

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 5 of 2009

In the matter of
Petition filed by M/s Great Eastern Plaza Condominium regarding single point supply to commercial building/ industrial complexes for mixed use.

Shri V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri S.B. Kulkarni, Member

Great Eastern Plaza Condominium
Airport Road,
Yerwade,
Pune

.... Petitioner

Vs.

Maharashtra State Electricity
Distribution Company Ltd.
(MSEDCL)
Rasta Peth, Urban Circle,
Administrative Building, 1st Floor,
Rasta Peth,
Pune

.... Respondent

ORDER

Dated: August 17, 2009

Great Eastern Plaza Condominium filed a Petition on 13.04.2009. It is averred in the Petition that the Petitioner is the owner and occupier of a commercial complex called Great Eastern Plaza, developed by Mahindra Lifespace Developers Ltd., (formerly known as GESCO Corporation Ltd) (“Developer”). The Petitioner is the user and beneficiary of the single point HT connection provided by MSEDCL. The Petition raises



issues regarding Single Point Supply to Commercial Building/ Industrial complexes for mixed use. In this regard, it has been submitted by the Petitioner that MSEDCL once inspected the Petitioner's premises in February 2009 and levelled allegations against the Developers and the owners of the units of unauthorised use of electricity and resale of energy, sub- distribution at single point HT supply and application of wrong tariff. It is stated that MSEDCL further issued a Provisional Bill on the Developer imposing a penalty of Rs.21,64,04,390/-. The Petitioner is aggrieved by the arbitrary, unreasonable and wrongful exercise of power and jurisdiction initiated under Section 126 of the Electricity Act 2003 ("EA 2003"), by the Vigilance Department of MSEDCL, Pune, while the issue of single point supply was pending consideration and deliberation before the Commission in Case No. 75 of 2007, a Petition filed by Maharashtra Chamber of Commerce, Industries and Agriculture. Therefore, the Petitioner seeks regulatory intervention from the Commission.

2. The Petitioner has prayed as follows:

- (a) *Pass an Order in writing for an investigation into the affairs of the distribution licensee MSEDCL in Pune, with special reference to the non compliance of directions and the MERC (Conditions of Distribution Licence) Regulations, 2006 in respect of Single point HT Connections and distribution to sub-distribution system by consumers and to other users.*
- (b) *Appoint an Investigation Authority to investigate the affairs of MSEDCL, Pune.*
- (c) *Direct the Investigating Authority to take steps in accordance with Section 128 of the Electricity Act 2003 and submit a Report, and*
- (d) *Pass such other directions and orders as it may deem fit and proper under the facts and circumstances of the present case.*

The Petitioner also filed two applications seeking interim orders. The main prayers under the two interim applications are as under:



1. *Hold in abeyance the proceedings initiated under Section 126 of the Electricity Act, 2003, vide Provisional Bill No. SE/RPUCT/ Tech/Steno/1938 dated March 12, 2009 and subsequent notices issued by MSEDCL;*
2. *Refrain from passing any Order/s pursuant to the personal hearing held on April 2, 2009 and April 8, 2009;*
3. *Restrain from taking any coercive steps for seeking recovery of the amount of Rs.21, 64, 04, 390/- held payable under the Provisional Bill dated March 12, 2009;*
4. *Pending the adjudication of the Petition, direct that the electricity supply to the HT Connection Consumer No. 170019024050 shall not be disconnected;*
5. *Tag the present Petition along with Petition 75 of 2007.”*

3. A hearing was held on 6.05.2009, along with Case No. 8 of 2009 filed by Mahindra Lifespace Developers Ltd. Vide letter dated 6.05.2009, the Petitioner requested the Commission to grant a further opportunity to advance and conclude their arguments with regard to the issue of maintainability. The admissibility hearing was held on 9.06.2009, wherein both the sides were directed to file the draft issues and brief summary of the matter. Issues were framed and written submissions were filed by the parties.

4. The Petitioner contends that it has sought parity with the case of the Petitioners in Petition No. 75 of 2007- *MCCIA v. MSEDCL*, where a user of 11 kV HT connection at single point had been proceeded against under Sec.126 of the Electricity Act, 2003, for unauthorised use of electricity while the regulatory exercise was underway. The Petitioner is aggrieved that MSEDCL has:

- a) Not paid heed to the pending issue of single point supply and sub-distribution to the mixed loads,
- b) Not complied with the directions of the Commission's Tariff Orders for the year 2005-06 and Tariff Order dated 01.06.2008, regarding identification of consumers availing supply of 11kV. In these Orders, the Commission had directed that HT industrial and commercial category consumers, undertaking sub distribution to



mix load, shall continue to be under this category for a period of six months, pursuant to which, the consumers shall have to avail of supply through franchise route or individual connections.

5. The Petitioner further points out that the Commission had empowered the Distribution Licensees in Maharashtra to implement franchise route for single point supply to consumers and mixed loads under Regulation 8.3.7 of MERC (General Conditions of Distribution License) Regulations, 2006. Vide its Order dated 20.06.2008, the Commission had directed the Distribution Licensee to identify the consumers and bring them within the regulatory ambit. The Petitioner alleges that MSEDCL did not discharge its duty and on the other hand, wrongfully exercised its powers under Section 126 of the EA 2003, booking a number of consumers for unauthorised use and resale of electricity, thus taking undue advantage of its own lapses and non compliance of the Orders and Regulations.

