

**OFFICE OF THE ELECTRICITY OMBUDSMAN**  
(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)  
**B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057**  
(Phone No: 011- 26144979)

**Appeal No. 07/2020**

(Against the CGRF-TPDDL's order dated 04.11.2019 in CG No. 55/2019)

**IN THE MATTER OF**

**M/s KOLOR CATALYST DESIGN PVT. LTD.  
(through Shri Sachin Gupta, Director)  
Vs.**

**TATA POWER DELHI DISTRIBUTION LTD.**

**Present:**

Appellant : Shri Sachin Gupta along with Shri D.P.Singh, Advocate

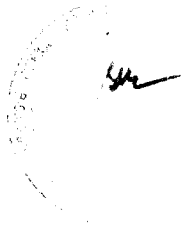
Respondent: Shri Gautam Jai Prakash, Sr. Manager (Legal) & Shri Ajay Joshi, on behalf of the TPDDL.

Date of Hearing: 17.07.2020

Date of Order: 23.07.2020

**ORDER**

1. The appeal No. 07/2020 has been filed by M/s Kolor Catalyst Design Pvt. Ltd., through its Director Shri Sachin Gupta and represented by his advocate, against the order of the Forum (CGRF-TPDDL) dated 04.11.2019 passed in CG No. 55/2019. The issue concerned in the Appellant's grievance is regarding billing dispute wherein a demand was raised on average basis by Discom (Respondent) on account of replacement of the defective meter against his industrial connection bearing CA No. 60013286863.



2. The brief background of the case is that M/s Kolor Catalyst Design Pvt. Ltd. (hereinafter referred as 'Company') was earlier having a L.T. connection with a sanctioned load of 95 KW and the same was upgraded to HT connection of 490 KW at the request of the Appellant and accordingly connection bearing CA No. 60013286863 was energized on 29.07.2011 at A-11, Lawrence Road, Industrial Area, Delhi-110035. The Appellant submitted that after the energization of HT connection the production in the company commenced only on 05.08.2011 which was later hampered on account of sudden demise of his father on 10.09.2011. Further, on account of the nascent state of the unit and unfortunate demise of his father, production and sales were badly affected resulting in lower electricity consumption. He also reiterated that his plant remained under shut-down for modification for around 26 days in between and his sales and production picked up only after December, 2011. He submitted that his production and hence the sales during the period the meter was alleged to be defective was much less as compared to the period after the meter was replaced on 20.12.2011.

The Appellant further submitted that without any information and any notice being served on him as per the DERC's Regulations, which the Discom was bound to follow, they replaced his meter on 20.12.2011 and no reason was communicated to him for changing the same. The defective meter was retained at the site and the same was checked by Enforcement Team of the Discom on 05.01.2012. The signatures of his guard were taken on the inspection report of the meter by the Inspection Team instead of that of the Appellant or his authorized representative. Further, after the inspection by the officials of Discom, no information was received by him and only after a gap of 15 (fifteen) months an amount of Rs.12,87,476/- was shown as arrears in the Bill for the month of May, 2013 to be paid by him without any explanation regarding the details and reasons of the generated arrears. Thereafter, without any information and without issue of any notice, the Discom again changed the meter on 18.08.2012 for the reasons best known to them. He was not communicated any reason for change of the meter. On verbal enquiry regarding huge arrears, he was told by Discom orally that the Enforcement Team had removed the meter being faulty on 05.01.2012, its data was downloaded and on analysis of the downloaded data, it has been found that the meter was showing abnormally high voltage and power failure w.e.f. 23.08.2011. It was further informed by Discom that accordingly an average assessment has been carried out for the period 23.08.2011 to 20.12.2011 as per Regulation 43 of DERC Supply Code & Performance Standard

Regulations, 2007, and an impugned bill has been raised for the said period on the basis of average consumption recorded between 20.12.2011 to 30.06.2012.

