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APPEAL PETITION NO. P/001/2016
(Present: V.V. Sathyarajan)
Dated: 17th May 2016

Appellant : Sri Kurian Varghese
Managing Director
M/S Met-Rolla Steels (P) Ltd.,
Paipra, Muvattupuzha
Ernakulam.

Respondent :
1. The Deputy Chief Engineer,
Electrical Circle, KSEBL
Perumbavoor,
Ernakulam

2. The Special Officer (Revenue)
KSEBL, Vydhyuthi Bhavanam,
Thiruvananthapuram

ORDER

Background of the case:

The appellant, M/s Met-Rolla Steels Limited is a High Tension consumer with consumer code No HTB-24/3267, having a Contract Demand of 2500 kVA, under Electrical Section, Velloorkunnam. It is a medium heavy industrial unit engaged in manufacturing of steel ingots and rolled steel products and started commercial production in the unit in the year 1996. The entire production of the factory came to a block due to a major plant and machinery breakdown on 24-01-2015. It is alleged that the production could only be resumed on 02-04-2015 after completing the repair works and the appellant is entitled to get waiver of minimum demand charges for the closed period of February 2015 and March 2015 as per Clause 16 (b) of HT agreement conditions.

But the respondent issued demand for the 75% of the contract demand as per differential pricing system with the aid of ToD meter as per the revised tariff order and based on the relevant Regulation in the Supply Code, 2014. Against the issuance of invoices for the month of February

2015 and March 2015, the appellant approached the Hon'ble High Court of Kerala by filing W.P. (C) No. 11840/2015 and the Hon'ble Court directed the Special Officer (Revenue) to consider the representation filed by the appellant. Pursuant to this, the Special Officer (Revenue) passed an order on 28-07-2015 rejecting the claim of the appellant. Challenging this, the appellant approached the Hon'ble CGRF Ernakulam requesting to set aside the impugned order and also prayed for a direction to refund/adjust the minimum demand remitted by the appellant for the months of 2/2015 and 3/2015. The CGRF, Ernakulam, vide order in OP No. 70/2015-16 dated 27-11-2015, disposed of the petition holding the demand issued by the respondent is valid. Against the decisions of the CGRF, the appellant has approached this Authority with this appeal petition.

Arguments of the appellant:

M/s. Met-Rolla Steels Limited is a private limited company incorporated under the Companies Act and certified as an ISO-9001 company. It is a medium heavy industrial unit which obtained SIA (Secretariat for Industrial Approval) and is having its Head Office at Paippra, Muvattupuzha, and is engaged in the manufacturing of steel ingots and rolled steel products and started commercial production in the unit in the year 1996 and is continuously functioning till this date. The company has two divisions that is Melting and Re-Rolling.

Consumer No HTB-24/8267 is installed at the premises of the melting division of the industrial unit with a total contract demand of 2,500 kVA. An agreement was entered into between the appellant and the 1st respondent on 29-10-1996 for supplying energy under HT tariff. The appellant's company is regularly remitting the energy charges issued from the office of the 2nd respondent and the average energy charges paid by the appellant as far as melting division is concerned is around Rs.7.5 lakhs per month and there is no dues to the Kerala State Electricity Board by way of energy charges.

While so, there took place a major plant and machinery breakdown in the unit on 24-01-2015 and the entire production in the unit was stopped. The matter was immediately brought to the notice to the Assistant Engineer, Electrical Section, KSEB Limited, Vellorkunnam, Ernakulam district as per letter dated 02-02-2015. Immediately after the breakdown of the machinery, the repair works started in the industrial unit and was over by the end of March, 2015 and the appellant was able to resume production on 02-04-2015 and that matter was also intimated to the Assistant Engineer, Electrical Section, KSEB Limited, Vellorkunnam, Ernakulam district.

In the meanwhile the appellant remitted the monthly bill for the month of 2/2015 which carried only fixed charges and the complainant remitted the amount under protest. Thereafter the 2nd respondent issued bill for month of March, 2015 demanding an amount of Rs. 6,13,246/- by way of minimum demand charges for the month of March, 2015. A perusal

of the above demand charge would clearly show that the entire demand is based on the fixed charges portion alone and there is no consumption of energy for manufacturing in the unit apart from light load and the load used for repairing.