6. The Petitioner through its petition seeks regulatory intervention and guidance of the Commission by taking notice of MSEDCL's misdirected actions under Section 126. It confirms that it has filed a petition under Section 86 read with Section 57 of the EA 2003, seeking regulatory guidance and intervention on the issue as in Petition No. 5 of 2009. The Petitioner now seeks a direction from the Commission to direct a person by an order in writing to undertake investigations into the affairs of MSEDCL, the Distribution Licensee and to direct the Investigating Authority to submit a report under Section 128 of the EA 2003 pertaining to the issues of misconduct and of non compliance of Regulation 8.3.7 by MSEDCL in Pune.

7. The Petitioner prays that if the Commission is satisfied that MSEDCL has violated the Commission's Regulations and Orders, it may seek compliance by MSEDCL and initiate proceedings against MSEDCL under Section 129 and Section 142 of the EA 2003.



8. The Respondent filed its reply wherein it states that the Developer had, vide letter dated 15.01.1999, applied for a new electrical connection for its commercial project of construction of Great Eastern Plaza. The connection was sanctioned on 06.11.2000 and agreement was executed on 13.11.2000. The purpose for the connection sought by the Developer was for commercial project which attracted lower tariff rate. Also, then the Developer was the single user and was engaged in construction of commercial complex. Vide letter dated 01.02.2002, the Developer applied for additional demand of 300 kV. The demand was sanctioned and another agreement was entered into between the Developer and MSEB on 04.04.2002 that superseded earlier agreement dated 13.11.2000. Till this time, the Developer was single user and carried on commercial project.

9. The Respondent then points out that construction work of GE Plaza was completed in or around January 2002. After the Pune Municipal Corporation (“PMC”) issued Building Completion Certificate, the Developer began to sell and / or allot individual tenements in the building to various third parties. The Respondent has attached the list of purchasers in its reply. The Respondent thus alleges that the purpose for seeking and obtaining electrical supply for “commercial Project” came to an end. It was no longer used by a single user and for real estate development. Rather, claims the Respondent, that several, distinct and different users required it for their own independent, distinct and different purposes. The Respondent supports its claim by specifying that there is separate internal wiring and metering arrangement for each tenement and every such tenement is internally billed on the electricity consumed by it. The Developer and the new owners thus have been using electrical energy at a lower rate, viz., the electrical supply meant for a single user for commercial project. Respondent alleges that the Petitioner did not apply for separate / individual connection and has thus practised deception by using electrical energy not meant for multiple individual users. The Respondent claims that the Petitioner did this to avoid higher tariff rate under the commercial category as compared to industrial tariff rates and such practise amounts to theft of electricity.



10. On receipt of confidential information, the Respondent undertook detailed checking of Developer's premises on 3.05.2009. Some relevant points revealed after the checking were:

- a) That there existed single point HT supply in the said premises,
- b) PMC had issued and authorised building completion certificate,
- c) Billing was done as per HTP-I tariff for industrial purpose,
- d) The agreement dated 4.04.2002 states the purpose as 'real estate and development' under HTP-I tariff plan,
- e) The developer was no longer occupying the premises, and subsequent owners had sold the units to various owners at GE Plaza and some third parties,
- f) Separate meter registers which maintained sub metering records, showed that the Petitioner was charging electricity bills from individual users @ Rs. 7/- per unit whereas MSEDCL provided the same @ Rs. 5.60/-

11. Vide letter dated 5.03.2009, the Respondent demanded from the Petitioner, various documents required for the determination of assessment period. On 12.03.2009, the Superintending Engineer, MSEDCL, Pune, served upon the Developer a provisional bill of Rs. 21,64,04,390/- in terms of Section 126 of the EA 2003. Under Section 126 (2), the Respondent served the order of provisional assessment upon the Condominium, it being the person in occupation and possession of or in charge of the premises.

12. A hearing was held on 22.7.2009. The Commission questioned the maintainability of the Petition. The Petitioner referred to the definitions of 'consumer' and 'premises' from the EA 2003; and that they have stepped into the Developer's shoes, receiving bills in the Developer's name and have deposited the bills since January 2008. The Respondent objected on the maintainability of the petition, questioning the applicability of Section 86 and Section 57 of the EA 2003. It also brought to the Commission's notice that the Developer had filed a Writ Petition before the Bombay High Court and that the Petitioner is aware of the Writ Petition and is marked on the notices. The Commission enquired as to whether the Petitioner had gone in appeal under Section 127.



The Petitioner's counsel clarified that no such appeal was filed and failed to give reasons for the same.

13. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the Petitioner's main intention is to get reprieve from action by MSEDCL under Section 126. They have by their own admission, not appealed to the appropriate authorities under Section 127. The Commission has no jurisdiction in the matter and hence the same is not admissible.

The issue of "Single Point HT connection and sub-distribution" raised in its original Petition is a red-herring and is not the issue on which it has been charged by MSEDCL, hence no relief is warranted on this account. In view of the foregoing, its prayer for action under Section 128 is superfluous and misleading.

Accordingly, Case No. 5 of 2009 stands dismissed.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V .P. Raja)
Chairman



(P.B.Patil)
Secretary, MERC