

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 100 of 2007**

**In the matter of  
Petition of M/s. Life Style International Private Limited seeking clarifications on  
the applicability of tariff category.**

**Shri A. Velayutham, Member  
Shri S. B. Kulkarni, Member**

M/s. Life Style International Private Limited  
Block No. 1012, Devidayal Estate  
Kanjurmarg (East), Mumbai 400 042 ... Petitioner

Versus

Reliance Energy Limited  
Reliance Energy Centre  
Santa Cruz (east), Mumbai 400 055 ... Respondent

**ORDER**

**Dated: August 4, 2008**

M/s. Life Style International Private Limited filed a Petition on 18.2.2008. It is averred in the Petition that a Public Notice had been issued by the Commission in respect of Case No.78 of 2007 for Public hearing to be held on 4.1.2008. With regard to the above Public hearing, the Petitioner filed submissions before the Commission that since the Petitioner was being charged on the basis of LT-2 (Commercial) Tariff, the Petitioner may be continued in the said category and not be transferred to the LT-9 (Multiplexes and Shopping Malls) Tariff category which in any case, as contended by the Petitioner, is not applicable to the Petitioner. The said change was being made only consequent to the change of HT-2 category consumers having Shopping Malls, to LT-9 category because the Petitioner is located within the Shopping Mall (In-Orbit Mall). The Petitioner has submitted that In-Orbit Mall, within which the Petitioner is located, was being charged under HT-2 (Industrial) Tariff, and their Tariff in respect of the said Mall was being transferred to LT-9. In-Orbit Mall objected to the said change and requested that they may be continued in HT-2 category. Only because of this change of In-Orbit Mall, the Petitioner's category should not have been changed to LT-9 from LT-2.



2. It is averred in the Petition that by the judgment and order dated 19.12.2007, the Appellate Tribunal for Electricity (“ATE”) had held that the Tariff under LT-9 is not applicable to Malls and Multiplexes and they shall continue to be charged under their parent category.

3. It is further averred in the Petition that the Commission in its Order dated 15.1.2008, while following the judgment and order of the ATE dated 19.12.2007 in Appeal No.146 of 2007 and IA No.163 of 2007, continued the applicability of the parent category of HT-2 category to In-Orbit Mall rather than the changed category of LT-9. On page 3 of the judgment, the Petitioner’s case has been specifically referred to as follows:

*“Counsel submitted that this subsequent judgment dated December 19, 2007 directs consumers located either in ‘Multiplexes and Shopping Malls’ or in single ownership stand alone Shopping/Department Stores, placed in tariff category LT-IX be charged tariff applicable to their respective parent categories (i.e. LT-II (non-domestic) and HT industrial with effect from 1 May 2007, the date on which the new tariff orders came into effect.”*

4. The Petitioner submitted that the Commission has held that LT-9 (Multiplexes and Shopping Malls) category was not applicable to In-Orbit Mall. Consequently, the said LT-9 category cannot be made applicable to the Petitioner also since it is located inside the Mall and has to be treated on the same basis, and the Petitioner’s category deserves to be relegated back to its parent category, i.e., LT-2.

5. The ground taken in support of the case is that the Commission’s Order dated 15.1.2008 does not deal with the LT-2 Category, which is the Petitioner’s category although they are within the In-Orbit Mall and deserve to be treated in their parent category, instead of the LT-9 category as claimed by the Electricity Supplier. Since the last line of the said Order dated 15.1.2008, only refers to HT-2 category and not to LT-2, the Petitioner has submitted that this is an error apparent on the face of the record and seems to be a typographical mistake, because it cannot be that the Petitioners who are located within the Mall are charged under the category of LT-9, which is not applicable to them, and the Shopping Mall itself is charged under its parent category that is HT-2. It is submitted that the Petitioner’s bills are received in the name of ‘In-Orbit Malls India Pvt. Ltd. C.O. Lifestyle International Pvt. Ltd.’, which shows that the category applicable to the Mall is applicable to the shops inside the Mall. Therefore, the present clarification petition has been filed. In case the present clarification is not made, it is submitted, the Petitioner shall suffer irreparable loss and injury.

