

Office of Electricity Ombudsman
(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act, 2003)
B-53, Paschimi Marg, Vasant Vihar, New Delhi – 110 057
(Phone No.: 32506011, Fax No.26141205)

Appeal No. F. ELECT/Ombudsman/2007/204

Appeal against Order dated 27.07.2007 passed by CGRF–NDPL in CG.No. 1180/04/07/KPM.

In the matter of:

M/s Hitech Grains Processing Pvt. Ltd. - Appellant

Versus

M/s North Delhi Power Ltd. - Respondent

Present:-

Appellant Shri Laliet Kumar, Advocate attended on behalf of
M/s Hitech Grains Processing Pvt. Ltd.

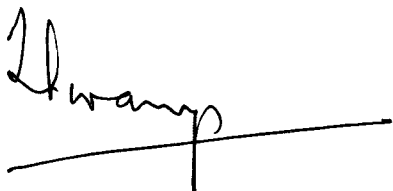
Respondent Shri Manish Kanwar, Officer KCG,
Shri Shishir Manager, KCG,
Shri Shri Vivek Executive (Legal)
Shri Jai Prakash, AM (legal)
Shri Sudhir Nand Raj, Advocate all attended on behalf
of NDPL

Dates of Hearing : 13.11.2007, 29.11.2007, 20.12.2007,
29.12.2007, 10.01.2008, 17.01.2008,
22.01.2008

Date of Order : 17.03.2008

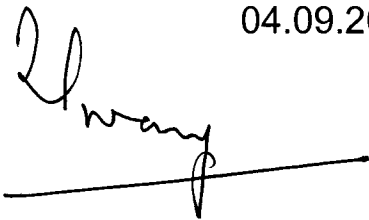
ORDER NO. OMBUDSMAN/2008/204

- 1) The Appellant, Shri Vipul Mittal, has filed this appeal against the order of CGRF-NDPL dated 27.07.2007 in case no.1180/04/07/KPM as he could not get the relief prayed for.



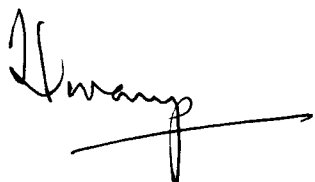
2) The background of the case is as under:

- i) Shri Naresh Kumar Mittal, owner of the premises G-36 Lawrence Road New Delhi and father of the Appellant Shri Vipul Mittal, along with Mrs. Pushpa Mittal and Shri Hansraj were partners of a firm named M/s. Kapil Flour Mills and obtained an industrial power electric connection K. No. XI -1765 for 80.6 HP in the name of Shri Hansraj for their Flour Mill unit at G-36, Lawrence Road, Industrial Area. Shri Naresh Kumar Mittal, Mrs. Pushpa Mittal and Shri Hansraj had 50%, 40% and 10% share respectively, in the firm.
- ii) The electricity supply of the said connection was disconnected sometime in 2000 on account of non-payment of dues.
- iii) The Appellant Shri Vipul Mittal applied for a new industrial electric connection for 63 kw load, by taking 50 sq. yards out of the plot of 388 sq. yards at G-36, Lawrence Road, premises on rental basis from his father Shri Naresh Kumar Mittal, who is also the owner of the premises. Shri Vipul Mittal, the Appellant has shown himself as Director of another firm Hi-tech Grain Processing Pvt. Ltd., located in the same premises for which he had applied for the new connection.
- iv) According to the Respondent, they were not aware of this background and issued a demand note No.64244 for Rs.1,08,500/- against the new connection applied for by the Appellant. This amount was deposited by the Appellant on 04.09.2004 and a new K.No.32105032178 was allotted. While

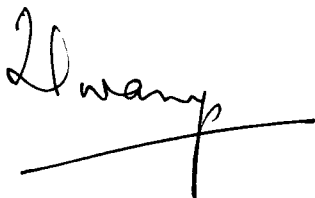


executing the new connection it was found that another connection with K No. XI-1765 existed earlier at the same premises and was lying disconnected with huge outstanding dues. The Appellant Shri Vipul Mittal was asked to deposit pro-rata dues of Rs.8,03,752/- out of the total outstanding dues of Rs.54,33,361/-, against the earlier disconnected connection XI-1765 installed in the said premises, where M/s. Kapil Flour Mills was earlier functioning.

