

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai – 400 001

Telephone No. 22853561

Representation No. S-A-59-08 dt . 24/11/2008

Bennett, Coleman & Co. Ltd.Complainant

V/S

B.E.S. & T. UndertakingRespondent

Present

Quorum
1. Shri. M.P. Bhave, Chairman
2. Shri. S. P. Goswami, Member
3. Smt. Vanmala Manjure, Member

On behalf of the Complainant
1. Shri. P.M.Rao
2. Shri. M.M.Bhurke

On behalf of the Respondent
1. Shri. U.Y.Vajandar, DECC 'A' ward
2. Shri. D.N. Pawar, DEEA
3. Shri. M.T. Nair, CLA
4. Shri. S.S.Neglur, Supdt. EA
5. Shri. V.S.Khole, AECC 'A' ward

Date of Hearing 03/02/2009

Judgment by Shri. M.P. Bhave, Chairman

M/s. Bennett, Coleman & Co. Ltd, The Times of India Building, D.N. Road, Mumbai-400 001 has come before this Forum for his grievance regarding application of commercial tariff instead of Industrial tariff applied by BEST in the electricity bill.

Brief history of the case

1. M/s. Bennett, Coleman & Co. Ltd, proprietor of well-known Times of India Group, had been respondent's (BEST) agreemental consumer from 1979 at Times of India Building, D.N. Road, Mumbai-400 001 under A/c no. 000-508-000 at Industrial tariff. The complainant is a printer & publisher of newspapers and other publications. Till Feb 1992 entire publishing activity was carried out in the Times of India Building premises.
2. As per complainant (M/s. BCCL), they have shifted the printing press activity from The Times of India Building to Kandivali printing press on Feb 25, 1992 due to shortage of space. Pre-press activity is still being carried out at The Times of India Building & the processes were computerized in or around 1985. However, as per respondent, sometime in between 1985 & 1992, complainant shifted its printing press from The Time of India Building premises to Kandivali, without intimation to the respondent and started various commercial activities such as Times Bank, Times Guarantee, Planet-M, Commercial & Corporate Offices etc. at the same premises.
3. Complainant had applied on May 14, 1999 for a meter for commercial tariff in respect of some commercial activity carried on in a small part of Times of India Building premises, for load of 300 KW. That consumption is separately charged under RC (HV) tariff under A/c no. 000-655-000.
4. Respondent with effect from June 2000, commenced to apply RC (HV) tariff, instead of IND (HV) tariff for the entire load connected to the premises. However, as per respondent, BCCL has not paid to respondent till date the difference between RC(HV) tariff and IND(HV) tariff for the period from 1985 to May 2000 in respect of electricity supplied to and consumed by BCCL under A/c No. 000-508-000, amounting to about Rs.8.76 crores
5. Complainant vide their letter dtd. July 29, 2000 states that payment for electricity consumption at commercial tariff RC(HV) would be made under protest.
6. Complainant referred said matter to the office of the Joint Directorate of Industries of the Govt. of Maharashtra on Sept. 17, 2002 and asked opinion whether the prepress activity carried out required air-conditioning. The joint Director of Industries by his letter dtd. Sept 26, 2002 confirmed that pre-press activity is a part of printing activity and same required air-conditioning.
7. Respondent addressed a letter dtd. April 24, 2003 to, MCGM to confirm whether the NOC of complainant is in order.
8. Complainant received a notice on May 30, 2003 from the MCGM, informing that on inspection of their premises it was observed that the complainant was no longer carrying out printing activity and only prepress activity was being carried out, MCGM further stated that respondent has been directed to disconnect the industrial load as the permit (NOC) issued to it u/s 390 of the MMC Act is revoked. The said notice further states that a permit under section 390 can be

granted only for activities where steam, water or mechanical power has been employed.

9. Complainant by their advocate's letter dtd. 6th June 2003 being a reply to MCGM notice dtd. 30th May 2003 called upon the MCGM to withdraw their notice under intimation to complainant or their advocates. The complainant further requested the MCGM that if they are not inclined to withdraw the said notice, they should grant a personal hearing in the matter.
10. Respondent by its letter dtd. June 12, 2003 informed complainant that the Asst. Municipal Commissioner on inspection of the site has observed that the printing press activity has ceased and only prepress activity is in progress and called upon to produce a valid NOC from MCGM, certifying the premises to be 'INDUSTRIAL'. In absence of the same complainant would be charged for the power consumed on the basis of commercial tariff.
11. On Sept.1, 2003 complainant filed suit no. 2838 of 2003 in the High Court and notice of motion bearing no. 2630 of 2003 on 16/09/2003 for restraining the respondent herein from disconnecting the power supply, to levy tariff at industrial rate & for refund of difference between amounts paid at commercial tariff under protest & amount actually payable at industrial tariff. Accordingly, respondent filed an affidavit in reply to notice of the same motion.
12. The Hon'ble High Court in its order on Sept. 16, 2003 recorded the statement of respondent's advocate that the disconnection of electricity would be as per the law & that a notice prior to disconnection if any, would be given to complainant.
13. As per the complainant's application, the Jt. Directorate of Industry, Mumbai granted registration to the complainant on Oct 18, 2004 as Information Technology enable service unit for the product 'Computerised Desk Top Publishing of Newspaper',
14. The MCGM issued a factory permit (NOC) on Jan 20, 2005 to complainant for the said premises under the provision of section 390 of MMC Act. The said factory permit was issued for 'IT enable Service - Computerised Desk Top Publishing of Newspaper pre-press activity'.
15. Complainant by its letter dtd. March 4, 2005 informed respondent that the factory permit is granted by MCGM & requested to restore Ind(HV) tariff instead of commercial tariff.
16. Respondent by its letter dtd. May 31, 2005 raised various queries as the list submitted by the complainant was not clear as to which are the loads used exclusively for Industrial purpose.
17. Complainant vide their letter dtd. July 7, 2005 informed respondent that all equipments mentioned in the list attached to the factory permit granted by MCGM were used for Industrial activity i.e. Information Technology Enable Services - 'Computerised Desk Top Publishing of Newspaper'. Hence, complainant was eligible for industrial HV tariff.

18. The Hon'ble High Court by an order dtd. Jan 18, 2006 held that the complainant is at liberty to file application before respondent on the basis of Industrial license issued to him in the year 2004, pertaining to industrial user of the premises within a period of one week. Respondent was directed to consider the same & to pass appropriate order. If the order is adverse to the complainant, the complainant may adopt appropriate legal proceedings as may be available in law.
19. Complainant filed application on Jan 24, 2006 to the Dy. Chief Engineer (CS), in view of the High Court's order for restoration of Industrial Tariff.
20. After carrying out inspections and hearing the respondent, DCECS vide his Order no. DCECS/BCCL/154/2006 dtd. May 5, 2006 held that the complainant was not qualified for benefit of Industrial tariff & rejected the application for conversion to industrial tariff i.e. IND (HV) dt. 10/3/2006.
21. Unsatisfied by the order given by respondent on 5th May, 2006 complainant applied u/s. 86 of Electricity Act, 2003 to Maharashtra Electricity Regulatory Commission (MERC) for the grant of reliefs.
22. The MERC by its order dtd. April 23, 2007 rejected the application of the complainant on the ground that MERC does not have jurisdiction to decide the issues raised by complainant & asked to approach the concerned IGR Cell/CGR Forum for Redressal of the dispute.
23. Complainant preferred an application on June 16, 2008 to IGR Cell as per order given by MERC.
24. Administrative officer IGR Cell, Customer Care 'A' ward in his order passed dtd. July 22, 2008 & letter dtd. 30/12/08 states that the decision given in the respondent's earlier order dtd. 5/5/2006 in the case stands & requested to separate A/C load for commercial activity & press activity for which a separate meter would be provided & billing would be done accordingly, as per tariff in force.
25. Complainant registered application on Nov 24, 2008 to CGR Forum in Annexure 'A' for various prayers including setting aside of IGR Cell order.