6. The Petitioner has sought for the following relief:  
*“Therefore the petitioner most respectfully and humbly prays that this Hon’ble Commission may be pleased to clarify that in the judgment dated 15.1.2008 in Case No.78/2007, the LT-9 category is not applicable to those present within the In-Orbit Mall like the petitioner and that they shall also be charged in their parent category i.e. LT-2.”*



7. A hearing was held in the matter on 22.4.2008. Shri. Anurag Garg appeared for the Petitioner. Shri. K. Shenoji and Shri. Ganesh. B., were present on behalf of the Respondents. The Petitioner reiterated the averments made in the Petition. The Petitioner submitted that in addition to its contentions, it is further submitted that though the Petitioners are situated in the mall, the entire mall gets supply at the lower tariff but the Petitioner being a shop inside the mall is charged higher tariff. Subsequently, on 30.4.2008, written submissions were filed on behalf of the Petitioners, wherein the following points are made:

- a) Judgment dated 18.2.2008 passed by the ATE in the appeal filed by M/s. Spencer's Retail Ltd., challenging the application of LT-9 category. By this judgment, the ATE allowed the appeal and set aside the Order dated 24.4.2007 in Case No.75 of 2006 and Clarificatory Order dated 21.9.2007 in Case No.75 of 2006 insofar as M/s. Spencer's Retail Ltd., is a single ownership stand-alone shopping/departmental store, etc., and is placed in the LT-9 category. The ATE further directed that M/s. Spencer's Retail Ltd. be charged tariff applicable to its parent category of LTP-2 (LT-4 at the time of Order) from the date on which the new order came into effect and the difference in charges be adjusted in the future bill of M/s. Spencer's Retail Ltd.
- b) Judgment dated 1.4.2008 passed by the ATE in the following appeals (Common Order passed in the following appeals);
  - Appeal No.29 of 2008 and I.A. No.5 of 2008 (Runwal Developers Pvt. Ltd. v/s. MERC and MSEDCL)
  - Appeal No.30 of 2008 and I.A. No.7 of 2008 (Shoppers Stop Ltd. v/s. MERC and Reliance Energy Ltd.)
  - Appeal No.31 of 2008 and I.A. No.9 of 2008 (Hyper City Retail India Ltd. v/s. MERC and Reliance Energy Ltd.)
  - Appeal No.32 of 2008 and I.A. No.11 of 2008 (Shoppers Stop Ltd. v/s. MERC and Reliance Energy Ltd.)
  - Appeal No.33 of 2008 and I.A. No.13 of 2008 (Shoppers Stop Ltd. v/s. MERC and MSEDCL.)

By this Judgment, the ATE allowed all the five appeals and all the five appellants were placed in their parent category of consumers as claimed by them instead of the LT-9 category. All of them were entitled to adjust the excess payment on-account of being billed under the LT-9 category against future bills.

8. In the written submission, the Petitioner has submitted that both the above judgements of the ATE have been passed after the present petition was filed by the Petitioner. The Petitioner therefore, in the interest of justice and without prejudice to the submissions made in the Petition, requests the Commission to place the Petitioner in its parent category i.e., LT-2, based on the above judgments of the ATE.

9. In the written submission, the Petitioner has also submitted that when the law in this regard is settled by the ATE, it will not be fair to expect that every consumer affected by the applicability of the LT-9 category will file individual appeal before the ATE to seek its restoration to its parent category. In view thereof, the Petitioner has



prayed that the Commission be pleased to clarify that the tariff Order in Case No.75 of 2006 and Clarificatory Order dated 21.9.2007 in Case No.75 of 2006 will not apply to the Petitioner, hence, the Petitioner be reclassified under its former category, i.e., the LT-2 category instead of the LT-9 category.

#### **DECISION WITH REASONS-**

10. It is necessary to clarify that earlier, two consumers in the area of supply of Reliance Energy Ltd., viz., Inorbit Mall (India) Pvt. Ltd., and Vasudev C. Wadhwa Construction, had filed two appeals before the ATE being Appeal Nos. 125 & 126 of 2007. The appellants were earlier consumers in the tariff category of HT-2 industrial (HTP), but in terms of the Commission's Clarificatory Order dated 26.07.07, consumers who were hitherto being billed as HT-2 consumers began receiving bills as LT-9 consumers. Since, as held by the ATE in its Judgment dated 26.11.2007 disposing of the above appeals, "*there being no notice to the HT-2 consumers, particularly the present two appellants, about their being any further enlargement of category LT-9*" "*the facts now placed on record by these two appellants were not before the Commission when the impugned order was passed*", taking this into account the ATE directed the Commission to pass a fresh order on the issue after giving full opportunity to the two appellants of being heard as to whether they should also fall in the same category as those in LT-9. Accordingly, all consumers in the area of supply of Reliance Energy Limited who earlier were in the tariff category of HT-2 and later put under the LT-9 category, were notified of a Public hearing and their suggestions were considered before the passage of the Order dated 15.1.2008. Therefore, there was no question of considering the applicability of LT-2 (Commercial) Tariff category while passing the said Order dated 15.1.2008, since LT-2 (Commercial) Tariff category was not in issue and had not been directed to be examined by the ATE for its re-categorisation to LT-9 category. Therefore, there was no question of considering submissions made by the petitioner herein in Case No.78 of 2007 in the public hearing for the bills charged on the basis of LT-2 (Commercial) Tariff and that the petitioner be continued in the said category and not be transferred to the LT-9 (Multiplexes and Shopping Malls) Tariff category. The mandate given by the ATE was clear and the Commission has clearly acted in terms of the said mandate. Re-categorisation of LT-2 (Commercial) Tariff category to LT-9 was never in issue before the ATE in Appeal Nos. 125 & 126 of 2007. The Commission's Order dated 15.1.2008 has therefore, only examined the case of tariff category of HT-2 being re-categorised into LT-9. Therefore, there is no error or mistake in the Commission's Order dated 15.1.2008 as contended by the Petitioner herein.