- v) The Appellant approached the CGRF-NDPL, challenging the pro-rata demand of Rs.8,03,752/- raised by Respondent. The CGRF after giving due consideration to the submissions made by both the parties held that a new connection in part of the premises at G-36, Lawrence Road, can be energized only after the clearance of dues of Rs.8,03,752/- for the old connection worked out on pro-rata basis for 50 sq. yards, rented by Shri Vipul Mittal.
3. Not satisfied with the CGRF's order, the Appellant has filed this appeal by stating that:
- i) The demand of pro-rata dues raised by the Respondent is barred by the limitation under Section 56 (2) of Electricity Act, 2003 and is not recoverable on account of being barred by the statute.
 - ii) No details have been given in respect of the demand raised. There is no provision in the tariff orders for the years 2004-05, 2005-06, 2006-07 for payment of outstanding dues as a pre-condition for the grant of a new electric connection.

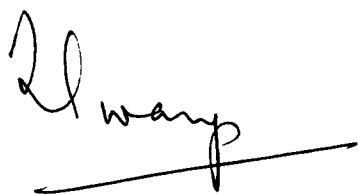


- iii) The Appellant, Shri Vipul Mittal is not the beneficiary of the earlier connection K. No. XI-1765. It is further stated by the Appellant that Shri Naresh Kumar Mittal, father of the Appellant was not the partner with Mr. Hansraj and even presuming that Shri Naresh Kumar Mittal was the partner with Mr. Hansraj, the present Appellant is not liable to pay the dues of the partnership firm of Mr. Hansraj.
- iv) The CGRF failed to appreciate that the dues which the Respondent is intending to recover were on account of penalty allegedly levied on account of theft of electricity against Mr. Hansraj of which the Appellant was not the beneficiary.
- v) The CGRF had erred in concluding that the civil liability which was arising out of the FAE, be owned by the successor / inheritor of the person/firm. The Appellant is not the successor or inheritor of the firm, as such he is only liable to pay for the consumption charges of electricity, which does not include the penalties imposed under the Act or Regulations.
- vi) The Respondent cannot ask the new entrants to the premises to pay for the charges which are not recoverable. The charges are neither recoverable under the law of limitation or under Section 56 (2) of the Electricity Act, 2003. As per Section 56(2) the charges ceased to be recoverable after a period of 2 years, when such sum became first due.
- vii) The CGRF had erred in concluding that Shri Naresh Kumar Mittal, was the partner of M/s. Kapil Flour Mill, and the Appellant being son of Shri Naresh Kumar Mittal, was liable to



pay the charges. It is submitted that M/s. Hi-tech Grain Processing Pvt. Ltd. is a company incorporated under the Companies Act, and the Appellant Shri Vipul Mittal, is Director of the Company.

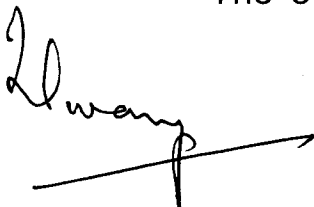
- viii) The CGRF has wrongly relied upon the clarification issued by Secretary DERC vide his letter dated 02.08.2004. The clarification is neither statutory nor binding on the Appellant.
- ix) There is no general condition of supply statutorily approved for the period of erstwhile DVB, which can be extended or which is extendable, in view of Clause 23 of the license issued to the NDPL. The general conditions of supply are required to be framed under the Electricity Act, 1910. The conditions of supply are to be framed under Section 21 of the Electricity Act, 1910, whereas the general terms and conditions of supply are required to be framed under the Electricity Supply Act, 1948 under Section 79 read with sub-section 49 and 79 (A).
- x) The Appellant has prayed that the Hon'ble Ombudsman may be pleased to :
 - (a) Quash the order dated 27.07.2007 passed by the CGRF-NDPL in CGRF case no. 1180/04/07/KPM and direct the Respondent to install and energize the new electricity connection at the premises bearing no. G-36, Lawrence Road, Industrial Area, Delhi – 110 035.
 - (b) Pass any other or further orders which this Hon'ble authority may deem fit and proper in the facts and



circumstances of the case in favour of the Appellant in the interest of justice.

