

**ELECTRICITY OMBUDSMAN
MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

5th Floor, “Metro Plaza”, E-5 Arera Colony, Bittan Market, Bhopal-462 016

Case No. LOO-05/2024

Sub: Representation/Appeal against order dated 29.11.2023 passed by the Electricity Consumer Grievance Redressal Forum Bhopal in Case No. BT-01/2023 challenging the erroneous and arbitrary demand notice dated 06.01.2020, disconnection notices dated 27.01.2020, and 03.03.2020 issued by the Distribution Licensee namely Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited, Bhopal.

ORDER

(Date of Order: 27th May’2024)

M/s. Waaneep Solar Private Limited - Applicant
201, Ground Floor, Okhla Industrial Estate Phase III,
New Delhi 110020

V/s

General Manager (O&M Circle) - Respondent
MP Madhya Kshetra Vidyut Vitran Co. Ltd.
Sehore (MP)

Aggrieved by the order dated 29th November, 2023 passed by the Electricity Consumer Grievance Redressal Forum, Bhopal (**Forum**) in case No. BT-01/2023, M/s Waaneep Solar Private Limited (**Applicant/consumer**) has filed the subject representation/Appeal challenging the erroneous and arbitrary Demand Notice dated 06.01.2020, Disconnection Notices dated 27.01.2020 and 03.03.2020 issued by the Respondent Distribution Licensee. The Applicant has broadly submitted the following in its representation: -

- i. *The Consumer, Waaneep Solar Private Limited, is a company registered under the Companies Act 1956 having its registered office at 201, Ground Floor, Okhla Industrial Estate, Phase-III New Delhi-110020. The Consumer has established a 50 MW capacity solar power generation project in village Molga, Tehsil Ichhawar, District Sehore (“Solar Project”).*

- ii. *The Respondent Discom, is a company registered under the Companies Act, 1956 and is one of the distribution licensees operating within the state of Madhya Pradesh. Madhya Pradesh Power Transmission Company Limited (“MPPTCL”/ “Transco”) is a transmission company for the State of Madhya Pradesh.*
- iii. *The consumer Company was incorporated on 12.03.2014 as a Special Purpose Vehicle (“SPV”) promoted through the Public Private Partnership between Waaree Energy Limited (“WEL”) and North Eastern Electric Power Corporation Limited (“NEEPCL”) for setting up of a 50 MW Solar Power Generation Project at Village –Molga, Tehsil, Ichhawar, District Sehore, Madhya Pradesh (Solar Project). The SPV was formed to participate in the tender issued by the Solar Energy Corporation of India (“SECI”), a nodal agency of the Ministry of New and Renewable Energy (“MNRE”) for facilitating development of grid connected solar power plant under Jawaharlal Nehru National Solar Mission of Union of India (“JNNSM”), under RFS No. SECI/JNNSM/SPV/P2/B-1/RfS/102013 issued on 28.10.2013. The Consumer craves leave to produce a copy of the Request for Selection (RFS) if required.*
- iv. *The Consumer was declared the successful bidder in the bidding process. Pursuant thereto, SECI has issued a Letter of Intent (“LOI”) dated 26.02.2014 to the Consumer for setting up the Solar Project in the State of Madhya Pradesh. Accordingly, on 25.04.2014, a power purchase agreement was executed between the Consumer and SECI (“PPA”). The Consumer craves leave to produce copies of the LOI and the PPA if required.*
- v. *To implement the Solar Project, the Consumer preferred an application to the Transco, seeking connection of its Solar Project with the Discom’s transmission system for transmitting solar energy to and/or from its Solar Project through the State Transmission System.*
- vi. *Based on the Consumer’s application, the Discom executed a Connection Agreement on 18.10.2014, where under it agreed to connect the Solar Project with the State Transmission System at the connection point at 132 KV DCSS at 132/33 KV Ichhawar sub-station through 132 kV DCSS transmission line using the Transmission and Communication system of the Transco or any other transmission line as the case may be, to transmit the electricity as also real time data relating to the interconnection, as per the connection agreement.*
- vii. *The grid connected Solar Project was successfully commissioned in June 2015. Since then, the Solar Project has been interconnected with the State Grid and 100% of the power generated there from it is injected into the grid.*