Consumer in his application and during Hearing stated the following

1. The complainant states that the Bennett, Coleman & Co. Ltd. is an existing company within the meaning and the provisions of companies Act, 1956 and has its registered offices at The Times of India Building, D.N. Road, Mumbai-400 001.
2. The complainant states that he is inter alia a Printer and Publisher of Newspapers and other publications carrying out industrial activity. Till February 25, 1992 the entire publishing activity inclusive of press and pre-press activities were being carried out from the premises of the Complainant at The Times of India Building, D. N. Road, Mumbai-400 001 (Hereinafter for the sake of brevity referred to as the said Industrial Premises). The Complainant shifted the printing

activity to the Kandivali due to shortage of space after advent of the Computer technology in India. The Complainant's processes were computerized in or around 1985. The dispute is related to the nature of the activities which are inter alia carried on by the Complainant at the said Industrial Premises.

3. For the better preview of the activities of the Complainant, the complainant provides summary of the printing and publishing activities as follows:

Pre-Press :

- a) The Pre-press activities consist of and include:
- i) Receiving, collecting and collating news, features, pictures and graphic through an extensive network of Journalists, news agencies, freelancers, independent writers, correspondents, etc. Similarly collection, collation and scheduling of display advertisements, classifieds, legal notices, tenders and public notices, appointment advertisements, etc. from various advertising agencies, advertisers, Directorate of Audio Visual Publicity (D.A.V.P.) etc. The sub-editors edit the news input and the processing of advertisements is done by advertising department. The next activity is of electronically composing news items and advertisements followed by proof reading and final editing. It is followed by placing scanned advertisements and news items on electronic page dummy. Unit of a newspaper is a page. A newspaper is produced page by page. The next activity is of cutting, pasting and to take a print out or a hard copy proof for each page which is then physically approved by the editor responsible for making of the particular page. At this stage of production, each page is finalized and approved in electronic format and the same is done by the pre-press department. These pages are then digitally transmitted one by one for printing to the printing department (for subsequent activity).
 - ii) Just like processing of text as described above, for processing of images and graphics, the complainant simultaneously carries on activities such as receiving input in the form of photographs from editorial / advertising department, digital photographs from various news agencies, ready paste-up pages from news systems, etc. The subsequent activities are of making negatives for advertisements and miscellaneous work, scanning of paste-up pages received, processing black and white / colour images, etc.
 - iii) Therefore text and images pertaining to respective stories are electronically integrated and adjusted to fit into the page plan or the electronic dummy for the respective page. This activity of production of contents for the newspapers is known as page make-up process.

PRESS:

- b) The Press Activity consists of:
- i) The prepared pages i.e. all the contents which are processed in the prepress activity are electronically transmitted to printing department,

which receives the electronic output on film. This process is known as “Film Outputting”.

- ii) This activity is followed by “Plate Making”. Plates are then mounted on Rotary machine cylinders and actual printing is carried out.
- c) The complainant states that the Industrial activity of production of newspaper consist of following processes.
 - i) The production of a newspaper is carried out in the form of its individual pages-page-by-page. A ‘page’ is the unit of a newspaper.
 - ii) Each page has ‘content’ in it which is divided into two main categories: i.e. editorial content; and advertisement content.
 - iii) There can be pictures and graphics forming part of either editorial or advertisement content and have to be produced accordingly.
 - d) In any production planning, the production of each page has to be planned in advance, every day. Accordingly, for each page there is a separate production plan for the advertisement content and the editorial content respectively. These are known as the ‘Advertisement Dummy’ and the ‘Edit Plan’ for that page. The Advertisement Dummy is provided by the advertisement dept. (Response) and Edit Plan by the editorial dept. separately.
 - e) The next step is to process the contents-both editorial and advertisement, to fall in accordance with their respective page plans. This involves subbing, proof-reading and deiting of text, editing pictures, giving captions etc. It also includes scanning, page-making, colour processing, fitting of stories/pictures and advertisements on each page.
 - f) After both the contents have been put in the page in accordance with their respective page plan, an output is taken to ensure the acceptability ad correctness of these contents. The page is then ‘signed-off’ or cleared, “in principle”, for printing and thereafter transmitted to the printing centre.
 - g) All activities of the production process described here-in-above up to the stage of transmission of the page can be broadly termed as pre-press activities and form the first part of the production process of any newspaper.
 - h) The entire pre-press activity involves contribution from number of people from various departments viz.:
 - i) Editorial staff to process all editorial contents.
 - ii) Advertisement staff to process all Advertisement contents.
 - iii) Production staff to integrate the above two contents.

- iv) Maintenance and support staff to facilitates the above mentioned two processes.
4. The complainant states that the production of the process of the newspaper is explained in the details in a newspaper production Workflow Diagram. The complainant further states that none of the activities mentioned above can be viewed as a commercial activity or in isolation and to do so would amount to a very restricted and hyper technical view of the whole process of production. The complainant says and submits that the prepress activity as elaborated above is inherently an industrial activity in the chain of continuous processes all of which are essential and integral activities for production of a newspaper. In any event it is an activity of IT enabled Service Unit.
 5. The Complainant submits that with the rapidly changing technology for printing newspaper and magazines and with a large increase of volume of printing due to increase in circulation, the place earmarked for printing machines the said industrial premises was found to be inadequate. Therefore, the Complainant bifurcated the printing activity (which was always accepted as an industrial activity) into pre-press activity, both retaining the character of industrial activity. The printing was shifted to a press at Kandivali, Mumbai. The shifting process was completed in or around February 25, 1992 of one of their newspapers was the last issue printed by the Complainant at the said Industrial Premises at the Times of India Building. Even after the printing was shifted to Kandivali the entire industrial activity of publishing i.e. prepress requirements or processing the contents continued to be located at the said Industrial Premises and the same continues to retain its character as an industrial activity.
 6. The Complainant states that the establishment at the said Industrial Premises has always been registered under the provisions of the Factory Act, 1948.
 7. The Complainant states that the establishment at the said Industrial Premises has always been an industrial establishment and the Complainant has, for last several decades, been paying electricity based on IND (HV) (Industrial) Tariff.
 8. The pre-press and also the press activity of the Complainant require the aid of electrical power and cannot be carried out without such power. The Complainant has obtained necessary license from the Municipal Corporation of Greater Mumbai (MCGM) under Section 390 of the Mumbai Municipal Corporation Act, (MMC Act) for its premises.
 9. The Complainant submits that after the press activities were shifted to Kandivali the license granted under Section 390 of the MMC Act was renewed from time to time. The said license was renewed by the MCGM on 27th March 1997 for a period of 10 years ending on 31st March 2007.
 10. The Complainant submits that a license with regards to the Kandivali premises was also issued by the MCGM and renewed from time to time.
 11. The Complainant states that as per Government order No.S-121/412/CR/NRG-2 dated 11/6/1979 the total connected load at the said industrial premises was 3547 KW. The MCGM granted permission vide permit No.WORS/F-34 of 88-8 to

shift part printing load out of the said 3547 KW to Kandivali. Hence the total load at the said industrial premises was reduced to 2003.28 HP+650 KW. The same was certified by the MCGM.

12. The officers of the Respondent inspected the premises after the printing activity had shifted to Kandivali and the load had been reduced and the Respondent was at all times aware of the shifting of the printing activity to Kandivali.
13. The Complainant had been paying for electrical power to the Respondent at industrial tariff. However, the Respondent has, since about June 2000, been wrongly recovering charges for electricity supplied to the Complainant's establishment at the said industrial premises at the higher commercial tariff.
14. The Respondent by a letter dated 13th July 2000 unilaterally informed the Complainant that with effect from 1st June 2000 the Respondent would charge the Complainant for electricity consumption at commercial rates instead of industrial rates. The Respondent was of the purported view that after shifting of printing activity of the Complainant to Kandivali press, the said industrial premises attracts Commercial tariff as per the tariff schedule.
15. Subsequent to the aforesaid letter a meeting was held between the representatives of the Complainant and the Respondent. The Complainant was called upon to submit details with regards to its electrical load.
16. The Complainant by its letter dated 29th June 2000 recorded the meeting and agreed to submit the details with regards to its electrical load in due course of time. The said letter further states that payment for electricity consumption would be made under protest at commercial tariff.
17. The Complainant by a letter dated 25th October 2000 informed the Respondent that after the shifting of the press activity to Kandivali, the officers of the Respondent had carried out an inspection of the premises and it was also informed that the said industrial premises of the Complainant were still governed by the provisions of Factory Act.
18. The Complainant by a letter dated 19th December 2000 informed the Respondent that all electricity consumption bills henceforth would be paid under protest. The said letter gives a break up of bills paid under protest for the months of June to October 2000.
19. The Complainant by a letter dated 31st January 2001 paid an amount of Rs.26,58,019 for the month of December 2000.
20. The correspondence between the parties continued. The Complainant continued to pay for the electricity consumed on the basis of commercial tariff but under protest. The Complainant craves leave to refer to and rely upon the said correspondence when produced.
21. The Complainant referred the said matter to the Office of the Joint Directorate of Industries of the Government of Maharashtra by its letter dated 17th September