4. In reply to the appeal filed by the Appellant, the Respondent has submitted as under:

- (i) The present appeal should be dismissed on the sole ground that the Appellant has not approached this Forum with clean hands and has concealed material facts.
- (ii) From the perusal of the partnership deed dated 28.05.1982, the Rent Agreement dated 07.06.2004 and Affidavit of the Appellant in the Writ Petition bearing no. 12367/2005 filed in the Hon'ble High Court, it is evident that Shri Vipul Mittal, Director of the Appellant Company (Hi-tech Grain Processing Pvt. Ltd.) is the son of Shri Naresh Kumar Mittal, who is a partner of M/s Kapil Flour Mill along with Mr. Hansraj. The electricity dues are outstanding against the connection K. No. XI-1765 in the name of Shri Hansraj used for M/s Kapil Flour Mill. The present appeal has been filed by the Appellant to shrug his liability to pay the outstanding electricity dues against the earlier connection. The Appellant company continues to be in constructive possession of the premises and by lifting the corporate veil it can be revealed that whatever benefits were attached to the earlier connection have been passed on to the Appellant as well.
- (iii) The Appellant's company and the entity by the name of M/s. Kapil Flour Mill are infact the same, behind a corporate veil. The owner of the property is also one of the Directors of the



said Mill, and was the Director of M/s Hitech Grains Processing Pvt. Ltd.

(iv) The representatives of M/s. Kapil Flour Mill had approached the Hon'ble Lok Adalat for a settlement and as per the directions of the Hon'ble Lok Adalat, a meeting was held in the office of the Respondent and a Memorandum of Settlement was signed on 29.06.2004 by both the parties. The lack of interest shown by Shri Naresh Kumar Mittal after arriving at a settlement, shows that the Appellant has not approached this Hon'ble Forum with clean hands.

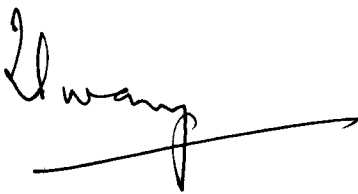
(v) The Appellant Company is only a device created through family arrangements, just to avoid the payment of electricity dues.

The Respondent has denied that the amount sought from the Appellant, is not recoverable on account of being barred by the statute.

5. After scrutiny of the contents of the appeal, the CGRF's order and the replies submitted by both the parties, the case was fixed for hearing on 13.11.2007.

On 13.11.2007, the Appellant was present in person along with his Advocate Shri Laliet Kumar. The Respondent was present through Shri Manish Kanwar, Officer KCG, Shri Vivek Executive Legal, and Shri Shishir Manager KCC.

Both the parties were heard. The Appellant was asked to produce documents regarding the constitution of the Board of Directors of the two companies i.e. Hi-tech Grain Processing Pvt. Ltd. and Kapil

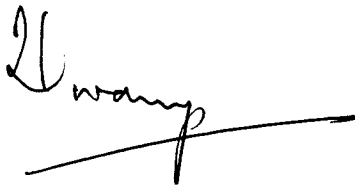


Flour Mill and regarding the ownership of the premises. The Respondent was asked to produce the original K. No. files for the existing connection and the new connection sought. The Respondent was also asked to give the break-up of dues against the earlier connection and details of action taken to recover them, sequentially.

The case was fixed for hearing on 29.11.2007 and was further postponed on the request of both the parties to 20.12.2007 when the advocates of both the parties could attend.

6. On 20.12.2007, the Appellant was present through Shri Laliet Kumar, advocate. The Respondent was present through Shri Sudhir Nand Raj, Advocate, Shri Vivek Executive Legal and Shri Shishir Manager KCG, Manish Executive KCG.