3. The Appellant submitted that since his request for revising the arbitrary and unjustified assessment bill was not considered by Discom and further he was also served with a disconnection notice on 24.11.2013, hence he was constrained to approach the Forum for redressal of his grievance. His disconnection was however stayed by the Forum after he deposited a provisional amount of Rupees One lakh on 30.12.2013 with the Discom. After hearing the matter, the Forum issued an interim order with some directions to the Discom on 13.03.2014, which was challenged by Discom before the Hon'ble High Court of Delhi, wherein the Hon'ble High Court stayed the operation of the order of the Forum on 07.05.2014. In view of the above, the matter being subjudice, the Forum closed the case on 19.05.2014. Further, on 29.09.2016, the Hon'ble High Court of Delhi remanded the matter back to the Forum to pass a fresh reasoned order on the contentions raised by the parties. Discom filed an application on 15.04.2019 seeking disposal of the case by the Forum in terms of the order dated 29.09.2016 passed by the Hon'ble High Court, which was admitted by the Forum vide case No. 55/2019. After hearing the parties, the Forum passed the order dated 04.11.2019 vide which Discom was asked to issue a revised bill in terms of the order, within 10 days. The revised bill was however received by him after a gap of more than two months only on 28.01.2020. Since he was out of station till 03.02.2020 on account of business exigencies and on his return after depositing the one-third of the amount as assessed by the Discom in accordance with the directions passed by the Forum, the present appeal has been filed by him on 11.02.2020.

4. Since the Appellant was not satisfied with the relief given in the order of the Forum he has preferred this appeal mainly on the grounds that the Forum has erred in including the period from 22.09.2011 to 07.10.2011 in the assessment period, once it has been concluded and established that the data for the said period is not available. Secondly, as per the regulations, Discom was required to give him a prior notice of at least one week before changing the meter, whereas in the instant case no prior notice was given to him on both the occasions while changing the meter by Discom either on 20.12.2011 or 18.08.2012. Further, Forum has not considered the fact that as per regulations, it is mandatory that the assessment bill should be raised within two billing cycles from the date of changing the defective meter whereas in the present case the assessed bill was raised after a gap of 15 (fifteen) months which



further escalated the dispute and in addition he was also not informed about the meter being defective during this intervening period.

As per the Appellant, the fact that the meter being defective intermittently for few hours and absolutely accurate and normal after that has been ignored by the Forum. The order is therefore liable to be set-aside on the sole ground that excess voltage did not exist throughout the assessed period and it was there only for few hours and on few days. In view of above, the Appellant cannot be made to suffer and pay for the period when the voltage was absolutely normal and accurate. The Appellant also argued that the Discom should have changed the meter on the first occasion on 21.09.2011 itself, when the data of the meter was downloaded and analyzed rather than waiting upto 20.12.2011, which has unnecessarily extended the period of assessment almost by three months and he has been forced to pay more assessment charges on account of the reasons not attributable to him. The Appellant also stressed that as yellow phase current has been found missing intermittently during 23.08.2011 to 27.08.2011 then why he is being forced to pay for the revised assessment period from 23.08.2011 to 06.11.2011 as per the order of the Forum.

In view of the above background, the Appellant has prayed as under:-

- (a) Condone the delay in filing the appeal against the impugned order dated 04.11.2019 sent to him vide letter dated 20.11.2019.
- (b) Direct the Discom not to take any coercive action against the connection bearing CA No. 60013286863 pursuant to the Bill dated 28.01.2020 till the pendency of the present appeal.
- (c) Allow the present appeal and set-aside the impugned order dated 04.11.2019 passed by the Forum in CG No. 55/2019.
- (d) Set-aside the Bill dated 28.01.2020 prepared by the Discom pursuant to the order dated 04.11.2019 passed by the Forum in CG No. 55/2019.
- (e) Hold that M/s Kolor Catalyst Design (P) Ltd. is not liable to pay the Discom for the period as assessed by the Forum.

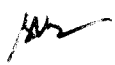


- (f) Direct the Discom to refund the amount deposited by M/s Kolor Catalyst design (P) Ltd. with them for the purpose of filing the present appeal along with the interest @18% p.a.

5. The Discom's version of the events is that an abnormal voltage pattern was observed in the Meter No. 11100127 against the electricity connection bearing CA No. 60013286863 and accordingly this meter was removed on 20.12.2011 and a new meter bearing No. 11100172 was installed in the premises. Further, for the period between 28.08.2011 to 20.12.2011 during which the meter remained defective an assessment was carried out on the basis of average consumption of units consumed between the period 20.12.2011 and 30.06.2012. Assessment was done for an amount of Rs.12,87,476/- and the same was reflected in the Appellant's bill for the month of May, 2013.

Discom submitted that the Appellant approached the Forum for the matter related to the billing dispute, specifically contesting the billing demand of Rs.12,87,476/- wherein the Forum passed some directions which were in turn challenged by them in the Hon'ble High Court of Delhi. As per the directions of the Hon'ble High Court, the complaint was again taken up in the Forum for deciding the matter and passing a fresh reasoned order after dealing with all the contentions raised by the parties. The Forum was pleased to dispose of the matter vide order dated 04.11.2019 with certain directions to them, which have been duly complied with by them herein.

The Discom further stated that the Appellant has preferred this appeal for setting aside the order dated 04.11.2019 passed by Forum, which is liable to be rejected at this initial stage only since the same has been filed after a lapse of more than one month from the date of receipt of the order of the Forum. The Discom argued that the Appellant is seeking to escape the payment of electricity dues which is legal, valid and in consonance with the law. Regarding the contention of the Appellant that the production and sales were badly affected due to various reasons, the Discom countered that the period of assessment of short charged energy on account of faulty meter does not coincide with the date of load enhancement i.e. 29.07.2011 and it has been admitted by the Appellant that production in the company commenced on 05.08.2011. Further, the figures of sale of goods cannot be the sole criterion for determining the amount of energy consumed whereas their case for less recording of energy is based on the data of the meter which has a



scientific basis and the same cannot be countered by the Appellant solely on the assumption based logic.

Discom further argued that during primary analysis of the meter data, an abnormal voltage pattern and power failure was observed w.e.f. 23.08.2011 and accordingly, this meter was removed on 20.12.2011 and a new meter was installed. The meter replacement form was duly signed by the representative of the appellant without recording any protest on the 'meter protocol sheet'. The Appellant never approached for initiation of testing of meter to appropriate authority, which he was entitled to, as per the Clause 38(1)(g) of DERC Supply Code & Performance Standard Regulations, 2007. Discom further submitted that authorizing an employee to sign an important document such as an inspection report is a prerogative of the Appellant. The fact that the guard of the Appellant signed the inspection report is a sufficient proof of the fact that the incident of inspection was well within the knowledge of the Appellant and hence his contention that the meter was replaced without any information and notice is not in order. Further, regarding the service of notice, Discom submitted that this being a very old case, they could not bring on record a written communication. However, there was a constructive notice in this case, since the change in meter for a HT connection required shutting down of the supply which is communicated to the consumer in advance through written notice, telephone intimation or both. Discom also argued that any change of meter cannot be done without prior intimation of a shutdown of supply and as the connection of the Appellant being a HT Large Industrial Power Connection, any activity carried out affecting the supply of electricity is planned and intimated in advance through telephonic channel in a routine manner.

6. Regarding raising of assessment bill in May, 2013 after a gap of 15 months, Discom submitted that for the period between 23.08.2011 to 20.12.2011 during which the meter remained defective, an assessment was carried out on the basis of average consumption of units consumed between 20.12.2011 and 30.06.2012 which came out to Rs.12,87,476/- and the same was reflected in the Appellant's bill for the month of May, 2013. As per the prevailing regulations for assessment of energy in case of defective meter, they had to wait for next twelve billing cycles to obtain the average consumption since the previous average consumption was not to be made applicable in the present case, as it was a case of load enhancement from 95 KW to 490 KW on 29.07.2011. However, since there was another change in the meter at the time of final assessment on 18.08.2012, it was thought better to take average of



six months instead of 12 months. The change of meter on 18.08.2012 was carried out as a part of mass drive to change a particular series of meters (triple one meter series) which though did not affect the normal recording of energy as the change in meter was not due to any defect. However, since there was a break in continuity in reading due to this fact, the base period of 12 months post meter change was not considered appropriate to be applied for assessment. Discom also submitted that the change of meter in August, 2012, did not cause any prejudice to the Appellant's case, in any manner. Discom also submitted the copy of the Meter Change Protocol dated 18.08.2012 for reference and record.

Discom also denied the contention of the Appellant that he was communicated orally regarding the assessment and further submitted that he was also informed regarding assessment vide letter dated 07.06.2013 to which the Appellant himself responded through his letter dated 15.06.2013. Further, the disconnection notice was served on the Appellant on 24.11.2013 which is sufficient to prove that the Appellant was given ample time to deposit the assessed bill. Regarding the observation of Appellant that when for the first time the meter data was downloaded on 21.09.2011, the Discom failed to take any action at that point of time causing him to suffer on account of the same, Discom explained that the electronic meter records the daily consumption data along with various other parameters such as voltage, current, tamper events etc., whereas data specific to the consumption and maximum demand is downloaded for every billing cycle for the purpose of raising monthly bills. Along with that a periodic download of the entire profile is also done, however, analysis of the data is done on a periodic basis of six months. In the present case, analysis of the data was done in the month of December, 2011, i.e. within six months from the date of installation of new meter and at that occasion the abnormality in the data was observed. After observing the abnormality and only when the defect was detected the requirement of previously downloaded data arose and for finding out the first date of occurrence of the defect, the data downloaded on 21.09.2011 was analyzed. Discom further submitted that reasons behind unavailability of data between 22.09.2011 and 07.10.11 is amply clear from the fact that since the downloaded data on 14.12.2011 does not cover the said period as the memory of the meter did not allow it to retain the data beyond 08.10.2011. Similarly, absence of data after 14.12.2011 is for the reasons that data was not downloaded on 20.12.2011 when the meter was changed.