- 2002 and inter alia sought an opinion whether the pre-press activity carried on in the said industrial establishment required air conditioning.
22. The Jt. Director of Industries by his letter dated 26th September 2002 confirmed that the pre-press activity is a part of the Printing Activity and the same required air-conditioning.
 23. Further correspondence between the Complainant and the Respondent continued. The Complainant by its letter dated 16th October 2002 sent the above correspondence with the Joint Director of Industries to the Respondent. The Complainant also enclosed a certificate from a Chartered Engineer to the same effect.
 24. The Respondent by a letter dated 11th November 2002 proposed a joint inspection of the industrial load and 'NOC' from the MCGM to enable restoration of the industrial tariff. The relevant load list was also requested.
 25. By a letter dated 17th April 2003 the Complainant forwarded to the Respondent a certificate from The Assistant Engineer of the MCGM certifying the industrial load and further informed that as per the MCGM a fresh NOC was not required as the pre-press activity was continuing at the same premises.
 26. The Respondent addressed a letter dated 24th April 2003 to the MCGM. The Respondent stated that – "We have now received a letter dated 17th April 2003 enclosing the list of connected load for 2503 KW duly certified by Asstt. Engr. Factory Bldg. 'A' Ward. We understand in case of reduction in load due to transfer of industrial activities from one place to another, generally a consumer is required to surrender his existing NOC to MCGM authorities and a new NOC is to be issued for the then existing connected load. However, it can be seen that the same NOC issued in 1995 is validated upto 2007 with variation in connected load".
 27. The Respondent then asked the MCGM to confirm whether the revalidated NOC was in order.
 28. Thereafter, to the surprise of the Complainant, the Complainant received a notice dated 30th May 2003 from the MCGM, informing the Complainant that the permit issued to it under Section 390 of the MMC Act was revoked. The same was on the alleged ground that on inspection of the said industrial premises it was observed that the Complainant was no longer carrying out printing activity at the said industrial premises and only pre press activities were been carried out. The said notice further states that a permit under section 390 can be granted only for activities where steam, water or mechanical power has been employed.
 29. The said notice further states that the Respondent has been directed to disconnect the industrial load supplied to the Complainant. This action of the MCGM was possibly to bolster the false and incorrect stand adopted by the Respondent which is an undertaking of the MCGM itself.
 30. The Complainant appointed one Mr. A.S. Rajwade, a Chartered Engineer for inspecting the industrial power load at their industrial premises at the Times of

- India Building. The certificate dated 6th June 2003 issued by the Chartered Engineer states that most of the load is used for pre press activities (for which complete dust free atmosphere at controlled temperature is required hence air conditioning is compulsory) and central air conditioning system. The same further states that the pre press activity is an industrial activity and hence the Complainant should be charged for power supplied under the industrial load at industrial tariff instead of commercial tariff. The said certificate also gives a break up of the total amount paid from June 2000 to April 2003, the amount payable as per industrial load and the refund due. As per the said certificate the Respondent had charged an excess of Rs.3,55,40,023/- (Rupees Three Crores fifty five lacs forty thousand twenty three only).
31. The Complainant by their Advocates letter dated 6th June 2003 being a reply to the MCGM notice dated 30th May 2003 called upon the MCGM to forthwith withdraw their notice under intimation to the Complainant or their Advocates. The Complainant further requested the MCGM that if they are not inclined to withdraw the aforesaid notice, they should grant a personal Hearing in the matter.
 32. The Respondent by its letter dated 12th June 2003 (in reply to the Complainant's letter dated 17th April 2003) informed the Complainant that The Assistant Municipal Commissioner on inspection of the site has observed that the printing press activity has ceased and only pre-press activities were in progress. By the said letter the Complainant was called upon to produce a valid NOC from the MCGM certifying the premises of the Complainant to be 'INDUSTRIAL'. In absence of the same the Complainant would be charged for the power consumed on the basis of Commercial tariff.
 33. The Complainant by letter dated 18th June 2003 reiterated and confirmed all the statements and contentions made by them in their letter dated 6th June 2003.
 34. It is pertinent to note that the Complainant had filed a Writ Petition against the MCGM and others to renew the lease agreement of the Complainant in respect of Plot No. 15, Hornby Road, Estate, Mumbai, on which the said industrial premises are situate on the same terms and conditions and not to enhance the lease rent on the basis of market value of the land. The Hon'ble High Court, Mumbai by its order dated March 20, 2003 directed MCGM that a composite Hearing before the officer of MCGM for deciding lease rentals as also the regularization charges be granted to the complainant. Accordingly, three Hearings were held by senior officers of MCGM respectively on July 1, 2003; September 26, 2003 and November 24, 2004. The minutes of the Hearing held on July 1, 2003 reflects that the Jt. Municipal Commissioner has himself recorded the fact that the complainant "being an Industrial User, as per lease, 2% of the current market value calculated by adopting the Ready Reckoner rates have been charged for revised lease rent." The complainant craves leave to refer to and rely on minutes of the Hearings held on September 26, 2003 and November 24, 2004 when produced.
 35. Correspondence ensued between the Complainant and the Respondent in respect of the additional amounts being wrongly recovered by the Respondent by

- the expedient of wrongly charging the Complainant at commercial rate instead of industrial rate. The Respondent threatened to disconnect the power supply.
36. In the premise, Suit No.2838 of 2003 was filed by the Complainant for restraining the Respondent herein from disconnecting the power supply, to levy tariff at Industrial rate and for refund of difference between amounts paid at commercial tariff under protest and amount actually payable at industrial tariff.
 37. On 16th September 2003 the Complainant moved a Notice of Motion 2630 of 2003 in Suit 2838 of 2003 to restrain the Respondent from disconnecting power supply and for other reliefs. An Affidavit in Reply of Mr. Ashok V. Kane dated 15th September 2003 was filed by the Respondent.
 38. At the time of the Hearing of the said Notice of Motion the Advocate appearing on behalf of the Respondent made a statement that of the Respondent proposes to disconnect electricity it would do so on accordance with law and that a notice prior to disconnection, if any, would be given to the Complainant. The Hon'ble High Court, Bombay in its order dated 16th September 2003 recorded the same.
 39. Further correspondence ensued between the Complainant and the Respondent with the Respondent wrongly continued to raise supplementary bills.
 40. Subsequent to the filing of the aforesaid Suit the complainant applied afresh to the MCGM for grant of a permit Under Section 390 of the MMC Act, which according to the complainant had been wrongly cancelled.
 41. The Complainant learnt that the Office of the Directorate of Industries, Maharashtra, recognizes the pre-press activities such of those of the Complainant as "Computerised Desk Top Publishing for Newspaper". The Complainant applied to the Government of Maharashtra for registration of the said industrial premises as "Information Technology enabled Service Unit" for the product "Computerised Desk Top Publishing for Newspaper". The Government by its Registration Certificate dated 19th October 2004 issued through the Office of the Jt. Directorate of Industries (Mumbai Metropolitan Region), Mumbai granted registration to the Complainant as Information Technology enabled service unit for the product "Computerised Desk Top Publishing for Newspaper".
 42. The Government of Maharashtra, Office of the Jt. Directorate of Industries (Mumbai Metropolitan Region), Mumbai by a letter dated 10th Nov 2004 recognised that industrial power load of 2916.4 KW is required for activities carried out by the Complainant for "Computerised Desk Top Publishing for Newspaper". The said load of 2916.4 KW was recognized after considering the electrical load list submitted by the Complainant (as attached to the Factory Permit granted by the MCGM as stated herein after). The said letter also records the registration as Information Technology enabled Service Unit" granted to the Complainant and that printing activities had been shifted to Kandivali.
 43. On 20th January 2005 the MCGM issued a Factory Permit to the Complainant for the said industrial premises under the provisions of Section 390 of the MMC Act. The said Factory Permit was issued for "IT enabled services - computerized desktop publishing for news paper pre-press activity". The description of the