As per Clause 16 (b) of the HT agreement, the appellant is entitled to get waiver from payment of fixed charges for the non-consumption of energy for the closed period due to the force majeure conditions provided the complainant is paying the minimum revenue guaranteed as per the agreement. In the case on hand the payment details for the months from 1.4.2014 to 31.3.2015 it can be seen that the appellant had already paid more than Rs. 7 crores and the minimum revenue guaranteed by the appellant is only Rs.67,50,000/- (1857 (i.e. 75 % of the contract demand) x 300 x 12). Since the production in the company is already restarted on 02-04-2015, minimum demand charges demanded for the months of February and March 2015 ought to have been waived by the 2nd respondent. Immediately on receipt of bill appellant filed a detailed representation before the 2nd respondent requesting to grant waiver of minimum demand charges. In the complaint it is specifically requested for waiver of minimum demand charges for the closed period of February and March 2015.

Thereafter the 2nd respondent passed an order on 28-07-2015 rejecting the claim of the appellant by relying on a model agreement given as Annexure-13 in the Supply Code, 2014 and stated that statute does not provide to consumer the waiver of minimum demand charges in cases where the unit is unable to consume energy due to any reason and hence the stand taken by the 2nd respondent is legally unsustainable.

The Hon'ble CGRF rejected the complaint on an entirely different aspect and held that monthly minimum charges have been enforced by statute and further held that the agreement is accordingly stands modified. It is respectfully submitted that the order is legally unsustainable and contrary to the decision pointed out by the appellant and hence liable to be set aside on the following among other grounds.

As per Clause No. l6 (b) of the HT agreement the minimum annual revenue is guaranteed by the consumer is 12 times the demand charges per month corresponding to 75% of the contract demand or kVA whichever is higher. Since the agreement is binding between the parties, and so long as there is no cancellation or modification of the agreement, the respondents are bound to grant benefit as per the agreement. However, the Hon'ble CGRF suo-moto modified the agreement for which the Forum has no power and hence liable to be set aside.

The entire case pleaded by the appellant is based on the decision reported in Indira Vs. KSEB reported in 2014 (1) KLT 59. In the said decision the Hon'ble High Court was dealing with a similar issue in regard to the payment of special deposit. The Hon'ble High Court after analyzing

Regulation 14(4) held that, it can be insisted only as a precondition for providing service connection to new tenants /occupants and further held that the Board is not entitled to make any demand for special deposit over and above the security deposit which is insisted upon at any time when the connection was given and further held that insisting of special deposit cannot have any retrospective operation with respect to the connections already provided. However, the original authority as well as the CGRF failed to consider the above relevant aspect and hence liable to be set aside.

The stand of the KSEB all throughout is that in the light of model agreement, the consumer is bound to make the payment. However the Hon'ble CGRF declined to accept the contention of the KSEB and held that the agreement conditions not covered by the changes in the statute are to be re-executed for enforcement. As such Clause 16 (b) in the agreement executed between the parties in 1996 cannot be enforced without a new agreement. In the light of the above categorical finding the Hon'ble CGRF ought to have granted the benefit to the appellant. However, on an entirely different point and by relying on HT and EHT tariff general conditions, the Forum rejected the request. It is respectfully submitted that so long as the general conditions of HT and EHT are not having retrospective operation, the same is inapplicable in the case on hand and in the light of the settled legal position that all laws that affect substantive rights generally operate prospectively 2008(1)KLT 50 (SC) and hence liable to be set aside.

It is respectfully submitted that since the unit restarted the production immediately after repair and since the appellant has remitted the annual minimum revenue as undertaken in the agreement, the unit is entitled to get the benefit of Clause 16(b) of the agreement and the denial of the benefit of waiver of minimum demand charges for the months of 2/ 2015 and 3/2015 is illegal.

Since the minimum demand charges for the months of 2/2015 and 3/2015 have already been remitted, the appellant is entitled to get refund or adjustment of the amount remitted by the appellant with interest as per law. The appellant is in great financial crisis and hence urgent orders may be passed in the above matter. For these and other grounds to be urged at the time of hearing, it is most humbly prayed that this Hon'ble Ombudsman may be pleased to:

i) Set aside the orders issued by the 2nd respondent and the Forum by issuing appropriate orders.
ii) Declare that the appellant is entitled to get waiver of minimum demand charges for the months of 2/2015 and 3/2015 in the light of the decision reported by the Hon'ble High Court in Indira Vs. KSEB reported in 2014 (1) KLT 59 and also in the light of the decision in 2008(1) KLT 50 (SC).
iii) Direct the 2nd respondent to refund/adjust to the minimum demand charges remitted by the complainant for the months of

2/2015 and 3/2015 within a time frame fixed by this Hon'ble Forum.

iv) To award cost for these proceedings.

v) To grant such other reliefs that may be deemed just and proper by this Hon'ble Forum.

