CG No. 974/2018-19 Mahaboobnagar Circle dt.25.03.2019.”

The independent auditors report has disclosed that M/s. Aavya Industries (P) Ltd., holds 49.98% of shares in MBN847 M/s. BTT Industries Ltd. which is existing in Mahabubnagar Circle. As such it is clearly established that both are being operated under the same roof.

From the above it can be construed that M/s. BTT Industries Pvt. Ltd. is a hand in glove operated by M/s. Aavya Industries (P) Ltd. which is major shareholder (49.98%) and is deliberately evading the dues payable to the TSSPDCL. Further the directors and shareholders in M/s. Aavya Industries (P) Ltd and M/s. BTT Industries Pvt. Ltd are from the same family. The share holding pattern is furnished here under:-

Name of the shareholder	Share holding % in M/s. BTT Industries
Anand kedia	4.12
Preeti Kedia W/o Anand Kedia	4.11
Archit Kedia S/o Anand Kedia	4.11
Nipun Kedia S/o Anand Kedia	4.11
	16.45
Arvind Kedia	4.12
Anita Kedia W/o Arvind Kedia	4.11
Abhav Kedia S/o Arvind Kedia	4.11
Amogh Kedia S/o Arvind Kedia	4.11
	16.45
Aditya Kedia	5.47
Aavya Kedia D/o Aditya Kedia	5.47
Ritu Kedia D/o Aditya Kedia	5.47
	16.41
Geetabali Merchants Pvt Ltd (Anand Kedia & Arvind Kedia are Directors)	
Aavya Industries (Anand Kedia & Aditya Kedia are Directors)	49.98
Total	99.29

It is to submit that M/s. Bharath Tin Tubes Pvt. Ltd has filed a case before the Hon'ble National Consumer Law Tribunal (NCLT) for insolvency of M/s. BTT Industries Pvt. Ltd and the case is pending.

Heard both sides.

Issues.

7. In the face of the said averments by both sides the following issues are framed for settlement?

1. Whether to set aside the notice bearing No. ADE/OP/BLNG/D-XVI/C-VI/D.No.1507 dt.07.10.2020 issued by the Respondent No.1? And
2. To what relief?

Issue No.1

8. M/s. Aavya Industries Pvt. Ltd. situated at B-71, Balanagar, Hyderabad represented by Sri. Aditya Kedia having a HT Service connection HT SC No. SEC1234 with Contracted Maximum Demand of 70 KVA, pleaded to set aside the notice of disconnection issued by ADE/OP/Balanagar under alleged link service vide Lr.No. ADE/OP/BLNG-D-XVI/C-VI-D.No.1507/19-20 dt.07.01.2020, due to non payment of outstanding amount against SC No. MBN847, M/s. BTT Industries Ltd. in Appajipally Village, Balanagar (M), Mahabubnagar Dist., link service to M/s. Aavya Industries HT SC No. SEC1234 and requested to clear the outstanding dues of M/s. BTT Industries along with the applicable surcharge and on non payment of the said charges the supply to M/s. Aavya Industries will be disconnected.

Notwithstanding the alleged notice given by the Respondents, the Appellant preferred an Appeal before the CGRF-II, in the meanwhile the Respondent No.1, ADE/OP/Balanagar disconnected the power supply to M/s. Aavya Industries on 24.01.2020 and recorded the KWH, KVAH and MD readings of the meter submitted the same vide Lr.No.1711 dt.25.01.2020 to the SE/OP/Secunderabad Circle. Aggrieved by the disconnection and due to delay in numbering the CG Number in the CGRF-II, the Appellant approached before the Hon'ble High Court vide WP No. 1707 of 2020. Subsequently the Hon'ble High Court issued the orders dt.28.01.2020 the writ petition was dismissed giving liberty to the Appellant to file appeal before CGRF-II within a period of two weeks from the date of receipt of the order copy. Simultaneously the CGRF-II was directed to consider the same and pass appropriate orders in accordance

with law within a period of one month thereafter. Subsequently the Appellant approached the CGRF-II on 06.02.2020 and hearing was conducted on 10.02.2020 and thereafter the CGRF-II passed their award dismissing the Appeal of the Appellant.