- Factory Unit includes the detailed list of equipments used by the Complainant at the said industrial premises. The said list is attached to the said permit. The said list includes all the equipments used by the Complainant at the said Industrial Premises for the said Industrial activity. The said Factory Permit is for the period 1st June 2003 to 31st March 2007. The said Factory Permit also endorses requirement of the Complainant of Electrical Power of 3909.00 H.P. which is equivalent to 2916.4 KW Electrical Power sanctioned by the Government of Maharashtra, Jt. Director of Industries. Since, the said Factory Permit had expired on 31st March 2007, the Complainant applied to the MCGM for renewing the said Factory Permit, and the MCGM has renewed the said Factory Permit vide its Renewal Permit No. 786101309 dated 25th June 2007. MCGM has renewed the Factory Permit for the period 1st April 2007 to 31st March 2009.
44. The Complainant submits that without prejudice to the Complainant's submissions that pre-press activity was always industrial activity even before the Registration Certificate dated 18th October 2004 being issued by the Jt. Director of Industries (Mumbai Metropolitan Region), Mumbai and the letter dated 10th November 2004 from the Jt. Director of Industries which recognized that Industrial power load of 2916.4KW is required for activities carried out by the Complainant for "Computerised Desk Top Publishing for Newspaper" and the issuance of the said Factory Permit by the MCGM, the Respondent does not have any valid ground whatsoever to deny to the Complainant benefit of industrial tariff.
 45. On obtaining the said Factory Permit the Complainant by its letter dated 4th March 2005 informed the Respondent of the Factory Permit being granted by the MCGM and requested the Respondent to restore Ind(HV) Tariff (Industrial Tariff) instead of Commercial Tariff, which is unilaterally and wrongly charged by the Respondent.
 46. The Respondent by its letter dated 4th May 2005 informed the Complainant that its request for restoration of Ind(HV) Tariff (Industrial Tariff) was being considered.
 47. The Complainant also forwarded the list of equipment used by the Complainant at the said industrial premises (as attached to the Factory Permit granted by the MCGM). The Respondent by its letter dated 31st May 2005 raised various queries, though the same did not survive in view of the fresh Factory Permit dated 20th January 2005 being granted by the MCGM. The Respondent was purportedly of the view that from the list which was submitted it was not clear as to which are the electrical loads used exclusively for industrial purpose in the said Industrial Premises.
 48. The Complainant by its letter dated 7th July 2005 informed the Respondent that all equipments mentioned in the list attached to the Factory Permit granted by the MCGM were used for Industrial Activity i.e. "Information Technology Enabled Service – Computerised Desk Top Publishing for newspapers" and recognized by the MCGM as "IT enabled services – computerized desktop publishing for news paper pre-press activity". The said letter further states that the total load of 2916.40 kw was sanctioned by the Director of Industries vide its letter dated

10th November 2004, after considering the electrical load list which forms a part of the Factory Permit and hence the Complainant was eligible for IND (HV) Tariff for the above mentioned activities.

49. The Complainant states that the IT & ITES Policy, 2003 of the Government of Maharashtra clearly states that power charges are to be levied on IT and ITES units at Industrial rates. The said IT & ITES Policy, 2003 recorded in the Government Resolution NO. ITP-2003/CR/3311/Ind-7 dated July 12, 2003 empowers this Commission to notify the IT and ITES units as a separate category of consumers for levying of power charges on the IT and ITES units at industrial tariff.
50. The Complainant had also filed an Affidavit dated 7th December 2005 in Suit No. 2838 placing on record the area used for Industrial and commercial activities at the said industrial premises.
51. The Complainant at the behest of the Respondent had applied for a commercial Transformer bearing meter no. 655 which was installed on May 14, 1999. The power consumed from the said meter is charged at and paid by the Complainant at Commercial Tariff in respect of some commercial activity being carried on in a small portion of the said industrial premises.
52. The Hon'ble High Court by an order dated 18th January 2006 held that the Complainant was at liberty to file an application before the Respondent for levy of power at Industrial Tariff on the basis of the Factory Permit issued by the MCGM. Respondent was directed to pass appropriate order on the said Application within a period of 8 weeks.
53. In view of the said High Court Order dated 18th January 2006, the Complainant filed an Application dated 24th January 2006 before the Dy. Chief Engineer, Commercial (South), of the Respondent for restoration of industrial tariff.
54. The officers of the Respondent had carried out a complete detailed inspection of the said industrial Premises of the Complainant and had noted the machinery installed and used therein.
55. After the inspection a hearing was granted by Dy. Chief Engineer, Commercial (South), BEST on 8th March 2006, when the representatives of the Complainant along with their Advocates explained the facts of the case and pointed out all the relevant data / documents which justified that the Complainant was an industrial user and hence must be charged at industrial tariff. The Complainant was informed that the Respondent would give a list of equipment which prima facie according to the Respondent would not fall under "Computerised Desk Top Publishing for newspapers" and which would not qualify for industrial tariff. The Complainant could then respond to the same and be called for a further Hearing.
56. The Complainant on 10th March 2006 filed their Written Submissions setting out the gist of the case and submitted that they are entitled to supply of power on basis of IND(HV) Tariff i.e. Industrial Tariff. The Complainant also submitted that if in the prima facie opinion of the Respondent any load does not fall within

Industrial Tariff the same be intimated to the Complainant at the earliest to enable the Complainant to reply to the same.

57. The Respondent vide its letter dated 9th March 2006 enclosed the summary of the load investigation ("Inspection Report") of electrical load at the said industrial premises of the Complainant.
58. The Complainant submits that the said report demonstrates total non application of mind. The load used at the said industrial premises was sought to be segregated between Industrial and Non-industrial load without any rationale. In the said report the Respondent sought to bifurcate the areas in which industrial activities were being carried out and the areas in which industrial activities were allegedly not being carried out. The said report seems to suggest that the passages, corridors, toilets and restrooms in a factory would be charged at commercial rate which is totally baseless, irrational and arbitrary.
59. Upon reviewing the Inspection report of the Respondent, the Complainant vide their Advocates letter dated 24th March 2006 elucidated in detail the classification of their activities as industrial and commercial being carried out at the said industrial premises. In the said letter the Complainants have in detail replied and clarified every aspect of the Inspection Report in seriatim.
60. The officers of the Respondent on 4th April 2006 once again inspected the Premises and investigated the load.
61. The Respondent by its Order, DCECS/BCCL/154/2006 dated 5th May 2006 arbitrary held that the Complainant was not qualified for the benefit of Industrial Tariff and accordingly rejected the Application dated 10th March 2006 filed by the Complainant.
62. Being aggrieved by the Order dated 5th May 2006, the Complainant preferred an application under Section 86 of the Electricity Act, 2003 to the Maharashtra Electricity Regulatory Commission (MERC) for the grant of following reliefs:
 - i) that the Hon'ble Commission be pleased to hold and direct that the complainant is entitled for the supply of power at industrial tariff for the IT and ITES units category of consumers under the MERC tariff order, as per the Government Resolution No. ITP-2003/CR-3311/IND-7 issued by the Industries, Energy and Labour Department, Government of Maharashtra.
 - ii) that the Hon'ble Commission be pleased to hold, direct, declare and confirm that the pre-press activity carried out by the complainant inter alia which is also known as "Computerised Desk Top Publishing for Newspapers" at the Times of India Building, D.N. Road, Mumbai-400 001 is an industrial activity and since more than 75% of the connected load is used for the said activity, the complainant is entitled for the supply of power at the industrial tariff as mentioned herein above;
 - iii) that the Hon'ble Commission be please to hold and direct that even before October 18, 2004 being the date of registration certificate issued in

favour of the complainant as 'IT enabled Service Unit' by the Joint Director of Industries, Government of Maharashtra, the activity of the Applicant viz. pre-press activity be confirmed as an industrial activity; and entitled for the supply of power at the industrial tariff and

- iv) that the Hon'ble Commission be pleased to direct the Respondent to supply power to the complainant at The Times of India Building, D.N. Road, Mumbai 400 001 under industrial load at industrial tariff and give to the complainant all consequential reliefs.
63. The MERC by its order dated 23rd April 2007 rejected the application of the Complainant on the ground that the MERC did not have jurisdiction to decide the issues raised by the Complainant in the said application. The MERC also held that the Complainant should approach the Internal Grievance Redressal Cell / Consumer Grievance Redressal Forum for Redressal of the dispute in question.
64. In terms of the order passed by MERC the Complainants preferred an application dated June 16, 2008 to the IGR Cell.
65. The Administrative Office IGR Cell Customer Care (A) Ward by his letter dated 23rd July 2008 (received on August 4, 2008) rejected Application filed by the Complainant without giving assigning reasons. No remedy has been provided by the IGR Cell.
66. The complainant prayed to the Forum :-
- i) That the order dated 23rd July 2008 passed by the Administrative Officer IGR Cell Customer Care (A) Ward rejecting the Application filed by the complainant be set aside;
 - ii) That the Forum be pleased to hold and direct that the Complainant is entitled for the supply of power at industrial tariff being an IT and ITES unit category of consumer as per the Government Resolution No. ITP 2003/CR/3311/IND/7 issued by the Industries, Energy and Labour Department, Government of Maharashtra.
 - iii) That the alternative to prayer (ii) above, BEST be directed to make an application to the Maharashtra Electricity Regulatory Commission (MERC) in terms of clause 4(h) of the IT & ITES Policy 2003 for notifying IT & ITES units as a separate category of consumers to whom power is to be supplied at industrial rate.
 - iv) That the Forum be pleased to hold and direct that manufacturing process at Time of India Building D.N.Road, Mumbai-400 001 is an industrial activity and the load utilized in area used for advertisement/response department, canteens, corridors, toilets, passages, air conditioning etc. is for industrial purpose and the Complainant is entitled for the supply of power at industrial tariff.
 - v) That the Forum be pleased to hold that more than 75% of the connected load is used for industrial activity and consequently Complainant is entitled to the supply of power at industrial tariff.

- vi) That the Forum be pleased to direct BEST to supply power to the Complainant at The Times of India Building D. D. Road, Mumbai-400 001 under industrial load at industrial tariff.
- vii) That the pending the Hearing and final disposal of this application, BEST be directed to charge the Complainants for power supply at The Times of India Building, D. N. Road, Mumbai-400 001 with effect from the date of this application at Industrial Tariff.
- viii) consequential reliefs.
67. Being aggrieved by the impugned Order dated 23rd July 2008 this appeal is being preferred on the following amongst other ground:
- a) The Complainant submits that the said order has been passed in violation of the principles of natural justice.
 - b) There is no discussion or finding in the impugned order dated 23rd July 2008 by the Administrative Officer of the IGR Cell as to why and on what basis he has rejected the Application.
 - c) The Administrative Officer has not given any reasons, leave aside sufficient and explicit reasons, in support of the impugned order dated 23rd July 2008.
 - d) The Administrative Officer has not even made pretence of compliance with the principles of natural justice.
 - e) The impugned order dated 23rd July 2008 passed by the Administrative Officer is a non speaking order.
 - f) The Administrative Officer has blatantly, overly and manifestly violated the principles of natural justice.
 - g) The Complainant submits that on the said ground alone the impugned order dated 23rd July 2008 ought to be set aside.
 - h) The Complainant submits that the MERC has in its order dated 23/4/07 held as follows "In view of the continuing impasse in this case, the Commission in the passing, deems it necessary for BEST to review the basis on which the Petitioners are being charged commercial rate, and to withdraw it if considered appropriate after such review." The Complainant submits that despite a specific observation by the MERC, the Respondent has failed to review its decision.
 - i) The Complainant submits that the Respondent, though an autonomous body, is an Undertaking or division of the MCGM. The Complainant submits that once a Factory Permit is granted by the MCGM and the Premises being declared / recognized as a Factory, it was incumbent on the Respondent to have charged the Complainant for electricity supplied for industrial activity mentioned in the Factory Permit at Industrial Tariff. It is not open to the Respondent to go behind the Factory Permit granted by the MCGM.

J) The Complainant submits that the Order dated 5th May 2006 purports to proceed on the basis that "I am accepting BCCL's contention that the afore stated documents jointly or severally disclose that 'pre-press activity'" but thereafter in a pre-determined manner seeks to deny the benefit of Industrial Tariff by omitting from industrial or ITES activity areas like corridor, passage, waiting room, security, stores, purchase, record room, store-room, conference room, engineering department, production department, canteen, etc. These activities carried on in these areas are ancillary/adjunct to any factory or industry and cannot by any stretch of imagination be regarded as commercial activities.

k) The complainant submits that of the determination of the activity is carried out in a rational manner and power used in areas like corridors, canteen, toilets, etc. are not arbitrarily regarded as commercial activity, more than 75 % of the installed load is used for industrial activity.

l) The complainant has been granted registration as "Information Technology enabled Service Unit" for the products "Computerised Desk Top Publishing for Newspaper" vide order dated 19th October 2004 from Government of Maharashtra, Office of the Jt. Directorate of Industries. The Office of the Jt. Directorate of Industries has by its letter dated 10th November 2004 recognised that industrial power load of 2916.40 KW is required for activities carried out by the Complainant for "Computerised Desk Top Publishing for Newspaper". This was binding on the Respondent and it was not open to the Respondent to arbitrarily reject uses of electricity as not being used for "Information Technology enabled Service Unit".

m) Even before the acceptance of the complainant as an ITES unit by the government by its letter dated 10th November 2004, the work being carried out at the Industrial Premises was industrial activity and the complainant was entitled to electrical power at industrial tariff.

n) The complainant submits that Article 4.2(h) of the IT & ITES Policy, 2003 of the government of Maharashtra states that power charges are to be levied on IT and ITES units at Industrial rates as per Resolution No. ITP-2003/CR/3311/Ind-7 dated July 12, 2003. The Respondent is deliberately flouting the Policy by its irrational division of installed load.

o) The letter dated 9th March 2006 was issued by the Respondent enclosing summary of load inspection. The complainant submits that the said report demonstrates total non application of mind. The load used at the said industrial premises was sought to be segregated between Industrial and Non-industrial load without any rationale. In the said report the Respondent sought to bifurcate the areas in which industrial activities were being carried out and the areas in which industrial activities were allegedly not being carried out. The said report suggests that the passages, corridors, toilets, canteen, security rooms, sports rooms and restrooms, etc in a factory would be charged at commercial rate.

p) The same non-application of mind continues in the order dated 5th May 2006 which relies on the sad report to come to the conclusion that allegedly only 47.7% of the absurd and pre-conceived conclusion by holding that in the IT

enabled Service Unit, the load connected in areas like corridors, waiting room, passage, security, billing, purchase, stores, UPS room, offices, advertising, medical room for staff, record room, secretarial services, board room, engineering department, scanning department, conference rooms, Information Technology section, canteen, toilets, common facilities like centralized A.C., pumps etc. was not for activity of an Information Technology enabled Service Unit for "Computerised Desk Top Publishing for Newspaper". The Respondent absurdly concluded that the load connected to above mentioned areas cannot be taken into account towards industrial use.

q) The Respondent has failed to appreciate the true nature of the newspaper publishing industry. The basic objective of a newspaper is to impart information. This comes in various forms such as current news reports, editorials, images and advertisements. Advertisements are an important means of imparting information to the public. Advertisements also have the effect of reducing the price of the newspapers in the hands of the consumers. Advertisements are inputs to industry's growth. The advertisement department of a newspaper comprises of obtaining advertisements from advertisers, preparing and setting out the advertisements in the layout of the page, which finally gets printed. The advertisement department is thus part and parcel of the pre-press activity of newspapers and is very much a part of the industrial activity. In the premises, electricity used by the advertisement department can never be regarded as electricity used for commercial activity.

r) The complainant further submits that it is imperative that in the filed of "Computerised Desk Top Publishing for Newspaper" air-conditioning is essential. Even Jt. Directorate of Industries by his letter dated 26th September 2002 confirmed that the pre-press activity is a part of the Printing Activity and the same required air-conditioning. In spite of this, the Respondent has wrongly refused to consider the load required for air conditioning as industrial load.

s) The complainant submits that certain facilities are required to be provided to the workmen pursuant to the provisions of the Factory Act and various other labours/social legislations. Areas required for such facilities cannot be classified as used for commercial or non industrial activities. The complainant submits that use of power for providing above mentioned facilitates should be charged at industrial tariff.

t) The complainant submits that it was the case of the Respondent in its affidavit dated 15th September 2003 filed in suit No. 2638 of 2003 that the complainant was required to obtain a Permit under Section 390 of the MMC Act from the MCGM and a non objection certificate from the Director of Industries to receive electricity supply for industrial purpose.

u) The complainant submits that the MCGM has granted a Factory Permit dated 20th January 2005 for " IT enabled services -computerised desk publishing for newspaper pre-press activity" and the Director of Industries has by its letter dated 10th November 2004 stated that the complainant would be entitled to industrial power of 2916.40 KW . Thus the conditions imposed by the Respondent itself and as enumerated in its Affidavit have been complied with. It was imperative for the Respondent to have granted power at the industrial tariff to the Complainant.