- viii. *The electricity generated by the Solar Project is exported during the day. During night (approximately from sunset to sunrise), electricity is imported from the Discom through the same meter for charging the equipment installed at the Solar Project and for the arrangement of lighting the premises for the Solar Project. The billing for the electricity thus imported is done by the Discom based on para 1.19 of General Terms and conditions of High-Tension Tariff of Retail Supply Tariff Order, Temporary Supply at HT and basis provisions given in tariff category HV 3.1 C, 132 KV Industrial Urban.*
- ix. *It is an admitted fact that appropriate metering devices, load limiter, tamper proof boxes and other equipment was installed by the Discom itself at the Consumer's premises of the Solar Project. Similar metering devices were also installed at the premises of the Transco under the Discom's supervision, for recording the supply of electricity by the Discom and consumption of the same by the Consumer's Solar Project.*
- x. *Basis the reading in the meters installed at the premises of both, the Consumer and the Transco, a joint Meter Reading ("JMR") was recorded every month since June 2015. These JMR sheets were reviewed and duly signed by representatives of the Consumer as also the Discom and the Transco. It is of utmost important to point out that the JMRs are signed, after the meter readings are jointly taken and cross checked by representatives of not one, but three entities.*
- xi. *The JMR correctly records exported and imported units of power and is triple checked, as stated above. Accordingly, based on the JMRs, electricity bills have been issued to the Consumer monthly, which have admittedly been paid by it regularly and within the stipulated time since June 2015, without any default. The bills raised by the Discom included both fixed and energy charges.*
- xii. *It is a matter of record that apart from the electricity bills produced herein above, no other bills were raised by the Discom from 2016 till date.*
- xiii. *It is also a matter of fact that none of the parties, i.e. the Consumer, the Discom or the Transco ever disputed or objected to the JMR. Consequently, none of the bills issued by the Discom basis the JMRs were ever disputed. Admittedly, these bills have been promptly cleared by the Consumer, without any delay or default.*
- xiv. *In an absolutely shocking and sudden turn of events, the Discom, without any prior intimation or notice, and in complete disregard of its contractual and legal obligations, issued an arbitrary demand notice on 06.01.2020 ("**Demand Notice**"), purportedly claiming arrears of INR 8,96,88,671 (Indian Rupees Eight Crores Eighty-Eight Lakhs Six Hundred and Seventy-One) towards billing of the*

Consumer's connection number 8497386117 for a period of three years and four months, from July 2016 to November 2019.

- xv. *Absolutely no reason or justification was given by the Discom for suddenly springing such a significant demand on the Consumer. More importantly, the Discom sought to raise a demand for electricity consumer as far back as July 2016, in the teeth of Section 56(2) of the Electricity Act, which provides that "Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity." However, no mention of such "arrears" was ever made prior to the issuance of the illegal Demand Notice, much less continuously, from July 2016 to November 2019.*
- xvi. *Therefore, the Consumer promptly objected to the Demand Notice, by email dated 22.01.2020 addressed to the Discom. Without prejudice to its objection, the Consumer requested the Discom sufficient time to reconcile the accounts to verify the alleged outstanding amount Rs.8,96,88,671.*
- xvii. *It is a matter of fact that the Discom completely over looked the request for extension of time sought by the Consumer and further, issued an erroneous and arbitrary notice dated 27.01.2020 ("**First Disconnection Notice**") and threatened to disconnect the electricity connection of the Consumer in contravention of the afore cited Section 56 (1) of the Electricity Act.*
- xviii. *The Discom, vide the First Disconnection Notice threatened to disconnect the supply of electricity to the Solar Project of the Consumer without any further intimation, in case the alleged "arrears" of INR 8,96,88,671/- pertaining to period from July 2016 to November 2019, was not paid within 15 days of issue of the said notice. The Discom also falsely claimed that the alleged dues were continuously shown as recoverable in the bills issued by it. However, the discom has been unable to produce even a single document, that continuously shows the demanded sum as "recoverable as arrear of charges for electricity supplied". The alleged arrears of INR 8,96,88,671/- came to be mentioned for the first time in the Demand Notice.*
- xix. *The Consumer addressed a letter dated 06.02.2020 to the Discom, once again objecting to the demand and proposed disconnection of power. Without prejudice, the Consumer once again sought sufficient time to verify and reconcile its accounts.*