Arguments of the respondents:

The respondent stated that the relation between the consumer and the Kerala State Electricity Board Limited is governed by the Electricity Act, 2003, Rules and Regulations made thereto, orders issued by the Appellate Tribunal for Electricity, Central/State Electricity Regulatory Commissions as the case may be from time to time. Agreement executed by the consumer and distribution licensee runs in accordance with the changes made in the Act, Regulation, Ruling by the Apex Court or other statutory bodies. The original agreement was executed prior to the enactment of Electricity Act, 2003 and with the coming into force of the Electricity Act, 2003, the agreement runs in consonance with the Rules and Regulations made under the Electricity Act. Besides, the tariff orders issued from time to time forms part of the agreement. The petitioner is billed under Differential Pricing System of Electrical Energy measured with the aid of time differentiated Time or Day (ToD) meter. The tariff of all consumers of the Kerala State Electricity Board Limited is determined by the Kerala State Electricity Regulatory Commission (KSERC) and tariff determined by the KSERC from time to time forms part of the agreement.

As for HT/EHT consumers, the billing demand shall be recorded maximum demand for the month in kVA or 75 of the Contract Demand. Further, when the recorded maximum demand during normal period and peak period in a month exceeds and if the Recorded Maximum demand exceeds 130 of the Contract Demand in off-peak period, the excess over demand shall be charged at a rate of 150 percent of the demand charges applicable. The recorded maximum demand (kVA) of the consumer in the month of February, 2015 and March 2015 and the billing demand (kVA) and MD charges (Rs) as stipulated in the Tariff Order is given below:

Month/Zone	Normal (kVA)	Peak (kVA)	Off Peak (kVA)	Billing Demand (kVA)	MD Charges (Rs.)
Feb-15	171	26	25	1875	5,62,500
Mar-15	21	28	25	1875	5,62,500

The bills raised by the billing authority are as per the tariff order and based on the relevant provision in the Kerala Electricity Supply Code, 2014. Section 45 of the Electricity Act, 2003 empowers every distribution licensee to recover the charges of electricity supplied by it in pursuance of Section 43 in accordance with the tariff fixed from time to time, by the appropriate

Commission. Section 50 of the Act conferred power to every State Electricity Regulatory Commissions to specify Supply Code, to provide for recovery of electricity charges, and other matters related to supply of electricity. Under the said power, KSERC framed Kerala Electricity Supply Code, 2014 after previous publication and public hearing. The said Code does not permit rebate in demand charges to the companies/firms invoking force majeure conditions. And hence, the bills for the months were issued as per the provisions of the Supply Code, 2014.

Against the issuance of invoice for the month of February, 2015 and March 2015, the appellant approached the Hon'ble High Court of Kerala by filing W.P. (C) No. 11840/2015 and the court directed the Special Officer (Revenue) to consider the representation filed by the appellant. Personal hearing was afforded to and disposal order was issued on 28-07-2015. In view of the express condition in the agreement as per the Supply Code, 2014, "in any event the consumer shall bound to pay to the licensee, the fixed minimum charges as approved by the Kerala State Electricity Regulatory Commission irrespective of the question as to whether any energy has been consumed or not whatever be the reason for non consumption and irrespective of actual quantity of energy consumed", the consumer is liable to pay the demand charges and there is no provision for relief or rebate in maximum demand charges for the consumer in any month. Accordingly the bills issued for the month of February, and March, 2015 was confirmed and orders were issued.

The Electricity Act, 2003, a special Act, came into force with effect from 10-06-2003. As per Regulations viz., KSERC (licensing) Regulations, 2006, KSERC (Conditions of License for existing Distribution Licensees) Regulations 2006 and also KSERC Regulations for Retail Supply of Electricity, Kerala State Electricity Board Limited has to file Aggregate Revenue Requirement (ARR) and Expected Revenue from Charges (ERC). That is as per the scheme of the Act, and regulations in force, the Annual Revenue Requirement (ARR) and the Expected Revenue from Charges (ERC) are to be approved and ratified by the State Commission after public hearing.

