

Complainant has submitted in brief as under :

1. The complainant has approached to IGR Cell of the Respondent on 1.7.2010 regarding recovery of outstanding arrears of consumer A/c no. 530-049-021 & release of Electricity supply.
2. Not satisfied with the reply of respondent's IGR Cell dtd. 17-08-2010, complainant approached to CGR Forum in schedule 'A' format on 28.02.2011.
3. The complainant has requested to the Forum to release the electricity supply as early as possible settling the arrears issue within the provisions and scope considering contents of application.

**Respondent, BEST Undertaking in its written statement
in brief submitted as under :**

4. The meter No.E855485 and L952850 under consumer A/c.No.530-049-021 were installed in the name of M/s. West Yarn Syndicates at the address 1st floor, Bharat Warehousing Co., 321-A Delisle Road, Mumbai 400 011 on 13.9.1985 & 21.2.1993 respectively. These meters were removed for non-payment of electricity bill of Rs.2,34,270.66 on 20.2.2001. The security deposit of Rs.37,970/- was adjusted towards the outstanding amount of Rs.2,34,270.66. As on today the outstanding balance is Rs.1,96,300.66 which includes delayed payment charges.
5. The applicant's contention is that the liability as per provision laid in regulations 10.5 and related requisitions of the Electric Supply Code and Standard of Performance of MERC, 2005 may be reassessed. Further, applicant informed that as per Section 56(2) of Electricity Act, 2003 the outstanding amount for the period till 2001 which remain unpaid and unclaimed without any demand from the Supply Distribution Licensee is to be treated as time barred and not recovered.
6. M/s. Dhiraj Electrical Works initially vide a requisition dated 22.3.2010 and thereafter vide requisition dated 4.11.2010 has applied for electric supply to the said premises. The applicant stated that he is in lawful possession & occupant of the above referred premises from 6th October 2006. He has submitted Rent Receipt, Affidavit & Irrevocable General Power of Attorney as proof of occupancy. The applicant has asked for reconnection of meter for the premises which has an outstanding amount of Rs.1,96,300.66. Hence the applicant has been asked to pay the same. In this regard our Letter dated 13.10.2010 forwarded to the applicant for compliance in respect of the requisition dated 22.3.2010 was returned back by Postal Authorities with the remarks "Left" on 25.12.2010 and 27.12.2010. Due to non-compliance both the requisitions have been cancelled.

7. On scrutiny of the documents attached along with the requisition it is observed that the said property is transferred in complainant name on the basis of "Love & Affection" merely on an Affidavit and Irrevocable General Power of Attorney which is not registered with the concerned Authority. It is also pertinent to state that the Affidavit & Power of Attorney has been made in March 2007 without mentioning the particular date. As such the consumer's contention that he was in lawful possession & occupation of the concerned premises from 6th October 2006 is also not correct.
8. Under Section 10.5, except in the case of transfer of connection to a legal heir, the liabilities transferred shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises. Hence, Section 10.5 is also not applicable in this case as there is no valid transfer in this case. We have to state here that outstanding of Rs.1,96,300.66 was created in the year December-2002. As such Section 56(2) of Electricity Act, 2003 may not be considered in this case.
9. Hon'ble CGRF is requested to direct the applicant to pay the outstanding amount of Rs.1,96,300.66 against the said premises

REASONS :

10. We have heard the learned representative Shri Sunil H.Pawar for the complainant and representatives Shri S.B.Lande, Shri N.H.S.Husain, Shri S.V.Chhabria & Shri Kishor Sarang for the respondent BEST Undertaking. Perused papers.
11. The complainant avers that he came in lawful possession and occupation of the premises under consideration, from 6th Oct, 2006. One Shri. Vinubhai Mangoji Patel for M/s. West Yarn Syndicates was in occupation of this said premises and was enjoying the electricity provided to the said premises. The complainant as allegedly by him occupied the said premises by purchasing the same and affirmed by the Landlord, on 6th Oct, 2006.
12. On occupying the premises under consideration, the complainant found the electric supply being disconnected by removing meter. Therefore the complainant had submitted a requisition for supply of electricity to the Respondent BEST Undertaking and it was cancelled. Therefore complainant has freshly submitted a requisition no. 61102380 dtd. 4-11-2010.
13. We further observe that the Respondent BEST Undertaking has denied to provide electric supply to the complainant on the ground that the supply

was provided to the erstwhile occupant viz. M/s. West Yarn Syndicates and it was required to be removed on 20-2-2001 for non payment of electricity bill of Rs.2,34,270.66. The security deposit was of Rs.37,970/-. On adjusting the same, the outstanding amount comes to Rs.1,96,300.66, as on this date, including Delayed Payment charges. The Respondent BEST Undertaking contends that as the complainant has failed to pay the outstanding amount of Rs.1,96,300.66 therefore he is not entitled for getting an electric supply, therefore his requisition has been cancelled.