- xx. *The Consumer's request was summarily rejected by the Discom vide its letter dated 11.02.2020, on the ground that there was no need for any verification since the parameters used for claiming such arrears from the date of commissioning till November 2019 were "taken from the data in the meter". The Discom's stand is incomprehensible, since the bills issued by the Discom were based on the JMRs jointly signed by the Consumer, the Discom and the Transco after reading the very same "data in the meter". The Discom's stand that the additional dues also stemmed from the meter reading data, would undoubtedly amount to unilateral modification of the JMRs.*
- xxi. *Aggrieved by the imminent threat of disconnection of power supply, the Consumer, vide its letter dated 11.02.2020 informed the Discom that it had paid a sum of INR 3,00,00,000/- (Rupees Three Crore only) under protest.*
- xxii. *It is worth pointing out that this sum of INR 3,00,00,000/- paid under protest is more than the average electricity charges paid by the Consumer during the last six months. The Discom attempts to contend that the Consumer's deposit of this sum is tantamount to admission of liability. The Consumer clarifies for good measure that the deposit was made bona fide, in view of the imminent and continuous threat of disconnection, without prejudice to the Consumer's rights and contentions and in accordance with the provisions of Clause 9.11 of the MP Supply Code, 2013.*
- xxiii. *Despite the above, the Discom vide its letter dated 03.03.2020 once again threatened to disconnect power supply to the Solar Project without any further notice upon expiry of 15 days from the date of the letter ("**Second Disconnection Notice**").*
- xxiv. *Aggrieved by the appalling arbitrariness displayed by the Discom, a state entity, Consumer approached the Hon'ble Madhya Pradesh High Court, Jabalpur through Writ Petition No. 6482 of 2020 ("**Writ Petition**") and sought the following reliefs:*
- "In view of the facts and grounds stated hereinabove, irreparable damage shall be caused to the Petitioner due to the arbitrary and erroneous actions of the MPPKVVCL and MPPTCL. Hence, the Petitioner prays for grant of following relief(s):-*
- (a) *Issue an appropriate writ, order or direction thereby declaring the Impugned Demand Notice dated 06.01.2020 issued by MPPKVVCL [being Annexure P-1 (Colly.)] as*

illegal, and arbitrary and set aside the said Impugned Demand Notice;

- (b) Issue an appropriate writ, order or direction thereby declaring the Impugned Disconnection Notice dated 27.01.2020 and 03.03.2020 [being Annexure P-1 (Colly.)] as illegal and for setting aside of the same; and*
- (c) Pass any other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.*

Interim Relief sought:

- (i) In light of the aforementioned facts and circumstances of present case, it is, therefore, most respectfully prayed that this Hon'ble court may graciously be pleased to pass an ex-parte ad interim order restraining MPPKVVCL from giving effect to or acting upon the Impugned Demand Notice dated 06.01.2020 [being Annexure P-1 (Colly.)], in any manner whatsoever, pending disposal of the present writ petition;*
- (ii) pass an ex-parte ad interim order restraining MPPKVVCL from giving effect to or acting upon the Impugned Disconnection Notice dated 27.01.2020 and 03.03.2020 [being Annexure P-1 (Colly.)] pending disposal of the present writ petition;*
- (iii) pass an ex-parte ad interim order restraining MPPKVVCL /Respondent No.1 from giving effect to any adverse action against the Petitioner, pending disposal of the present writ petition; and*
- (iv) pass any order and/or any such orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case and in the interest of justice."*

xxv. Hon'ble High Court vide its order dated 08.02.2023 was pleased to dispose of the Writ Petition, without considering or deciding the merits of the dispute. The Hon'ble High Court directed the Consumer to approach and seek redressal of its complaint through the Ld. Forum after deposit of INR 50,00,000 (Indian Rupees Fifty Lakhs). In view of the above, the Consumer preferred a detailed representation before the

Ld. Forum, inter alia challenging the Demand Notice, the First Disconnection Notice, and the Second Disconnection Notice. The Consumer's representation was registered on 06.04.2023 and assigned case number BT-01/2023.

xxvi. *Thereafter, post completion of pleadings the Ld. Forum rejected the Appellant's Representation vide the Impugned Order. Pursuant to the Impugned Order, the Discom has issued yet another demand letter on 26.12.2023, seeking payment of an amount of INR Rs.4,96,88,671/- (Indian Rupees Four Crores Ninety-Six Lakhs Eighty-Eight Thousand Six Hundred and Seventy-One) within 15 days from the date of receipt of the said letter.*

xxvii. *The Consumer's representation came to be rejected by the Impugned Order dated 29.11.2023, which was communicated to the Consumer under cover of the Ld. Forum's letter dated 08.12.2023, received by the Consumer's advocate on record on 13.12.2023.*

2. The Applicant is aggrieved by the impugned order passed by ECGRF, Bhopal on the following grounds:-

i. *The Impugned Order is premised on the following ex facie erroneous assumptions/conclusions, that have no basis either in the facts of the case or in law:-*

a) *The differential amount of INR 8,96,88,671/- became due on 03.01.2020 and the demand for the same was raised on 06.01.2020.*

b) *The demand was made continuously and shown as arrears towards electricity consumption.*

c) *The Demand Notice and Disconnection Notices are in the nature of provisional and/or supplementary bills and have been raised in accordance with law.*

d) *The Consumer has never stated that it was not given a bill for the amount of INR 8,96,88,671/-.*

e) *The Consumer has not raised any objection related to electricity consumption charges during the disputed period.*

ii. *The Impugned Order does not expressly either uphold or reject the Consumer's contention that the demand raised by the Discom was time barred. Instead of rendering a clear finding on whether the demand raised under cover of the Demand Notice is hit by the legal proscription under Section 56(2) of the Electricity Act, the Impugned Order incorrectly concludes that (a) the Demand Notice was in the*

nature of a provisional or supplementary bill; (b) the amount demanded became first due on 03.01.2020 immediately after which the said provisional/ supplementary bill was raised.