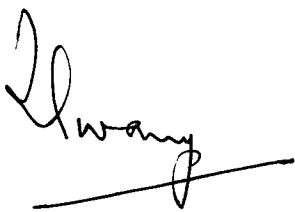
Both parties produced the documents as asked for during the earlier hearing and these were taken on record. It was directed that copies be given to the opposite parties. The Appellant argued at length on the points set out in the appeal, and concluded his arguments with the plea that, the Respondent could, if at all, recover pro-rata charges for consumption of energy which were about 3 lakhs, and not the penalty, as there was a difference between the consumption bill and assessment bill as is evident from the Regulations. It was also repeatedly argued that the claim of the Respondent was hopelessly barred by time as no steps were taken to recover the amount due since 1992-93. The Appellant also relied on several Judgments of the Hon'ble Supreme Court and Hon'ble High Courts in support of his contentions.

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The Respondent argued at length contending that the Appellant has been deceiving various Courts and Forums through over shadowing his true entity, and there was need to lift the corporate veil, which would establish that Shri Hansraj, M/s Kapil Flour Mills and M/s Hitech were entities created by the Mittal family with a view to shrugging off their liability, but were in fact, one and the same. It was also argued that the dues were also not barred by limitation, as Respondent has taken action provided under the law for their recovery within time. It is the Mittal family which was delaying payment through various means, including resorting to a number of court cases.

The case was fixed for further arguments on 29.12.2007. The case was again postponed to 10.01.2008, on the request of the parties.

7. On 10.01.2008, the Appellant was present in person. The Respondent was present through Shri Vivek Executive Legal, Shri Shishir Manager KCG and Shri Gautam Jai Praksh AM, Legal. Counsels of both the parties were not present and the parties sought time for completing their arguments. Both the parties state that they will not pursue an out of court settlement as suggested by the Appellant separately to the Respondent. Shri Vivek on behalf of Respondent seeks permission to file an additional application to rectify the amount due from the Appellant. The permission was granted with directions to give a copy to the Appellant. The case was fixed for final arguments by the counsels of both the parties on 17.01.2008.



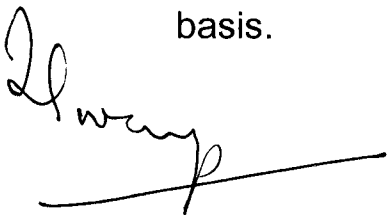
8. On 17.01.2008, the Appellant was present through Shri Laliet Kumar Advocate. The Respondent Shri Vivek Executive Legal, Shri Shishir Manager KCG, Shri Gautam Jai Praksh AM, Legal and Shri Anish Kumar.

Both the parties concluded their arguments. The Respondent filed some additional submissions which were taken on record. The Respondent was asked to produce the original file of K. No. XI-1765 and copies of all court orders pertaining to this K. No. The Appellant seeks copies of documents filed by the Respondent regarding inspections in 1992 and 1999, these be given by the Respondent. The Appellant also agrees to give a list of court cases and orders of various courts in respect of K. No. XI-1765 and is allowed to do so.

Both parties were also asked to file a written summary of their arguments which should be done by 22.01.2008.

9. The Appellant has argued that the old dues of the disconnected connection K. No. XI-1765 on pro-rata basis, are not recoverable because:

- (i) The conditions of supply are not statutory and therefore the Respondent cannot recover the dues.
- (ii) The dues are time barred.
- (iii) The Respondent cannot be permitted to recover the dues which are not recoverable under the law.
- (iv) The Appellant is not liable to pay the earlier dues as he has taken an area of 50 sq. yards out of 388 sq. yards on rental basis.



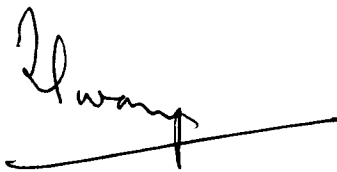
- (v) However, if these are taken as payable, only consumption charges can be recovered, and not the penalty imposed. In support of the above contentions, the Appellant has cited several court decisions.