Aggrieved by the orders passed by CGRF-II in CG No. 570/2019-20/Secunderabad Circle dt.17.02.2020 the Appellant preferred this Appeal submitting that the Respondents cannot demand the arrears of BTT Industries from the Appellant i.e. M/s. Aavya Industries Pvt Ltd. as they are a separate consumer with separate service connection No. SEC1234 and BTT Industries is a separate consumer with service connection No. MBN847, both are having separate agreement with the Respondents and are situated in different circles. The Appellant relied on the amended Clause of 4.8.1 of Regulation 5 of 2004 vide Regulation No. 7 of 2013.

The relevant portion of the amended Clause 4.8.1 of Electricity Supply Code vide Regulation No. 7 of 2013 dt.07.08.2013 is extracted here under as follows;-

“4.8.1:- Where any consumer default in payments of charges for the supply of electricity, and or any other sums payable to the Company under the contract of supply agreement, the Company may without prejudice to its other rights cause to disconnect all or any of the other services of the consumer with in the area of supply of licensee though such services be distinct and are governed by separate agreement and though no default occurred in respect thereof.”

Further relied on the definitions of Electricity Act'2003 as stated below:-

As per Section 2 (13) “Company” means a company formed and registered under the Company Act,1986 and includes anybody corporate under a Central State or Provincial Act.

As per Section 2(15) “consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.

As per Section 2(49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.

The Appellant also relied on the format of BILL prescribed in Clause 4.2 of Regulation 5 of 2004 dt.17.03.2004, where the bill should contain the amount which is payable by the consumer. As there is no claim in the bill of the Appellant, no amount is liable to be paid by the Appellant.

On the basis of above said clauses the Appellant held that both the companies are separate having distinct entities and as per above definitions. That the Respondents have not raised any bill or demand with the Appellant till date nor the dues of BTT Industries. That they have disconnected the power supply. That, even though there are common shareholders, the Respondents cannot fasten liability of one company with another company if two companies does not become one and the same. The Appellant also relied on Section 56(2) of Electricity Act'2003 :- No sum due from consumer is recoverable after the period of two years from the date when such amount became first due unless such sum is shown continuously as arrears. It was claimed that no such sums were shown against the Appellant. Hence pleaded to set aside the notice bearing No. ADE/OP/BLNG/D-XVI/C-VI/D.No.1507 dt.07.10.2020 issued by the Respondent No.1, ADE/OP/Balanagar.

The Respondent No 1, ADE/OP/Balanagar, vide his written submissions stated that disconnection notice was issued vide ADE/OP/BLNG/D-XVI/C-VI/D.No.1507 dt.07.10.2020 to M/s Aavya Industries Pvt.Ltd. HT SC No SEC 1234 due to non payment of outstanding amount of link service Sc no MBN 847. He has relied on the following factors towards considering M/s Aavya Industries Pvt.Ltd is link service to M/s BTT Industries.

That M/s Aavya Industries Pvt.Ltd is a major share holder with 49.98% in M/s BTT Industries, as found out in a audit report done by independent auditor V.S.Rao and company, chartered accounts, who is also auditor to M/S BTT Industries. As per the auditors report the value of plant and machinery is Rs 16.69 Cr, but same was sold for Rs 1.88Cr without disclosing the reason for selling property at huge loss during FY 2018-19. Sri.Anand Kedia is the director in both the entities and also holding a share of 4.12% in BTT Industries. That both the industries are related to each other.

The respondent No. 3, SAO/OP/secunderabad circle, vide her written submission stated that in an another appeal, Appeal No. 03 of 2019-20, the Vidyut Ombudsman has given favorable directions for recovery of dues to BTT Industries from similar link service M/s Reactive Metals of India Pvt.Ltd. In the said case M/s Reactive metal of India Pvt.Ltd produced share holding pattern of M/s BTT Industries as on 31.3.2018, depicting 49.98% of share belonging to M/s Aavya Industries, 4.12% of share Sri Anand Kumar Kedia who is also a director in both the entities, Sri Arvind Kumar kedia and family members are having a share of 16.4%, in M/s BTT Industries. That the link service notice is based on the amended clause 4.8.1 Regulation No 5 of 2004 of Electricity supply code, vide Regulation No 7 of 2013.

The detailed report of insolvency resolution petition was reviewed and found that M/s. Reactive Metals India Pvt. Ltd and M/s. BTT Industries are relative parties vide CP(IB).No.341/7/HDB/2019 dt.15.10.2019, M/s. Aavya Industries Pvt. Ltd is a major shareholder with 49.98% in M/s. BTT Industries Pvt. Ltd. Also the directors of M/s. Aavya Industries Pvt. Ltd Mr. Anand Kumar Kedia and Mr. Aditya Kedia are holding a share of 4.12% and 5.47% respectively in M/s. BTT Industries. Mr. Anand Kumar Kedia is found to be the director in both the entities.

The SAO/OP/Secunderabad, further added to her written submission stating that M/s Aavya Industries has paid an amount of Rs 5,00,000/- vide PR No 116057094 dated 11.03.2020, as per the interim direction given by this authority for restoration of power supply. That as on 31.10.2019 M/s BTT Industries Pvt Ltd has defaulted to the tune of Rs 23,87,64,451/-. That M/s Aavya industries Pvt Ltd is a major share holder with 49.98% in M/s BTT Industries Pvt Ltd, the directors of M/s. Aavya Industries Pvt Ltd Mr. Anand kumar Kedia and Aditya Kedia are holding a share of 4.12% and 5.47% respectively in BTT Industries.

The Appellant filed a counter against the written submission of the respondents stating that the interpretation and assumption of amended clause 4.8.1 of regulation 5 of 2004, read with Regulation 7 of 2013 is not correct. He relied on the judgement of Hon'ble High Court of Andhra Pradesh dt. 31.1.2002 in WP No 16092 of 1996, WP No 5157 of 2005 dated 29.8.2007 and WP No 1335 of 2001 dated 13.8.2008 and relied on the portion of the order reproduced here under:-

“That being so, I have no hesitation to hold that the Board is not entitled to proceed with the disconnection of other services relating to a partnership firm in which the consumer had been one of the partners.”

“ The Division Bench of this Court in the case of T. Chenchiah V A.P.E. board, AIR 198-- AP 12 held that even though the petitioner was a partner of the firm, the consumer was the firm and not the petitioner. The petitioner was consumer only in respect of his personal and private service connection. Simply because he was a partner of the firm, which was a consumer in relation to the other service, he cannot be called consumer in respect of the service standing in the name of the firm” .

Further stated that the present directors of the appellant company are Mr. Anand Kumar Kedia and Aditya Kedia. Sri Aditya Kedia was never the director in BTT Industries and at present Anand Kedia is also not the director in BTT Industries resigned w.e.f 20.3.2019, to that extent submitted the copy of resolution passed at the meeting of board of directors of BTT Industries. That as per the Interim directions dt. 10.03.2020, the power to the M/s. Aavya Industries was restored on 11.03.2020 after depositing Rs 5 lakhs.

9. A perusal of the rival contentions shows that, the Respondents placed liability of amount due towards electricity charges amount on M/s. Aavya Industries, which was based on the factors, such as 45.98% share of M/s. Aavya Industries, common Directors and on the Clause 10 of Regulation 7 of 2013. On the other hand Appellant claims that they are no way connected to M/s. BTT Industries relying on the same Clause 10 of Regulation 7 of 2013, Section 2(13), 2(15) and 2(49) of the Electricity Act, Clause 4.9.2 of Regulation 5 of 2014, Section 56(2) of the Act and various judgements given by the Hon'ble High Court.

The statute which imparts light on the dispute is Amended Clause 4.8.1 of Regulation 5 of 2004 read with Clause 10 of Regulation 7 of 2013 which is reproduced here under:-

“4.8.1

Where any consumer default in payments of charges for the supply of electricity, and or any other sums payable to the Company under the contract of supply agreement, the Company may without prejudice to is

other rights cause to disconnect all or any of the other services of the consumer with in the area of supply of licensee though such services be distinct and are governed by separate agreement and though no default occurred in respect thereof.”

The Appellant has claimed that Shri. Anand Kedia, Director of both the companies (Presently only for M/s. Aavya Industries) cannot be treated as consumer as per the Section 2(15) which means any person who is supplied with electricity for his own use, hence cannot be treated as a consumer as referred in Clause 10 of Regulation 7 of 2013. On the other hand Respondents claim that the said Clause envisages rights to disconnect all or any of the other services of the consumer or governed by separate agreement.

Shri Anand Kedia resigned from M/s. BTT Industries on 20.03.2019 and being not a consumer of electricity himself, the Appellant denied there is no link between the said industries. But the Audit reports shows that directly the company M/s. Aavya Industries holds the shares almost to 50% in M/s. BTT Industries apart from the Shri Anand Kedia, which the Appellant has not denied. Being directly holding the shares in the defaulter company, M/s. Aavya Industries cannot shred off the dues pending on M/s. BTT Industries. The sharing of M/s. BTT Industries is given below:-

Name of the shareholder	Share holding % in M/s. BTT Industries
Anand kedia	4.12
Preeti Kedia W/o Anand Kedia	4.11
Archit Kedia S/o Anand Kedia	4.11
Nipun Kedia S/o Anand Kedia	4.11
	16.45
Arvind Kedia	4.12
Anita Kedia W/o Arvind Kedia	4.11
Abhav Kedia S/o Arvind Kedia	4.11
Amogh Kedia S/o Arvind Kedia	4.11
	16.45
Aditya Kedia	5.47
Aavya Kedia D/o Aditya Kedia	5.47

Ritu Kedia D/o Aditya Kedia	5.47
	16.41
Geetabali Merchants Pvt Ltd (Anand Kedia & Arvind Kedia are Directors)	
Aavya Industries (Anand Kedia & Aditya Kedia are Directors)	49.98
Total	99.29

The above sharing pattern does not deny the fact that the M/s. BTT Industries was governed by the same family members including M/s.Aavya Industries. The judgements relied on by the Appellant is not directly related to the present case, in the judgement of the Hon'ble High Court in WP No.1335 of 2001, the Managing Director of the defaulter company was resigned, who entered into the agreement on behalf of the company, hence, the High Court denied the Respondents proceeding against the defaulter company. The Judgements given in the WP No. 16092 of 1996 and WP No. 5157 of 2005 dt.29.08.2007 is not related to the present dispute, which is based on the statutes prevailing during that period. In the similar case in Appeal No. 3 of 2019-20, this authority found M/s. Reactive metals India Pvt. Ltd. also linked to M/s. BTT Industries. Subsequently, M/s. Reactive Metals of India Pvt. Ltd, filed an Appeal before Hon'ble High Court for the State of Telangana in WP No.12590 of 2019 against the disconnection of power supply on the ground of non payment of dues in respect of link service to BTT industries Pvt. Ltd. Interim directions for restoration of power supply was issued by the Hon'ble High Court. The case is still pending for outcome.

In regard to the subject is hit by Section 56(2) of the Electricity Act, where no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. The Appellant has claimed that the Respondents are not entitled to recover due amount from M/s. BTT Industries Pvt Ltd. if it is shown as arrears continuously without disconnection of power supply as the due amount is pertaining to more than 6 years old. The subject was already dealt in the Appeal no 3 of 2019-20, M/s. Reactive Metals of India Pvt. Ltd, in para no 16, adjudicating the section 56(2) is not liable, where there was constant communication on the arrears to be paid by M/s.BTT industries Pvt. Ltd.

In view of the circumstances stated above, there is no clear evidence to set aside the notice given by the Respondent No.1, ADE/OP/Balanagar vide ADE/OP/BLNG/D-XVI/C-VI/D.No.1507 dt.07.10.2020 to M/s Aavya Industries Pvt.Ltd. HT SC No SEC 1234 due to non payment of outstanding amount of link service Sc no MBN 847 M/s. BTT Industries. Hence in the face of the above discussions this issue is decided against the Appellant.

Issue No.2

10. In the result the Appeal is dismissed.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 9th day of June, 2020.

Vidyut Ombudsman

1. Sri. Aditya Kedia, Director of M/s. Aavya Industries Pvt.Ltd., P.No.B-71, Balanagar, Secunderabad - 500 037. Cell: 9885335222, 9391033606
2. The ADE/OP/Balanagar/TSSPDCL/Secunderabad.
3. The DE/OP/Bowenpally/TSSPDCL/Secunderabad.
4. The SAO/OP/Secunderabad Circle/TSSPDCL/Secunderabad.
5. The SE/OP/Secunderabad Circle/TSSPDCL/Secunderabad.

Copy to :

6. The Chairperson, CGRF-GHA, TSSPDCL, GTS Colony, Vengal Rao Nagar, Hyderabad.
7. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul, Hyd.