14. The complainant contends that his liability, at the most could be for a maximum period of 6 months of the unpaid charges for electricity supply to the premises under consideration, as envisaged under Regulation 10.5 prescribed under MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. The complainant further contends that as provided under sub section (2) of section 56 under Electricity Act, 2003, the outstanding amount needs to be treated as time barred.
15. We do not find any merit in any contention raised by the complainant before this Forum. We observe that admittedly the premises was occupied by M/s. West Yarn Syndicates, who failed to pay the electricity charges of Rs.2,34,270.66. Therefore Respondent BEST Undertaking has disconnected the electric supply and removed the meter on 20-2-2001. It is therefore obvious that neither the electric supply Act 2003 nor the Regulations prescribed thereunder would come into play, as the provisions provided thereunder cannot be implemented with retrospective effect.
16. We find the complainant being liable to pay the electricity charges in arrears, on a vital ground that as stated in an "*Irrevocable General Power of Attorney*" dtd. 13-3-2007, the complainant i.e. proprietor of M/s. Dhiraj Electrical Works, was carrying on business alongwith the erstwhile occupier i.e. Shri. Vinubhai Mangoji Patel in the premises under consideration and he has been in a legal use, occupation, possession and enjoying the said gala premises, since beginning. We further observe that this Notarized "*Irrevocable General Power of Attorney*", further recites that the erstwhile occupier Shri. Vinubhai Mangoji Patel has been permanently shifting to his native place by putting the complainant in exclusive use, occupation, possession and enjoyment of the said gala premises.
17. We further observe that the said Notarized "*Irrevocable General Power of Attorney*", further recites in paragraph no.4 that the erstwhile occupier of the premises Shri. Vinubhai Mangoji Patel confirms upon the complainant the power and authority to pay all other out goings whatsoever due and payable or become due or payable for or on account of the said gala premises to the Landlord and / or to the concerned authority from time to time and obtained the receipts thereto.

18. We find that the complainant with open eyes has accepted whatever stated in the said Notarized "*Irrevocable General Power of Attorney*" and has put his signature thereunder in presence of an advocate and the Notary. We therefore find that now it is highly unsustainable on the part of the complainant to deny, having occupied and enjoying the premises under consideration alongwith the erstwhile occupier Shri. Vinubhai Mangoji Patel, sheerly to deny the payment of electricity charges in arrears.
19. An attempt has been made by the learned representative Shri Sunil H.Pawar for the complainant to contend that it has been a practice in Mumbai to make such statement in "*Irrevocable Notarized General Power of Attorney*", without accepting the consequences arises there from, as a sheer intention of parties to such document has been merely to transfer such property.
20. We however find ourselves unable to accept such arguments submitted before this Forum for a simple reason that the document has been Notarized and signed by the complainant. Therefore it is highly unsustainable on the part of the complainant now to turn around and deny the contents of the same.
21. Thus a fact remains that as stated in such Notarized document, the complainant has been accepting being in occupation and enjoyment of the premises since beginning and carrying on his business therein, alongwith the erstwhile occupier Shri. Vinubhai Mangoji Patel. To reiterate the complainant further undertakes to pay all other out goings and due and payable amount in respect of the premises under consideration. Therefore we find the complainant accepting the liabilities of paying electricity charges in arrears against the premises under consideration in respect of erstwhile occupier Shri. Vinubhai Mangoji Patel, the proprietor of M/s. West Yarn Syndicates.
22. We find that the electric connection has been disconnected on 20-2-2001 for non payment of electricity bill of Rs.2,34,270.66. Admittedly the complainant has submitted an application no. 61102386 on 4th Nov, 2010 seeking an electric connection. We do not find any attempt has been made by the Respondent BEST Undertaking to recover the electricity charges in arrears from the date of disconnection of the electricity till this date. Besides it, the complainant contends that without knowing the consequences he has signed the Irrevocable Power of Attorney. Therefore he has fairly placed it before the Forum for consideration of his occupation of premises from 6th Oct, 2006. We can not give a total blind eye to this contention of the complainant. We therefore find it justifiable to waive the Delayed payment and interest charges over the electricity charges in arrears. The prayer made by the complainant liable to be allowed to this extent only. Accordingly we proceed to pass the following order.

ORDER :

1. The complaint no. N-G(S)-115-2011 dtd. 3-03-2011 stands partly allowed to the extent of waiving Delayed payment and interest charges only.
2. The Respondent BEST Undertaking has been directed to waive the Delayed payment and interest charges on the amount of electricity charges in arrears, in respect of the premises under consideration and to provide electric connection on payment of the electricity charges, to the complainant and to report the compliance within a period of two weeks therefrom.
3. Copies be given to both the parties.

(Smt Varsha V Raut)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman