

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE No. 17 of 2002

**In the matter of
Application of M/s Chalet Hotels Limited, Powai, Mumbai
regarding the power supply to its Hotel Complex at Powai, Mumbai.**

**Shri P. Subrahmanyam, Chairman
Dr Pramod Deo, Member**

ORDER

Dated: November 1, 2002

M/s Chalet Hotels Limited, 24th Road, Khar, Mumbai 400 052 has submitted an application dated 6th September 2002 regarding the power supply to its Hotel Complex at Powai, Mumbai, and subsequently submitted a detailed affidavit on 17th September 2002. The Applicant requested the Commission to adjudicate on the following issues:

- 1) In whose jurisdiction does the area in which the Hotel complex is located fall – TPC or MSEB?
- 2) The rate at which the supply of power has to continue considering that an agreement subsists between the Company and TPC for supply for a period of 5 years at rates mentioned in the agreement.
- 3) Damages to be paid to the Applicant by the concerned party depending on whether the area falls in the jurisdiction of TPC or MSEB.

2. The admissibility hearing in the matter was fixed on 18th September 2002. During the proceedings, the Applicant submitted that theirs is a five star hotel with convention centre. They cater to the international and national tourists for their business and/or pleasure trips, and therefore, an uninterrupted, reliable and quality power supply is absolutely necessary. During the construction period, the Tata Power Company (TPC) was approached on 15th January 1999 for power supply under the presumption that the location of the Hotel is within the TPC's licensed

area of electricity supply. Accordingly, the TPC commenced the supply and continued to supply in a regular manner.

3. The Applicant submitted that sometime in 1999, the MSEB claimed that the location of the project did not fall within the TPC's licensed area and the same is within the jurisdiction of the MSEB. The MSEB, therefore, raised an objection against the TPC supplying power to them. He further submitted that from 1st April 2002, the MSEB unilaterally took over the supply of power to its hotel complex and also raised a demand for Rs.51.79 lakhs, which is totally unjustified. They have partly paid the same under protest to avoid disconnection.

4. The Applicant therefore requested the Commission to intervene and resolve the disputes / issues between the two licensees / utilities.

5. The MSEB, vide its affidavit dated 23rd September 2002, submitted that the entire Raheja Complex including the said hotel, falls within the MSEB area of supply and the TPC has no license to supply power directly to the consumers within the MSEB area of supply. It further clarifies that the Applicant was fully aware that the said complex was located within the MSEB area of supply. So much so, an application dated 28th January 1998 was also made to the MSEB for the release of a temporary connection, which was duly released.

6. The MSEB further submits that sometime in December 1998/January 1999, the Applicant got electricity supply disconnected from the meters provided by the MSEB and had apparently availed of electricity supply by TPC. The matter was taken up with the TPC vide its letter No.CE/BNDUZ/TS/0323 dated 15th January 1999. The MSEB, subsequently after obtaining legal advice in the matter, had also served a legal notice to the TPC on 31st March 1999. The matter was also referred, vide letter No. PR-3/TEC/009515 dated 7th March 2000, to the Secretary, Energy Department, Government of Maharashtra. The MSEB further submits that vide letter No. CE/BNDUZ/TS/T-13(B) dated 19th July 2001, the Petitioner had been requested *to complete the formalities and take supply from the SEB failing which it would be constrained to file legal proceedings. It simply shows* that the Board was regularly following up the matter with both the Petitioners and the TPC. Despite being aware of the said facts, the Petitioner illegally entered into an agreement with the TPC.