- v) The complainant submits that the activities which were and are carried out by the complainant at the said Industrial Premises and which were earlier known as Pre-press activities are now recognized by various government authorities as computerised desk publishing for news paper and the same is evident from the terminology used in the said factory permit for description of the industrial activity carried out by the complainant at the said industrial premises. In these circumstance, the complainant should have been always charged for electricity consumption at the said Industrial Premises at industrial tariff. The complainant submits that since the MCGM has granted a Factory Permit dated 20th January 2005 as stated the same means that he said Industrial Premises of the complainant in question continue to be recognized as factory/industrial premises.
- w) It is apparent that the pre-press activity falls within both categories viz. industrial activity per se and also within ITES activity.
- x) The Licence issued by the MCGM under Section 390 of the MCGM Act spells out the particulars of equipments used for Industrial activities and for which the electrical load is required.
- y) The complainant submits that on a plain reading of the Affidavit of the Respondent, the complainant is entitled to supply of power at Industrial Tariff.
- z) The Complainant submits that as per the Schedule of Electricity Tariffs of the Respondent effective from 15th July 1997, any customer of the Respondent would be entitled to be charged at Industrial Tariff if more than 75% of the total connected load is used for manufacturing activities.
- aa) The complainant submits that more than 75% of the Electricity load used by the complainant at the said industrial premises is used for industrial activity and hence the complainant is entitled to be charged at Industrial Tariff for the entire electricity consumption at the said factory. The complainant has at the behest of the Respondent already fixed a separate meter for its commercial activities.
- bb) In the premises the complainant submits that it is entitled to supply of power on basis of IND(HV) Tariff i.e. Industrial Tariff.
68. As per load investigation done by BEST at Times of India building Complainant has explained to the Forum at the time of Hearing that each of the department, floor wise are related to pre-press activity, eg corridor, waiting room, passages, training development dept, security, transport, purchase, stores & UPS room etc.
69. The Load of 7.585KW is for entertainment dept i.e. Planet-M premises, is a commercial premises. In the year 1999, for Planet-M a separate meter was installed. The same load is less than 1/10 of the total connected load. Planet-M had separate Air Conditioners and were also connected to commercial transformer.
70. Complainant has stated that they are ready for technically examine the load of Times of India building by a separate independent and impartial body such as IIT etc. to ensure it is commercial load or industrial load.

71. Complainant has also explained that the definition of industrial premises and manufacturing process as per BEST's schedule of electricity tariff which was effective from 15th July, 1997 is as under:
 "Industrial Premises are premises including the precincts thereof in any part of which a manufacturing is carried out on with the aid of power".
 And Manufacturing Process means any process for
 "Composing types of printing, printing by letter press, lithography or photography or other similar purpose or book binding" etc.

BEST in its written statement and during Hearing stated the following:

1. The issue of whether Pre-Press activity with Computerized Desk Top publishing for Newspapers constitute industrial activity or not is the issue before Hon'ble High Court vide this Suit No.2838 of 2003.
2. BCCL after shifting of its printing activities to kandivali has not been using required 75% of its total connected load for manufacturing process and it's a business into other allied business such as Radio, Music, Internet and Multimedia including the running of a chain of music, media stores under the name of "planet M", Commercial and Corporate offices, etc. This misuse of electricity by BCCL contravened applicable law and agreement between the parties. These allied businesses are commercial in nature and attract Commercial tariff.
3. As per BEST's Deputy Chief Engineer, Commercial (south) order dated 05th May 2006, it is mentioned that the inspection carried out by BEST team on 14.12.2005 reveals that out of total connected load of 1678.652 kW observed to be connected and exclusive of all the common amenities load and central air condition load aggregating to 1004kW, only 800.38 kW was found used for prepress activity, which constitutes only 47.7% of the total load and as such condition for qualifying for industrial tariff is not satisfied.
4. BCCL, since shifting of its printing press activity to kandivali , had not been using at least 75% of total Connected Load for manufacturing purpose, in respect of electricity supplied, hence BEST , Commenced to apply RC(HV) tariff, instead of Ind (HV) tariff as the said electricity was being used by BCCL predominantly for Commercial purpose.
5. Relevant load list was requested by BEST because the letter from Director of Industries submitted by complainant shows the original sanctioned load and not existing load at that time. Also NOC from BMC submitted which indicates the aggregate power but relevant load list was not enclosed.
6. The issue of whether Pre-Press activity with Computerized Desk Top publishing for Newspapers constitute industrial activity or not is the issue before Hon'ble High Court vide this Suit No.2838 of 2003. BCCL would be eligible for IND (HV) tariff, if at least 75% of the total connected load used by BCCL is for Industrial activity.

7. BEST vide its letter dated 4th May 2005 did not inform the complainant that its request for restoration of Ind (HV) Tariff was being considered. It has been informed that the matter is being studied at their end in details & will be heard regarding the decision in this matter.
8. Complainant submitted list along with the NOC it was not clear which load was exclusively used for Industrial purpose, hence queries were made.
9. The area over which electricity is consumed by a consumer has little or no relation with connected load of the consumer. A consumer may have high connected load over a small area or low connected load over a large area.
10. Complainant's some part of its commercial load (at about 300 kW) was separated and billed at commercial tariff under Account / Bill no. 000-655-000, electricity supplied under Account / Bill no. 000-508-000 continued to be used by BCCL for the other commercial activities and not for agreed purpose.
11. Pursuant to the order of 18.01.06 of His Lordship Hon'ble Justice Mr. S. U. Kamdar in the notice of motion no.2630 in the suit no.2838 of 2003, a committee was formed and the matter was investigated in detail by Dy. Chief Engineer Commercial (South) along with representative of BCCL. Order passed by the Dy. Chief Engineer Commercial (South) dated 05th May 2006, that BCCL does not qualify for considering the Industrial tariff.
12. IGR Cell sent the written reply to the BCCL on dated 23rd July, 2008, with the proper justification and remedies.
13. Order issued by IGR Cell itself explanatory and is based on the report of the various inspection carried out in the past and the order issued by Dy. Chief Engineer Commercial (South) dtd. 05.05.2006 as per the directives of Hon'ble High Court dtd. 18.01.2006, after hearing held with the representative of BCCL on 08.03.2006.
14. BCCL would be eligible for IND (HV) tariff, if at least 75% of the total connected load used by BCCL is for Industrial activity. This requirement was with pursuant to clause no.14 of the then Schedule of Tariffs of BEST. However, during inspection it was found that 75% of the total connected load was not used for the industrial purpose.
15. In accordance with the condition of supply and the then Schedule of Tariffs of BEST, the complainant failed to comply with the eligibility criteria for availing the facility of industrial tariff. During the joint inspections with the applicants, it was found that electricity consumption in the said premises for industrial activity is less than 75% of the entire electricity supplied. As per eligibility criteria for availing the industrial tariff at-least 75% of the total connected load is required to be used for industrial purpose and remaining 25% of the total connected load should be used for all other activities such as passages, canteen, corridor, waiting room, conference room etc.