7. Regarding the Appellant's contention that defect in meter should have been communicated to him earlier, Discom submitted that had it been the intention behind the applicable regulation it would not have allowed a licensee to assess energy in case of defective meter for a period of six months prior to the defect in the meter. All the provisions in this regard presume that the defect in meter could have occurred prior to the detection. Hence, for finding the actual date of defect there could be various methods and analysis of data being one of them. Regarding the delay in assessment, Discom again reiterated that assessment for this case could be done only after completion of 12 months period after meter change. Prevailing regulations in this regard cannot be interpreted in such a way that the action required to be taken after an event would be done before that event. Hence, the Appellant's contention regarding two months time limit for assessment is based on wrong interpretation of law.

Discom also submitted that the notion of the Appellant that this is a case of yellow phase current missing intermittently is wrong and it is a case of meter showing abnormally high voltage and power failure. The meter installed for Appellant's connection is a three phase three wire meter and in a 3 phase 3 wire meter, Y phase is taken as reference for voltage of other two phases i.e. R & B phase and no current flows in Y phase circuit for metering purposes. Regarding the contention of the Appellant that the meter cannot be defective only for some hours on few days and again be completely accurate and normal, Discom submitted that there can be a defect in the meter when it can record energy intermittently due to faulty internal wiring. In that case the entire data becomes doubtful and the only way to judge the correct consumption can be assessment on the basis of average consumption of a correct meter.

Discom finally submitted that the Forum had given a substantial relief to the Appellant by restricting the assessment till 06.11.2011 and after careful consideration of the circumstances of the case they decided to comply with the order to end any further litigation in the matter. It is further added that the concerned official of the Discom held telephonic discussion with the Appellant and bill to bill reconciliation was done and after reconciliation a credit of Rs.4,89,597/- has been given to him as per the order of the Forum. In addition to above, the LPSC from May, 2013 till the Forum's order has also been credited to the account of the Appellant. The payment of Rs.1,00,000/- (Rupees One Lakh) made by the Appellant on 30.12.2013 has also been adjusted in his account.



In the light of submissions made herein above, Discom prayed that the present appeal is liable to be dismissed and decided in their favour.

8. Having heard both the parties and gone through the case records, at the outset itself, one issue needs to be disposed of is the Discom's contention that appeal is liable to be rejected and cannot be entertained as the same has been filed after more than 30 days from the receipt of the final order of the Forum. After going through the explanation of the Appellant the objection of Discom is not found to be sustainable and the appeal was admitted. Further, as the Appellant had already deposited one-third amount of the assessment bill raised by Discom as per the orders of the Forum, Discom was directed not to take any coercive action against the Appellant till the pendency of the present appeal.

From the perusal of the records submitted by the Appellant and the Discom in the Forum and also before this office, it is quite evident that the case revolves around an assessment amount of Rs.12,87,476/- reflected in the Appellant's bill for the month of May, 2013 on the ground that his meter was defective from 23.08.2011 to 20.12.2011. The Appellant has raised objection that the meter was having abnormal voltage pattern only on few days for few hours and current missing in Y-phase only for four days, hence the meter cannot be termed defective for the whole period from 23.08.2011 to 20.12.2011, till the date the meter was replaced by Discom. On careful examination of the data of the meter for the defective period as submitted by Discom from 23.08.2011 to 20.12.2011, it is observed that although the abnormal voltage patterns can be seen on all the dates of the defective period yet these abnormalities are few and far between and the spikes in the voltage patterns are almost negligible after the date 04.11.2011. In view of the same, it has been rightly concluded by the Forum that the voltage and the current readings do not reveal any erratic pattern after 04.11.2011 and accordingly the Appellant has been given a substantial relief by the Forum by restricting the assessment period from 23.08.2011 to 06.11.2011. Further, it was confirmed by Discom and the Appellant both during the hearing that the relief has been passed on to the Appellant and the order of the Forum has also been implemented by Discom.