7. The MSEB further submitted that *what is stated in paras 7 and 9 of the petition is false to the knowledge of the Petitioners, in so far the Petitioners allege that the MSEB unilaterally took the supply of power or that there is no privity of contract between the Petitioners and MSEB. The contentions of the Petitioners are contrary to the record and appropriate action ought to be taken against the Petitioners for making false and misleading statements.*

8. During the hearing, the legal counsel for the TPC submitted, *“First of all he would like to clarify that there is no dispute between the TPC and the MSEB on this issue, as alleged by the Applicant”*. Earlier, they were supplying power to the Applicant under the belief that the hotel complex is located within the TPC jurisdiction. However, the moment the MSEB staked its claim, the TPC withdrew and handed over it to the MSEB. In fact, there is no dispute at all between the TPC and the MSEB in this regard, which is made out to be by the Applicant. .

9. He further pointed out that though the project falls within the MSEB area, the Board has no network existing in that area and even today, the Board is supplying the electricity to the Applicant using the TPC’s network, for which a wheeling charge is paid by the Board to the TPC. He further admitted that the TPC has no right to supply power in the MSEB area. In fact, the Applicant had in the initial stage (1998) itself, approached the MSEB for connection. Therefore, the Applicant and the Board were aware of the factual positions.

10. Regarding the differential rate, he pointed out that the Government of Maharashtra duly sanctioned the rate in force and the same had been made applicable to this consumer as well.

11. The TPC further submitted a detailed written statement on affidavit dated 27th September 2002 denying all the allegations made by the Petitioner in its petition dated 17th September 2002. It further stated that *the above petition is wholly misconceived, bad in law, not maintainable and is replete with false statements made with the sole intention of misleading this Hon’ble Commission. The Petitioner has suppressed several material facts from this Hon’ble Commission, with an ulterior motive”*

12. The Commission directed the MSEB to submit under affidavit the chronology of events and communications in support of their claim that they have been constantly following the matter and the client is indeed within its licensed area of operation. The MSEB submitted the same vide its affidavit-dated 23rd September 2002. On perusal of the documents, the Commission observes that the applicant has availed temporary connection of the MSEB as early as 29th January 1998. The TPC's submission and MSEB's furnishing of map establishes the MSEB's claim that the Applicant's complex falls in their jurisdiction. Further the BSES even denied vide its letter No. E-2685/EG-31SHJ/2000 dated 6th July 2000 that the client falls under their licensed area of supply. The Applicant even made an application on 15th October 2000 to the MSEB for power supply.

13. The Commission further observed that though M/s TPC is now completely disowning the responsibility, the fact remains that they had conveniently taken the consumer presumably in their area vide its letter DGM(P&M/99-41 dated 11th February 1999 addressed to the Chief Engineer, Bhandup Zone, MSEB and sought to resolve the matter in their favour. However, on consistent follow up and in face of a legal scrutiny by the MSEB, it preferred to concede the consumer in favour of the MSEB vide its letter EJ/AD-K-2/290 dated 21st June 2002, leaving the consumer high and dry after initially encouraging the applicant, who has submitted under affidavit that it provided infrastructure facilities to the TPC at a cost of more than Rs.11 lakhs.

14. In response to the MSEB's letter No. CE/BNDUZ/Tech/6149 dated 21st September 2001, the Applicant submitted, vide its affidavit dated 27th September 2002, that it had been clearly stated that the Petitioner's Residential Apartment Block would be charged as per residential rate after installation of a sub-meter on the LT side of cables main. No such sub-meter has been installed and the Board continues to charge residential apartment the higher tariff HTP-I. Further, the Petitioner had provided infrastructure to the TPCL at a cost of more than 11 lakhs, a facility that the MSEB is now utilizing. Therefore, requested the Commission to direct the MSEB to reimburse the cost of such infrastructure.

15. After hearing the Petitioner and the Respondents and also on perusal of the written statements on affidavit, the Commission observed that the application does not survive and, therefore, it dismisses the petition, with a directive to the MSEB to address the Applicant's grievance on sub-metering of residential portion within a period of three months.

Sd/-

(Dr Pramod Deo)
Member

Sd/-

(P. Subrahmanyam)
Chairman, MERC

Sd/-

(Sanjay Kumar)
Secretary, MERC