16. After shifting of its printing activities to Kandivali, BCCL has not been using required 75% of its totals connected load for manufacturing process and diversified its business into other allied business such as Radio, Music, Internet and Multimedia including the running of a chain of music, media stores under the name of "planet M", Commercial and Corporate offices, etc. This misuse of electricity by BCCL contravened applicable law and agreement between the parties. These allied businesses are commercial in nature and attract Commercial tariff.
17. During the various communication & discussions, the complainant has been asked to carry out segregation of load being used for industrial purpose and commercial purpose, failed to do so, effecting the non compliance of the eligibility criteria for availing the facility of industrial tariff. As per eligibility criteria for availing the industrial tariff at-least 75% of the total connected load is required to be used for industrial purpose and 25% of the total connected load should be used for all other activities such as passages, canteen, corridor, offices, toilets, waiting room etc.
18. Advertising activity by any means can not be covered under Industrial activity.
19. BCCL were asked to separate the A/c load used for industrial purpose and other commercial activities.
20. In accordance with the condition of supply and the then Schedule of Tariffs of BEST, the complainant failed to comply with the eligibility criteria for availing industrial tariff.
During the joint inspections with the BCCL representatives, it was found that electricity consumption in the said premises for industrial activity is less than 75% of the entire electricity supplied.
As per eligibility criteria for availing the industrial tariff at-least 75% of the total connected load is required to be used for industrial purpose and remaining 25% of the total connected load should be used for all other activities such as passages, canteen, corridor, waiting room etc. & other facilities given to the workman.
21. During the joint inspections carried out on 14.12.2005 & 04.04.2006, it was confirmed that electricity consumption in the said premises for industrial activity is less than 75% of the entire electricity supplied, which did not fulfill the eligibility criteria for availing the facility of industrial tariff.
22. The License issued by the MCGM is a necessary pre-requisite for availing industrial tariff, but the complainant failed to comply with the conditions of supply and the then scheduled of tariff of BEST as during the no. of inspections it was found that 75% of the load was not used for industrial purpose.
23. In the concluding para of the affidavit it is clearly mentioned that defendant (BEST) is entitled to and has correctly charged the plaintiff (BCCL) at the commercial tariff for the supply consumed by the plaintiff (BCCL).
24. Complainant's some part of its commercial load (at about 300 kW) was separated and billed at commercial tariff under Account / Bill no. 000-655-000,

electricity supplied under Account / Bill no. 000-508-000 continued to be used by BCCL for other commercial activities and not for agreed purpose.

25. In accordance with the condition of supply and the then Schedule of Tariffs of BEST, the complainant failed to comply with the eligibility criteria for availing the facility of industrial tariff.

During the joint inspections with the applicants, it was found that electricity consumption in the said premises for industrial activity is less than 75% of the entire electricity supplied. As per eligibility criteria for availing the industrial tariff at-least 75% of the total connected load is required to be used for industrial purpose and 25% of the total connected load should be used for all other activities such as passages, canteen, corridor, waiting room etc.

In addition to above submission, BEST has resubmitted following written statement mentioning their prayer.

i) BEST submits that the primarily the Forum has no jurisdiction to entertain and try the present dispute as is filed by the Complainants.

ii) BEST submits that cl. 6.7 sub. Cl. (d) of the of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006 reads as under-

“Where a representation by a consumer in respect of the same Grievance is pending in any proceedings before any Court, Tribunal or Arbitrator or any other Authority, or a decree or Award or a final order has already been passed by any such Courts, Tribunal or Arbitrator or Authority.”

iii) BEST says that for the present dispute the Complainants have already filed a suit in the Hon’ble High Court being Suit No. 2838 of 2003 for the same and similar prayers which is still pending before the Hon’ble High Court.

iv) BEST submits therefore that under cl. 6.7 sub. Cl. (d) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006 the Forum cannot entertain the present dispute. Hence the Complainants should not be allowed to pursue both the remedies simultaneously.

v) BEST submits that under Section 126 Explanation (b) (iv) of the EA 2003 the Unauthorized use has been defined as under -

“Unauthorized use of electricity means the usage of electricity for the purposes other than for which the usage of electricity was authorized.”

vi) Admittedly from the prayers of the present Complaint and the pending suit filed by the Complainants in the Hon’ble High Court being Suit No. 2838 of 2003 generally and from prayer of the present complaint particularly it appears that the Electric Supply given to the Complainant for one purpose has been utilized for another purpose.

vii) The cl. 6.8 sub cl. (a) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006 reads as follows-

“If the forum is prima-facie of the view that any grievance referred to it falls within the preview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the forum,

(a) Unauthorised Use of electricity under Section 126 of the Act.”

viii) BEST submits that this is presented as a dispute of Applicability of particular Tariff in fact it is a case covered by Sub Sec. (iv) of the explanation to Section 126 of the Act and hence the Forum should exclude such dispute from its jurisdiction.

ix) BEST says that by its order dated 18th January 2008 in Suit no. 2838 of 2003 the Hon'ble High court ordered the Complainant to file a representation on the basis of the fresh industrial license issued in 2004 However, the present Complaint is not filed as per the directions of the Hon'ble high Court. Hence the same has been rightly rejected by the IGR.

x) BEST further says that admittedly the Respondent started charging the Complainant at the commercial rate from 2000 onwards. The Complainant have paid the bills for the earlier period. The cause of action therefore has arisen at that time. Hence as per cl. 6.6 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006 present dispute should have been filed within two years there from. BEST submits that the present dispute is therefore barred by limitation and should be dismissed.

xi) The arrears covered by the Suit in which the Hon'ble High court has passed a direction to go before the IGR of BEST pertains to the period prior to the new Electricity Act came into force. Hence the dispute is also governed by the old Act being Indian Electricity Act 1910. In the old Act however, there is no provision to approach the Forum. Hence, the dispute should not be entertained by this Forum.

Without prejudice to what has been stated herein above BEST submits as under:-

xii) With reference to application submitted by complainant most of the contents thereof are denied by BEST. However, BEST says that The Bennett, Coleman and Co. Ltd. Is a consumer of the Respondents.

xiii) BEST says that the issue as regards whether the Pre-Press activity with the Computerized Desk Top publishing for newspapers constitute industrial activity or not is the main issue pending before the Hon'ble High Court in Suit No. 2838 of 2003. The Complainant after shifting its printing activities to Kandivali have not been using required 75% of their total connected load for manufacturing process and they are engaged in other business such as Radio, Music, Internet and Multimedia including the running of a chain of music, media stores under the name of 'Planet-M' Commercial and Corporate Offices etc. This misuse of electricity by the

Complainants contraverted the law and the conditions of their agreement with the BEST. It is also in contravention of the conditions of supply of the Respondents prevailing from time to time. All these business of the Complainant carried on this account number are commercial in nature and attracts commercial tariff.

xiv) BEST says that the Complainants were eligible for IND(HV) Tariff, only if the 75 % of the total load was used by them for Industrial activities. BEST says that this was clearly mentioned in clause 14 of the then Schedule of Tariff of BEST.

xv) BEST further says that the BEST has every time replied to the letters issued by the Complainant. The IGR Cell has even mentioned the fact in the order that a substantive hearing was given to the Complainant on their present grievance and a final decision was given on 5-5-2006 and the Complainant were suggested to separate the A/C Load for Commercial activities and Press Activities for which separate meters were offered to be provided with the application of separate Tariff applicable at that time. The impugned order therefore passed by the IGRC dated 23/7/2008 is self-explanatory and cannot be set aside by the Forum. The Respondent again and again requested the Complainant to segregate their Industrial and commercial load. BEST says that the power used by the advertisement/response Department canteens, corridors, toilets, passages, common air conditioning etc. cannot be considered as industrial load. In view of these disputed facts the joint investigations were carried on alongwith the representatives of the Complainant as per the directions of the Hon'ble High Court given on 18/1/2006 and final orders were issued by the Dy.Chief Engineer Commercial (South) on 5/5/2006. During the joint inspection carried out it was found that 75 % of the Total load was not utilized industrial purposes by the Complainant.

xvi) BEST says that the inspection carried out at the Complainant place on 14-12-2005 it was revealed that out of total load of 1678.652 kW exclusive of all common amenities load and central A/c Load aggregating to 1004kW, only 800.38 kW was found used for pre press activities which constituted 47.7% of the total load as such and thus they were not entitled for the industrial tariff. BEST says that since the shifting of its printing press to Kandivali the Complainant were not using at least 75% of their connected load for manufacturing purpose, in respect of the electricity supplied hence BEST started applying RC(HV) Tariff instead of IND(HV) Tariff as the power was being used predominantly for commercial purposes.

xvii) BEST requested the Complainant to furnish them the load list because the Complainant had only furnished original sanctioned load to the director of industries. The NOC letter from BMC also showed the Aggregate power but relevant load list was not enclosed. BEST repeats that the issue whether the Pre press activity with computerized desk top publishing for news papers amounted to Industrial Activity or not is pending before the Hon'ble High Court and the same is sub-judiced. BEST says that the Complainant would be eligible for Industrial Tariff if atleast 75 % of the Total Load is proved to be used for industrial activity.