11. However, the ATE's Judgment dated 19.12.2007 passed in Appeal No. 146 of 2007 and IA No. 163 of 2007 in the matter of Spencer's Retail Ltd., needs to be considered. Spencer's Retail Ltd., owned various retail outlets spread across the State of Maharashtra mostly classified in LT-II (non-domestic) category of consumers for tariff purposes. The shops were located in Shopping Malls as well as stand-alone single ownership establishments across the State. The outlets which were earlier in LT-II category (Non-domestic) and HT-I industrial were placed in the tariff category LT-IX



vide the Commission's Order dated 18.5.2007. The said judgment of the ATE dated 19.12.2007 states that "10. Thus, the 'multiplexes and shopping malls' placed earlier in LT and HT Categories were re-classified in tariff category IX for tariff purposes." The ATE held at paragraph 43 that "We are of the view that the tariff of Appellant and similar consumers in Category LT-IX is far from being reasonable and does not safeguard the business interests of the consumers and is not based on the commercial principles." The operative part of the said judgment of the ATE dated 19.12.2007 reads as under:

*"55. In view of our above findings and observations, we allow the appeal and set aside the tariff order dated 18 May 07 in Case no. 65 of 2006 and clarificatory order dated 24 Aug. 07 in Case No. 26 of 2007 and Case No. 65 of 2006 passed by the Maharashtra Electricity Regulatory Commission in so far as the Appellant consumer who is the direct consumer of MSEDCL, and is located either in 'Multiplexes and Shopping Malls' or in single ownership stand alone Shopping/Departmental Stores, is placed in tariff category. ....".*

12. Subsequently, M/s. Runwal Developers Pvt. Ltd., in Appeal No. 29 of 2008 prayed before the ATE that instead of new category LT-IX in which they were placed, they be continued to be treated in the category HP 1-C (Industrial). M/s. Shoppers Stop Ltd., in AFR No. 1362 of 2007 (Appeal No. 33 of 2208) prayed that it be treated in the category of HT and be charged at the same rate as applicable thereto as per the original order dated 18.05.2007. M/s. Shoppers Stop claimed that it did not fall under the new category as given in the original order and were actually being charged in the category of HT-II (Industrial) as was the practice in the past. It had also prayed for an appropriate order directing the Reliance Energy Ltd. to categorize the appellant in the category of HT and charge accordingly. The other appellant M/s. Hypercity Retail India Ltd., Appeal No. 31 of 2008 sought the relief of being treated in the parent category of LTP-II/ LTP-IV instead of in the new category LT-IX. The ATE held in its judgment dated 1.4.2008 as under:

*"14. ... For the same reasons as above and in view of Commissions' own order dt. 15.1.2008 these three appeals also need to be allowed. These three appellants need to be placed in the category as claimed by them instead of in LT-IX category. They are entitled to adjust the excess payment against the future bill.*

*15. Accordingly we allow all the five appeals. All the five appellants be placed in the category of consumers as claimed by them as mentioned above instead of LT-IX. All of them are entitled to adjust the excess payment on account of being billed under category LT-IX against future bills."*

13. Considering the above referred judgments of the ATE dated 18.2.2008, and 1.4.2008 which have been passed subsequent to the Commission's Order dated 15.1.2008, the Commission is of the view that its needs to be expressly clarified that M/s. Life Style International cannot be denied the benefit of the said Judgments of the ATE including the Judgment dated 19.12.2007 as well as the Order of the Commission dated 15.1.2008. The Respondent distribution licensee should have clarified this in the



first instance when the consumer approached it. The Respondent herein should not have issued bills to the Petitioner on the basis of LT-9 category in view of the ATE's judgments and the Commission's Order, as aforesaid, especially when the Petitioner's bills are received in the name of '*In-Orbit Malls India Pvt. Ltd. C.O. Lifestyle International Pvt. Ltd.*', which shows that the original (relegated) category applicable to the Mall should be applicable to the shops inside the Mall.

With the above observations, the present Case No. 100 of 2007 is hereby disposed of.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member



(P.B. Patil)  
Secretary, MERC