The contention of the Appellant that it is a case of yellow phase current missing intermittently has been rightly explained technically by Discom that the meter installed for the Appellant's connection is a 3-phase 3-wire meter and in such

a meter Y phase is taken as a reference for voltage of other two phases i.e. R & B Phase and no current flows in Y-Phase circuit for metering purpose. Hence, the contention of the Appellant in this regards that it is a case of yellow phase current missing intermittently is not in order. Rather it is a case of defective meter on account of abnormal voltage pattern and power failure.

Further, the view point of the Appellant that when some fault is appearing in the meter intermittently then the whole period cannot be taken as defective is not tenable since there can be a defect in the meter when it can record energy intermittently due to faulty internal wiring and in that case the entire data becomes doubtful. The only way to judge the correct consumption as per regulations is the assessment on the basis of average consumption of a correct meter. The Appellant cannot be selective for choosing the defective period and the assessment of energy in such a case cannot be done for selective period nor can it be based on any other method other than average consumption through a correct meter.

The objection of the Appellant regarding the absence of data between 22.09.2011 to 07.10.2011 is on account of the technical reason which has been rightly explained by Discom that the downloaded data on 14.12.2011 does not cover the said period since the memory of the meter did not allow it to retain the data beyond 08.10.2011. Secondly, the absence of data after 14.12.2011 is only for the reason that data was downloaded on 14.12.2011 and not on 20.12.2011 when the meter was changed. Further, the absence of data during 22.09.2011 to 07.10.2011 does not in any way affect the Appellant since the said period is already covered under the period of assessment from 28.08.2011 to 06.11.2011 and hence the objection of the Appellant in this regard has no basis and is not sustainable.


The contention of the Appellant that the production and sales of the company during the period the meter was defective was quite less as compared to the production and sales proceeds after the meter was replaced, and hence, the average consumption being charged during the defective period is much higher than the actual consumption, is misconceived and cannot be accepted as the sale figures cannot be the sole criterion for determining the amount of energy consumed and the consumption of energy can vary on account of number of other factors.

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The Appellant has also raised the issue that no prior notice was served before changing the meter on both the occasions either on 20.12.2011 or 18.08.2012, which the Discom was supposed to issue as per the prevailing regulations. In this regards, the Discom could not forward any plausible reason but for the fact that they are unable to produce the written documentation as the case is very old. However, their submission that a constructive notice has been given to the Appellant in the form of telephonic message and as change of meter for HT connection requires shutting down of the supply which is communicated to the concerned consumers in advance through written notice, telephone intimation or both does not fulfill the purpose of a notice. Despite the fact that the Discom should have given a proper notice before changing the meter but in any case the non issue of notice does not bar the Discom from changing the meter as the defective meter had to be changed and a correct meter had to be installed since the energy cannot be allowed to be supplied through a defective meter.

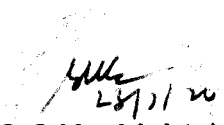
The Appellant certainly could have gone for testing of the meter in a designated lab at the time of replacement/removal of the meter to clear his doubt regarding the veracity of the meter but he did not chose to do so although the 'Meter Replacement Form' was duly signed by the representative of the Appellant. Similarly, the 'Inspection Report' of the meter which was also signed by the Appellant, clearly depicts that the meter is having abnormal high voltage pattern and power failure and therefore average assessment had been proposed therein. In view of the above, it is concluded that it was in the knowledge of the Appellant that the meter is defective and being changed with a correct meter. Hence, the various apprehensions as raised by the Appellant in this regard are misconceived and not tenable.

Further, Discom has clarified the reason for change of meter on 18.08.2012 which was done as a part of mass drive to change a particular series of meter, viz triple one meter series, which though did not affect the normal recording of energy as the change in meter was not due to any defect. Hence, since there was a break in continuity in reading due to this fact, the base period of 12 months post change was not considered appropriate to be applied for assessment. In view of above, the base period for the purpose of assessment which has been curtailed from 07.11.2011 to 30.06.2012 instead of 12 months period after installation of new meter is in order.



Having taken all the factors into account including the responses of the parties during the hearing, it is held that the Appellant's complaint does not have sound basis and that no infirmities are found with the order of the Forum. In summary, the Appellant is found liable to pay the assessment bills for the period under dispute as directed by the Forum. The order of the Forum in considering the assessment period from 23.08.2011 to 06.11.2011 instead of 23.08.2011 to 20.12.2011 and taking the base period for calculating the average consumption as 07.11.2011 to 30.06.2012 is in order.

Accordingly, no substantive case is made out for any intervention with the verdict of the Forum and the appeal is disposed of accordingly.

  
(S.C.Vashishta)  
Electricity Ombudsman  
23.07.2020