10. The Respondent has argued that:

- (i) It cannot be said that the Appellant is a third party and has no knowledge of the old dues. Infact it is a family affair and the Appellant has adopted dubious means to avoid payment of the huge arrears pertaining to the earlier connection installed in the premises.
- (ii) The premises G-36, Lawrence Road is owned by Shri Naresh Kumar Mittal. Earlier M/s. Kapil Flour Mills was being run from this premises with the electric connection K. No. XI-1765 in the name of Shri Hansraj. Shri Naresh Kumar Mittal, Mrs. Pushpa Mittal and Shri Hansraj were partners with 50%, 40% and 10% shares respectively. Shri Kapil Mittal is also related to Shri Naresh Kumar Mittal. For Kapil Flour Mills, an electric connection K. No. XI-1765 was taken in the name of Shri Hansraj one of the partner. This was not a personal connection for use exclusively by Shri Hansraj. Also Shri Suresh Mittal, brother of Shri Naresh Mittal and husband of Mrs. Pushpa Mittal, was the general Power of Attorney holder of Shri Hansraj and has been filing suits and litigations in this capacity. This connection was disconnected sometime in 2000 due to non-payment of dues.

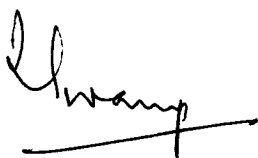


- (iii) The Mittal family floated another firm in the name of Hi-tech Grain Processing Pvt. Ltd. with Shri Naresh Kumar Mittal and Shri Vipul Mittal as Directors. Out of the 388 sq. yards area of G-36, Lawrence Road, 50 sq. yards was rented out by Shri Naresh Kumar Mittal one of the Directors of the new company to his son Shri Vipul Mittal, one of the other Directors of Hi-tech Grain Processing Pvt. Ltd. Shri Naresh Kumar Mittal signed the rent agreement as rentor. Later on Shri Naresh Kumar Mittal resigned and the constitution of Hi-tech Grain Processing Pvt. Ltd. was changed by inducting another member of the Mittal family.
- (iv) The Respondent has argued that the 80 KW load was earlier sanctioned for 388 sq. yards plot and now a new 63 KW connection is sought for only for 50 sq. yards. The intention is only to get a new connection sanctioned for the 50 sq. yards portion, and then the new connection can be used for the entire area as the Rent Agreement does not demarcate the 50 sq. yards area from the rest of the premises. The Respondent states that it appears that only the mask has changed and the beneficiaries are the same. The Respondent further stated that when the Appellant applied for 63 KW load for 50 sq. yards area, a demand note to clear the dues on pro-rata basis was issued as all the facts were not known to the Respondent. Now the Respondent states that the total dues against the disconnected connection XI-1765 are payable by the Appellant, before a new connection can be granted.



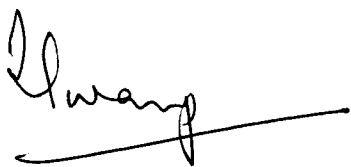
11. Based on the arguments and documents submitted by both the parties the position has emerged as under:

- a) Shri Naresh Kumar Mittal is the owner to G-36 plot, Lawrence Road, Industrial area, measuring 388 sq. yards as indicated in the Conveyance Deed dated 28.04.1975. Shri Naresh Kumar Mittal, Mrs. Pushpa Mittal and Shri Hansraj were partners of a firm named M/s. Kapil Flour Mill and were having 50%, 40% and 10% shares respectively. An industrial power connection K. No. XI-1765 for 80.6 HP was taken in the name of Shri Hansraj one of the partner for the said premises for running M/s. Kapil Flour Mill. Shri Suresh Mittal was however the holder of a General Power of Attorney for Shri Hansraj.
- b) During Enforcement inspections dt.17.02.1988 and 30.04.1992 the connected load of more than 100 KW was detected which attracted levy of a higher tariff under the LIP category. The levy of LIP tariff based on inspections dated 17.02.1988 and 30.04.1992 had been challenged from time to time in various courts. In the order dated 25.05.1993 of Shri S. K. Kaushik, Sub-Judge, 1st class, Delhi, the Hon'ble Court has taken a view that the Petitioner had applied for re-inspection on 13.05.1992 and no LIP bill be raised till re-inspection. The Court also held that no misuse charges be levied. In another order of the Hon'ble Court of Shri Narinder Kumar, Civil Judge, Delhi, three suits of the Petitioner suit no. 1030/91-801/2000, suit no. 773/92-1131/2000 and suit no. 774/92-1129/2000 were consolidated and suit no. 1131/2000 was ordered to be treated