It is further submitted, that if any relief is allowed to a consumer or batch of consumers the amount has to be made available to the distribution licensee in advance as per Section 65 of the said Act which reads as follows:

"If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall, notwithstanding any direction which may be given under Section 108, pay, within in advance in the manner as may be specified, by the State Commission the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other

person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

Electricity Act, 2003 is Special Act and in view of the decision of the Supreme Court of India in Gujarat Urja Vikash Nigam Ltd Vs Essar Power Ltd as reported in 2008 (4) SCC 755: when an Act came into force, the Rules and Regulations and the Terms and Conditions of the agreement changes in consonance with the new Act, Supreme Court rules that principle laid in Section 174 of the Electricity Act, 2003 is the principal or primary whereas the principle laid down in Section 175 is the accessory or subordinate to the principal. The Electricity Act, 2003 have overriding effect. That is provisions of Electricity Act have over riding effect over Contract Act. The Kerala Electricity Supply Code 2014 is notified under Section 50 of the Act and as such the billing and the assessment has to be in line with the Code.

In Gujarat Urja Vikash Nigam Ltd Vs Essar Power Ltd the Honourable Supreme Court of India in the context of sustainability, if the tenets of the agreement viz-a-viz the newly Electricity Act, 2003 had observed that:

"59. In the present case, it is true that there is a provision for arbitration in the agreement between the parties dated 30-05-1996. Had the Electricity Act, 2003 not been enacted, there could be no doubt that the arbitration would have to be done in accordance with the Arbitration and Conciliation Act, 1996. However, since the Electricity Act, 2003 has come into force with effect from 10-06-2003, after this date all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. After 10-6-2003, there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it. We further clarify that all disputes, and not merely those pertaining to matters referred to in clauses (a) to (e) and (g) to (k) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is because there is no restriction in Section 86(1)(f) about the nature of the dispute."

In view of the Section 65 of the Electricity Act, 2003 and in line with decision of the Supreme Court of India, in Gujarat Urja Vikash Nigam Ltd Vs Essar Power Ltd, the conditions and clauses in the agreement, annexure in the Kerala Electricity Supply Code, 2014 prevails. Any agreement executed prior to the enactment of the Act, gets modified in terms of the Act and the regulations made there under. The billing authority raised the bill in

accordance with the Supply Code and tariff orders in force and also based on the changes in law.

Agreement is conclusive and mutually agreed document. Change of law governing the business or the sector is binding on both parties. When a new regulation or Code is made based on the new law, the terms of agreement runs with the changed law. The original agreement was executed prior to the enactment of Electricity Act, 2003 and with the coming into force of the Electricity Act, the agreement runs in consonance with the Rules and Regulations made under the Electricity Act. As per Tariff Regulations the consumer is required to pay minimum demand charges equivalent to 75% of the Contract Demand. The State Commission has done away with the provision of allowing rebate in maximum demand. It is true that the agreement is binding on the parties subject to the changes legal frame work. It is the State Electricity Regulatory Commission makes the changes in the provision of the agreement. In the decision of the Supreme Court of India, in Gujarat Urja Vikash Nigam Ltd vs. Essar Power Ltd,(2008 (4) SCC 755), the conditions and clauses in the agreement, annexure in the Kerala Electricity Supply Code, 2014 prevails. Any agreement executed prior to the enactment of the Act, gets modified in terms of the Act and the Regulations made there under. The billing authority raised the bill in accordance with the Supply Code and tariff orders in force and also based on the changes in law. Agreement is a conclusive and mutual one. Change of law governing the business or the sector is binding on both parties. When a new Regulation or Code is made based on the new law, the terms of agreement runs with changed law. Payment of current charges is a statutory liability (Kusumum Hotels Ltd. K.S.E. Board). The amount remitted by the consumer is towards the charges for energy used and consumed by the petitioner consumer.