xviii) BEST ever turned down the request of the Complainant for restoration of the IND(HV) load but by our letter dated 4/5/2005 BEST informed that the request of the Complainant was under consideration of BEST and the same was being studied by us as the list of the load submitted by the Complainant was not very clear. The Complainant submission that the area over which the Industrial activity was carried on was more than 75% of the total area also was turned down as irrelevant. Though some part of the load was separated and charged at commercial tariff under account no. 000-655-000 and electricity under account no.000-508-000 was continued to be used for commercial purposes by the Complainant.

xix) BEST says that pursuant to the order passed by the Hon'ble High Court dated 18/1/2006 in Suit No. 2838 of 2003 a committee was formed and the matter was investigated in detail by the Dy.Chief Engineer Commercial (South) of BEST and the officers of the Complainant. After thoroughly hearing the complainant on 5/5/2006 it was decided that the Complainants did not qualified for considering the Industrial Load. This decision was communicated to the complainant in writing. BEST says that the impugned order passed by the IGR therefore is legal, reasoned and binding on the complainant, which is self-explanatory. BEST says that as per the conditions of supply and the Schedule of Tariff of BEST the complainant failed to qualify the eligibility criteria for availing the facility of Industrial tariff. As per cl. 14 of the Schedule of Tariff at least 75% of the total load was required to be for the industrial activity by the Complainant, which the Complainant failed to use. It was found during joint inspection that electricity consumption in the said premises for industrial activities was less than 75% of the Total supply. It appears that after shifting of the printing activities to Kandivali the Complainant were not using 75% of the Load for Industrial purposes but it was used for other commercial activities mentioned above. This misuse was in contravention of various provisions of law as well as the rules made there under. BEST denies that the advertising activity can be covered under Industrial activity. Therefore the BEST rightly requested for separation of the commercial load. BEST says that the Complainant failed to comply with every request of BEST. After contravening the conditions of supply of the BEST had to charge the entire load at the higher rate of Tariff applicable for which it was used as per their conditions of supply.

xx) BEST also relies on EA 2003, various enactments made there under, Conditions of Supply, Govt. Tariff orders, MERC's Tariff Orders, various circulars, documents & Electricity Rules and regulations framed from time to time.

Prayer-

xxi) As the Complainant have contravened the provisions of law and the Tariff schedule and the Conditions of supply the present complaint of the complainant's be dismissed with costs. The Complaint also deserves to be dismissed on the grounds mentioned hereinabove such as jurisdiction and limitation etc.

- xxii) The Complainant shall not now be allowed to produce any more evidence at the time of hearing of this complaint.
- xxiii) The Complainant should also not be allowed to change the facts of the case without giving opportunity to the BEST to reply.
26. BEST stated at the time of Hearing that the dispute started when the printing press activity shifted to Kandivali as only administration part of the establishment was left at Times of India building. Because of this the industrial load was reduced below 75% of the connected load. As per the tariff schedule in force, BEST had started charging the commercial tariff.
 27. In the year 2000 tariff was changed by industrial to commercial as per Indian Electricity Act 1910, the act in force at that time.
 28. BEST wants A.C load should be segregated as per commercial activity and industrial activity for which separate meter would be given.
 29. BEST denies the objection raised during the Hearing by complainant on the report of investigation dtd. 4/4/2006.
 30. Load used for passage, corridors, toilets etc. is considered as commercial load as it is common for both the businesses which attracts commercial tariff & industrial tariff. Therefore, BEST has no option except to charge the higher side tariff i.e. commercial tariff, given the denial of complainant for segregation of their load as per their business activities being carried out.
 31. BEST is not having separate agency to guide for segregation of the load of the complainant, for the commercial activity and industrial activity. However, as opinioned by Forum BEST may guide to the complainant how the segregation can be achieved, once they approach BEST with the application for the same.

Observations

1. BEST pleaded that as per clause 6.7(d) of MERC (CGRF & Electricity Ombudsman) Regulations 2006, Hon'ble Forum should not entertain the present dispute between BEST & M/s. BCCL as suit no. 2838 of 2003 is pending in the Hon'ble High Court, Bombay. However, Forum notes that the Hon'ble High Court vide its order dtd. 18/1/2006, has allowed the complainant (M/s. BCCL) to file application before the respondent (BEST) on the basis of the industrial license issued to him in the year 2004. The order of Hon'ble High Court is reproduce as below:

The learned counsel for the plaintiffs does not press the present motion. However, he is at liberty to file representation on the basis of the fresh industrial licence issued to him in 2004 pertaining to the industrial user of the premises within a period of one week from today. If such a representation is made, the learned counsel appearing for the 2nd defendant states that they will consider the

same and pass appropriate order thereon within a period of 8 weeks from today. If the order is adverse to the plaintiffs the plaintiffs may adopt appropriate legal proceedings as may be available in law. The learned counsel for the defendant no. 2 states that in the meantime the electricity power connection will not be disconnected. Motion disposed of accordingly. No order as to costs.

2. The Complainant approached to MERC for grant of their reliefs as per the underline portion of the order given above by Hon'ble High Court. MERC in its order dtd. 23/4/2007 refused to admit the application of the complainant on the ground that MERC does not have jurisdiction to decide the issue raised by M/s. BCCL. MERC however, informed the complainant to approach the concerned IGR Cell/CGRF for redressal of their grievances. Accordingly, complainant approached to the IGR Cell on 16/6/2008. Being aggrieved by the order of IGR Cell dtd. 23/7/2008 complainant approached to the CGR Forum on 24/11/2008.
3. Therefore Forum has full power to hear the complaint. The Forum is well aware of their jurisdiction as per clause no. 6.7(d) of MERC (CGRF & Electricity Ombudsman) Regulations 2006 & therefore like to consider the dispute only for the period after 18/1/06 (date of the order passed by Hon'ble High Court).
4. Forum has observed that on 14th May, 1999 a meter was installed for 300 KW load for commercial activity being carried out in the M/s. BCCL premises which is being charged commercial tariff. This indicates that the M/s. BCCL establishment is also having the commercial activity in the same premises.
5. Consumer requested to direct respondent to make application to MERC in terms of clause no. 4(h) of IT & ITES Policy 2003 for notifying IT & ITES units as a separate category of consumers to whom power is supplied at Industrial rate. But the Forum does not have authority to give the direction in this regard. However, it is seen that as of today tariff regarding IT & ITES units are included in the BEST tariff schedule in force from 1st June, 2008 to 31st March, 2009, which is approved by MERC.
6. There is another argument that industrial license is obtained for the entire building. It implies that licensee is free to do industrial work in every nook and corner of the premises. It cannot be construed as a certificate that core industrial load is more than 75% of the total load inside the premises.
7. The consumer has argued that certain loads like passage, toilets can not be considered as commercial. If one understands the meaning of 75% it means that core load should be 75%. It also means that any load can be treated as ancillary load and if it is within the 25 % of overall load, the complete load can be treated as industrial. In the present case, core load appears to be 42.5%, excluding the A/C load. Considering the total load including A/C the core load will be much less than this figure.
8. In light of above observation the decision given by Dy.Chief Engineer, Commercial (S), dated 5th May, 2006 is valid as per Tariff Schedule in force on that day. Therefore, the decision of IGR Cell in this regard is in order.

9. As on today certain amount of load is definitely qualifies as Industrial load. However, M/s. BCCL can avail this Industrial tariff only after applying for the same. In our opinion BEST should find out and guide the complainant for which part/floor of the building, industrial status can be given.
10. BEST claims that if the complainant segregate the load it will apply the appropriate tariff. In this case Forum feels that BEST should guide to complainant in detail about segregation of the load.

ORDER

1. The order of the IGR Cell is upheld.
2. BEST is directed to guide step by step to complainant for segregation of their load, if M/s. BCCL so desires.
3. If M/s. BCCL implements the suggestions and files the requisition accordingly, the BEST is directed to process the requisition with out any further delay.
4. Copies be given to both the parties.

(Shri. M. P. Bhave)
Chairman

(Shri. S. P. Goswami)
Member

(Smt. Vanmala Manjure)
Member