as the main suit. The Hon'ble Civil Judge vide order dated 09.07.2003 held that in the absence of any proof about the inspection report dated 17.02.1988 the court has no option but to hold that the Defendant has failed to prove his version, and the Plaintiff is entitled to relief of permanent injunction and all these suits are decreed in favour of the Plaintiff and against the Defendant. The Defendant (DESU / DVB) was restrained from disconnecting the supply of connection no. XI-1765 on account of non-payment of LIP charges, as debited in the bills for the month of June and July 1991, March 1992 and April 1992. The order further held that the Defendant shall be at liberty to raise the demand of amounts due, after following the procedure prescribed under the rules, so as to provide the plaintiff an opportunity of being heard.

- c) In pursuance of the order dated 09.07.2003 the NDPL, the successor body, issued a show cause notice on 19.11.2003. Thereafter Shri Naresh Kumar Mittal, major partner of M/s. Kapil Floor Mills and owner of the premises G-36, Lawrence Road, moved an application on 16.03.2004 before the Member Secretary DLSA, Patiala House, New Delhi for settlement of the dispute between the parties. As per the directions of the court (Special Lok Adalat dated 27.06.2004) a joint meeting was held on 29.06.2004 between the Respondent and Shri Naresh Kumar Mittal, Shri Kapil Mittal along with their advocate Shri B. N. Sharma.

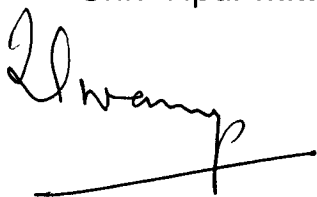


After discussion the mutually agreed decision was jointly arrived at and signed by the following officials on 29.06.2004:

NDPL	On behalf of M/s Kapil Flour Mill for connection No. XI-1765
1. Shri Ranjeev Kharyal (HOG)	1. Shri Naresh Kumar Mittal
2. Shri Sanjeev Banga (Manager, KCG)	2. Shri Kapil Mittal
3. Shri Sunil Dwivedi (AFO)	3. Shri B. K. Sharma Advocate
4. Shri Gautam Jai Prakash	

Thereafter no efforts were made by Shri Naresh Kumar Mittal to clear the pending dues.

12. The Memorandum and Articles of Association of Hi-tech Grain Processing Pvt. Ltd. submitted by the Appellant reveal that this company was incorporated under the Companies Act 1956 on 10.12.2001 (after disconnection of electric connection K. No. XI-1765). Shri Naresh Kumar Mittal owner of the premises and his son Shri Vipul Mittal (Appellant) became the Directors of this Company Hi-tech Grain Processing Pvt. Ltd.
13. As per the rent agreement dated 07.06.2004, Shri Vipul Mittal as Director of Hi-tech Grain Processing Pvt. Ltd. took 50 sq. yards out of the plot of 388 sq. yards on rental basis from his father Shri Naresh Kumar Mittal, who was also the Director of the same company. In August 2004, the Appellant Shri Vipul Mittal applied for a 63 kw connection for 50 sq. yards space taken on rental basis. Shri Naresh Kumar Mittal, being owner of the premises, issued a NOC in favor of Shri Vipul Mittal for getting the electric connection. The Respondent

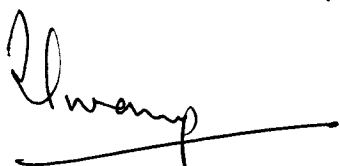


(NDPL) initially processed the application for a new connection and issued the demand note for Rs.108500/- as per rules, and payment was made by the Appellant. During the site inspection, the Respondent came to know that an earlier connection no. XI-1765 existed in the premises G-36, Lawrence Road, against which large amount of dues were pending. The Respondent asked the Appellant to pay the old dues on pro-rata basis. However, it may be mentioned here that as per DERC Regulations 15(iii) pro-rata dues against outstanding dues are applicable where a property / premises has been sub divided and on the basis of area of sub-division. As such, pro-rata dues are not applicable for part of the premises given on rental basis.