The case cited by the petitioner is reported in 2014(1) KLT 50) is of different footing and pertains to additional special security deposit collected from the consumer who does not occupy own premises. The issue of the petitioner consumer pertains to relief in demand charges during the lockout period. It is submitted that as per Regulation 14(4) of the KSEB Terms and Conditions of Supply, 2005, "If the intending consumer is not the owner of the premises to be electrified, he shall furnish a consent agreement in Form No.4 from the owner of the premises. If he is unable to produce the consent agreement from the owner of the building, the service connection can be effected if the applicant executes an indemnity Bond in Form No.5. A special security deposit equal to the amount of Security Deposit is also payable whenever service connection is effected to the occupier/tenant and not the owner". In the reported case the Hon'ble High Court ruled that "It is evident from Section 50 of the Act that the Kerala State Electricity Regulatory Commission is empowered to formulate the Supply Code in order to provide the recovery of the electricity charges and other connected matters.

Section181 of the Act confers powers on the State Commission to make Regulations consistent with the Act and the Rules, generally to carry

out provisions of the Act and in particular in relation to matters enumerated there under. The matters enumerated under sub-section (2) (y) of Section 181 includes reasonable security payable to the distribution licensee under sub section (1) of Section 47. Therefore it is evident that State Commission is empowered to formulate Regulations with respect to prescribing of security deposit payable by the consumers. Therefore Regulation 14(4) of the Terms and Conditions impugned herein is well within the legislative competence of the Regulatory Commission.

Hence challenge raised by the petitioner against introduction of such a restriction on the basis of lack of power or competence cannot be sustained". The Kerala State Electricity Board has not raised any special security deposit on the petitioner, M/s Met-Rolla Steels Limited. But as mandated in the Act and Supply Code, every consumer has to provide security deposit for maintaining supply with the distribution licensee. Accordingly duty cast upon the petition to provide security deposit equivalent to two months current charges. It is submitted that the Board allows interest at bank rate on such security deposit (cash portion) maintained with the Board.

Supreme Court rules that principle laid in Section 174 of the Electricity Act, 2003 is the principal or primary whereas the principle laid down in Section 175 is the accessory or subordinate to the principal. The Electricity Act, 2003 have overriding effect. That is provisions of Electricity Act have over riding effect over Contract Act. Besides the Supply Code was formulated by the State Regulator invoking Section 50 of the in exercise of the powers conferred by Section 181(2)(x). It is a settled position. The case cited by the petitioner is on -different footing. Electricity Act 2003 is a special Act and ruling of the Apex Court as reported in 2008 (4) SCC 755 is code in itself.

Tariff Notification from time to time issued by the State Electricity Regulatory Commission forms part of the agreement. As per the said tariff notification applicable to High Tension consumers, the billing demand is 75% of the Contract Demand or Recorded Maximum Demand whichever is higher and the consumer is liable to pay both energy and demand charges. As per the tariff Notification, the consumer is liable to pay the Minimum charges equivalent to 75% of contract demand even during the disconnected period.

Analysis and Findings

The hearing of the case was conducted in my chamber at Edappally, Kochi on 18-04-2016. Sri Santhosh P. Abraham, Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Velloorkunnam represented for the 1st respondent and presented his version of the case. Since the appellant could not attend on 18-04-2016 and as per his request it is decided to conduct another hearing on 22-04-2016. Accordingly next

hearing was conducted on 22-04-2016 and advocate, Sri Firoz K Robin, represented for appellant's side and Sri. P. Krishna Kumar, Accounts officer, Special Officer (Revenue), Vydhyuthi Bhavan, Thiruvananthapuram represented for the 2nd respondent. Both sides have presented their version on the lines as stated above. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

Having given the gist of submissions by the appellant, it is found that the appellant had made a request before the Special Officer (Revenue) KSEB Limited on 07-04-2015 for waiving the MD charges in the bills for the month of February 2015 and March 2015 as the factory had undergone a major plant and machinery breakdown in the unit on 29-01-2015. The appellant contented that as per Clause 16 (b) of the HT agreement executed between the consumer and the licensee, the appellant was not responsible for non-consumption of energy due to lock out, strike of employees of the consumer, major breakdown of machinery/plant or any other force majeure condition of which the consumer has no control and the consumer is bound to pay to the Board, the annual minimum revenue guaranteed by the consumer as specified in the schedule appended in the agreement. The minimum revenue per year guaranteed is 12 times the demand charges per month corresponding to 75% of the contract demand or kVA whichever is higher. The appellant had already paid more than Rs. 7 crores and the minimum revenue guaranteed by the company is only Rs.67,50,000/- (1857(i.e. 75 % of the contract demand) x 300 x 12).

Another argument raised by the appellant is that since the agreement is binding between the parties and so long as there is no cancellation or modification of the agreement, the licensee is liable to adhere to the conditions in the agreement and thereby to grant benefits to the appellant as per the agreement. The CGRF also held that the agreement conditions not covered by the changes in the statutes and are to be re-executed for enforcement. The appellant's contention is that clause 16 (b) in the agreement executed between the parties cannot be changed without entering into a new agreement.

In reply to the above arguments, the respondent stated that the appellant had executed an agreement with the Board on 29-10-1996 and the bills raised were based on the relevant provision in the Kerala Electricity Supply Code, 2014 which came into force with effect from 01-04-2014. **As per Clause 18 (b) of the HT agreement, the word "Rules and/or Regulations" wherever they occur shall mean the Rules and Regulations for the time being in force made by the Government and or by the Board.** The Supply Code, 2014 does not provide any relief to the consumer in the minimum demand charges in cases where he is unable to consume power due to any reason. **Clause 16(b) of model agreement**

(Annexure 13) in KESC 2014 categorically specifies as "In any event the consumer shall be bound to pay to the Licensee the fixed minimum charge as approved by the Kerala State Electricity Regulatory Commission, irrespective of the question as to whether any energy has been consumed or not, whatever be the reason for non-consumption and also irrespective of the actual quantity consumed". Based on the above provisions, the respondent has decided that the appellant is not eligible for waiving the Minimum Demand charges in the bills for the months of 2/2015 and 3/2015.

In support of the contention, the respondent placed reliance on the judgment of the Supreme Court of India in Gujarat Urja Vikash Nigam Ltd Vs Essar Power Ltd. According to him, Electricity Act, 2003 is Special Act and in view of the decision of the Supreme Court of India in Gujarat Urja Vikash Nigam Ltd Vs Essar Power Ltd as reported in 2008 (4) SCC 755: **when an Act came into force, the Rules and Regulations and the Terms and Conditions of the agreement changes in consonance with the new Act, Supreme Court rules that principle laid in Section 174 of the Electricity Act, 2003 is the principal or primary whereas the principle laid down in Section 175 is the accessory or subordinate to the principal. The Electricity Act, 2003 have overriding effect. That is provisions of Electricity Act have overriding effect over Contract Act.** The Kerala Electricity Supply Code 2014 is notified under Section 50 of the Act and as such the billing and the assessment has to be in line with the Code.

The point raised for consideration herein is as to whether the appellant is eligible for waiver of MD charges for the months of February and March 2015 as per Clause 16 (b) of the HT agreement executed between the appellant and the licensee and the bills now issued by the respondent without the approval of model agreement by the Commission is valid or not?

As per Regulation 103 (3) of Supply Code, 2014, the licensee shall prepare the format of the agreement before granting service connection along the lines of the Annexure 12 and Annexure 13 which deals with the model agreement for supply of LT and HT consumers respectively and obtain approval from the Commission. On a perusal of the documents it can be seen that the licensee has not obtained approval from the Commission for the model agreement till date and hence the same cannot be implemented as such. Since there are changes in the conditions of the agreement already executed, a revised agreement shall be executed between the licensee and the consumer as decided by the Commission. It is now well settled that contractual terms cannot be changed unilaterally.

The Regulation 19 (5) of KSEB Terms and Conditions of Supply, 2005, reads as "When there are changes in the contract demand / connected load, tariff or provisions in the Kerala State Electricity Board Terms and

Conditions of Supply, 2005, the Board may require in writing inform the consumer to execute a fresh agreement in the form applicable within thirty days of surcharge and the consumer shall comply with the same".

While disposing the petition by the CGRF it is specifically mentioned that the new agreement conditions cannot be imposed upon if there is no change in the statutes. The agreement conditions not covered by the changes in the statutes are to be re-executed for enforcement. As such Clause 16 (b) in the agreement executed between the parties during 1996 cannot be enforced without entering into a new agreement". Another point considered by the Forum is that item 2 of the general conditions for HT and EHT, in the tariff order issued by the Commission which is reproduced hereunder. Billing demand shall be the recorded maximum demand for the month in kVA or 75% of the Contract demand whichever is higher. This is only a guideline for issuing bill to a consumer. As long as the Clause 16(b) exists the above condition cannot be applied as chargeable for the minimum in any conditions.

Also Forum understood that the monthly charges can be enforced by item 6 of the general conditions for HT and EHT tariff which is reproduced hereunder. "The monthly minimum charge payable shall be the minimum guarantee amount as per minimum guarantee agreement if any, or the billing demand as per condition 2 above, whichever is higher. This applies even during the period of disconnection of supply". Forum viewed that item 6 is introduced by Hon'ble Commission, to ensure a monthly minimum charge to the licensee in any conditions as per item 2. From the above discussions, Forum concluded that the monthly minimum charges have been enforced by the statute and hence the changes in the agreement stands modified accordingly". In this context a reference to the relevant portion of clause 16(b) of the agreement executed by the part is useful. It is extracted below.

"In such cases where the consumer is unable to consume energy, he shall promptly intimate the Board the reason if any, for such non consumption. The consumer shall be bound to pay to the Board the annual minimum revenue guaranteed by the consumer as specified in the schedule appended herewith irrespective of the question whether any energy has been consumed or not whatever be the reason for non consumption and also irrespective of actual quantity consumed."

Section 185 of the Electricity Act 2003 deals with 'Repeal and saving' and Section 185(2)(a) of the Act reads as under: **"(2) notwithstanding such repeal (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorization or exemption granted or any document or instrument executed or any direction given under**

the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act."

Hence it is found that all the actions deemed to have been done or taken under the corresponding provision of the earlier Act are saved, the Agreement in question which was entered into by the Electricity Board in exercise of statutory power and was having legal force, had been saved under the aforesaid provisions. But whenever there is change in law or rule takes place the same is applicable to the agreement executed prior to date of change of law or rule. This overriding nature of the statute is usually part of the agreement executed by the consumer itself. It has always been held that contractual rights can be overridden by statute. But in the instant case, the respondent has not taken any action to execute a revised agreement, as per the Regulation 19 (5) of KSEB Terms and Conditions of Supply, 2005 .

It is pertinent to note that the appellant remitted the demand for the months of February and March 2015 under protests. The respondent did not even take care to inform the appellant to execute fresh agreement in terms with the draft model agreement annexed to the Supply Code, 2014. On going through the records, I find that even now the licensee has not taken any steps to revise the earlier HT agreement entered into between the licensee and the appellant as early as 29-10-1996. Since the agreement is not altered or modified in terms of the draft agreement annexed to Supply Code, 2014 and the appellant is not intimated anything with regard to the modification of HT agreement I could not find any fault with the appellant.

In the instant case, the appellant had already paid more than 7 crores, whereas the minimum revenue guaranteed by the appellant as specified in the schedule appended in the agreement executed by the appellant is only Rs. 67,50,000.00. The minimum revenue per year guaranteed is 12 times the demand charges per month corresponding to 75% of the contract demand or kVA whichever is higher. Since the appellant had already remitted an amount which is more than the guaranteed minimum revenue and in the absence of execution of a revised agreement (based on approved model agreement as decided by the Commission), it is highly irregular not to allow MD waiver to the appellant.

Decision

In view of the discussions it can be concluded that the respondent failed to get an approval for the model agreement from the Commission. So long as there is no valid agreement between the licensee and the appellant in tune with the model agreement annexed to Supply Code, 2014, the demand raised against the appellant for the months of February and Mach 2015 is not sustainable and hence quashed the same. The respondent is directed to allow MD waiver as per Clause 16(b) of HT agreement and to revise the demand issued to the appellant for the months of February and March 2015 at any rate within 30 days from the date of receipt of this order.

It is also directed to revise the HT agreement dated 29-10-1996 in tune with the agreement annexed to the Supply Code, 2014 without any fail.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is found having some merits and is allowed accordingly. The order dated 27-11-2015 of CGRF-CR/Comp.70/2015-16/452 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/001/2016/ Dated:

Delivered to:

1. Kurian Varghese, Managing Director, M/S Met-Rolla Steels (P) Ltd., Paipra, Muvattupuzha, Ernakulam.
2. The Deputy Chief Engineer, Electrical Circle, KSEB Limited, Perumbavoor, Ernakulam
3. The Special Officer (Revenue), KSEB Limited, Vydhyuthi Bhavanam, Thiruvananthapuram

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.