14. The documents submitted by the Appellant further reveal that:

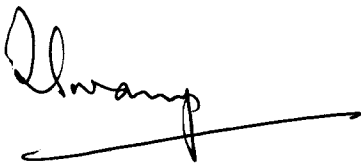
- i) A resolution was passed by the Board of Directors of Hi-tech Grain Processing Pvt. Ltd. Company during a meeting held on 04.07.2005 whereby Shri Vipul Mittal Director was authorized to file a legal suit against the NDPL. The Board Resolution dated 04.07.2005 is signed by Shri Naresh Kumar Mittal and Shri Vipul Mittal as Directors of the firm.
- ii) Thereafter Shri Naresh Kumar Mittal resigned as a Director of Hi-Tech Grain Processing Pvt. Ltd. on 15.07.2005 and Mrs. Asha Mittal w/o Shri Naresh Kumar Mittal was appointed as the Additional Director of the firm.

15. From the above mentioned details, it is evident that the partners of M/s. Kapil Flour Mills had challenged the old dues in various courts and later on approached the Special Lok Adalat for settlement of the



dispute and after arriving at a mutually settled agreement, signed by both the parties, made no effort to clear the dues. Now the Appellant who knew about the dues all along cannot claim that the dues are not payable under the Limitation Act or under Section 56 (2) of the Electricity Act 2003. The Respondent has stated that after disconnection of the electric connection on account of non payment of dues, no further bills are raised and outstanding dues remain reflected in the accounts book.

16. It is observed that M/s. Kapil Flour Mills was being managed by the Mittal family and the outstanding dues are against the connection that was being used for running M/s. Kapil Flour Mill. Shri Naresh Kumar Mittal being the owner of the premises, partner of Kapil Flour Mills and Director of Hi-Tech Grain Processing Pvt. Ltd., rented out a small part of 50 sq. yards to Shri Vipul Mittal who was his son, and another Director of Hi-Tech Grain Processing Pvt. Ltd., without demarcating the rented portion from the rest of the premises. Under such circumstances the question is, can Shri Naresh Kumar Mittal owner of G-36 premises against which large dues were pending, rent out a small portion to his son and give an NOC, for getting electric connection for 63 KW for running a company of which both were Directors? This obviously appears to be a dubious method adopted by the Mittal family to avoid payment of the old dues against connection no. XI-1765 and for getting a new connection for a small portion of the premises. The Respondent's apprehension that the same will be used in the entire premises appears to be genuine.

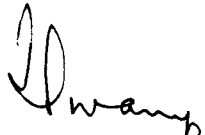


17. The Appellant has argued that if at all dues are payable only consumption charges be recovered and not the penalty imposed. The record reveals that the dues are mainly on account of levy of LIP tariff and FAE bill raised as per rates provided in the DVB Tariff Orders for theft cases. This argument of the Appellant is advanced only to reduce the financial liability of the theft bill raised as per the Tariff orders prevailing for such cases, and cannot be accepted.
18. Considering the facts and circumstances of the case I do not find any merit in the contention of the Appellant who has created a new entity by way of family arrangement and applied for a new connection to escape from the liability of paying the electricity dues against the old connection for the premises.

In view of the above, it is ordered that the new connection in the name of the Appellant may be released subject to payment of the total pending dues against the connection with K.No.XI-1765 which existed in the premises G-36 Lawrence Road New Delhi. There is no rationale for recovery of pending dues on pro-rata basis, in this case as this is not covered under Regulations 15(ii) of the Delhi Electricity Supply Code and Performance Standards Regulations.

The CGRF-NDPL orders dated 27.07.2007 are modified to the above extent.

17th March 2008


(SUMAN SWARUP)
OMBUDSMAN