- iii. *The Demand Notice is clearly barred by limitation and stands in teeth of the statutory proscription under Section 56 (2) of the Electricity Act. Section 56 (2) of Electricity Act provides that (i) no sum due from any consumer shall be recoverable after a period of two (2) years from the date when such sum became “first due” (ii) unless “such sum” has been shown continuously as recoverable as arrear of charges for electricity supplied and (iii) the licensee shall not cut off the supply of the electricity. Section 56 (2) of the Electricity Act is reproduced herein below:-*

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

- iv. *In order for the Demand Notice to not be hit by Section 56(2), the Discom is required to prove that (a) a valid demand for the sum due was raised through a properly issued bill when the amount became “first due”; (b) upon the demand being unpaid the same was continuously shown as “arrears” of charges for electricity supplied; and (c) the attempt to recover the said amount has been made through supplementary bill within two years from the date when the sum became first due.*
- v. *In respect of point (a) above, the Impugned Order erroneously holds that the amount demanded became first due on 03.01.2020 after which the Demand Notice was issued, which was in the nature of a provisional/ supplementary bill. In respect of point (b) above, the Impugned Order, without any reasoning or analysis whatsoever concludes that the demand was made continuously through the demand letter. Both the above findings are completely unfounded in the facts of the case and the record produced before the Ld. Forum.*
- vi. *In the Consumer’s respectful submission, any demand for the disputed period between July 2016 and November 2019 should have been raised through a validly issued bill as and when the meter readings were taken and the JMRs were signed by all parties concerned. As submitted herein below, bills have already been raised and duly paid de hors this demanded amount, and this issue cannot be re-opened on the pretext of there being a ‘mistake’ in the meter readings. It is clarified that*

the following contentions are being made without prejudice to this stand of the Consumer.

vii. *The Impugned Order incorrectly concludes that the sum of INR 8,96,88,671/- first became due on 03.01.2020 upon discovery of the mistake in billing. It is pertinent to point out that it was not even the Discom's case that the sum of INR 8,96,88,671/- first became due on 03.01.2020. The Discom has submitted (as recorded in the Impugned Order itself) that the alleged mistake in the JMRs and the so-called under-billing was discovered after the centralized system for e-billing of high tension electricity connection was started on 05.07.2019. The Discom has further submitted that upon alleged review of the Consumer's billing data by the newly formed centralized cell, it was found that the Consumer was being billed less amount every month. It is the Discom's case that the discrepancy in the bills was received by the Consumer on 02.12.2019 and within the time period of 2 years there from, the demand note for the difference amount was issued on 06.01.2020.*

viii. *Without prejudice and in any case, the Discom's contention that it came to know of the alleged error in billing only when the centralized cell was formed in July 2019 is also absolutely erroneous. The Discom has relied on Section 17(1)(c) of the Indian Limitation Act, 1985 ("**Limitation Act**") to contend that the period of limitation will commence from the date when the mistake is first discovered. According to the Discom, the 'mistake' in billing was discovered only after the newly formed centralized cell scrutinized the Consumer's bills post its establishment in July 2019. The Discom's contention is ex-facie erroneous and in the teeth of Section 17(1)(c) of the Limitation Act, on which it attempts to place reliance.*

ix. *Section 17(1)(c) of the Limitation Act is reproduced below:*

"17. Effect of fraud or mistake.—(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(c) the suit or application is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production."

- x. *In terms of Section 17(1)(c) of the Limitation Act, the period of limitation would start running from the time the Discom could have, with reasonable diligence, discovered the alleged mistake.*
- xi. *While attempting to authenticate the alleged meter readings which formed the basis of the Impugned Demand Notice, the Discom has repeatedly contended that the actual meter readings were available with the State Load Despatch Centre (“SLDC”) Jabalpur, and that the meter readings received from the SLDC in fact matched the data of the Discom’s AMR cell. In fact, the Impugned Order notes that the meter reading data was available with HTE Billing Cell through the SLDC on a monthly basis and that such data was uploaded by the SLDC on a monthly basis. The Impugned Order also notes that the data of the monthly generated units through Automatic Meter Reading (“AMR”) is also displayed on the State Energy Account (“SEA”) tab of the SLDC’s website. The Ld. Forum has gone on to review the data retrieved from the website of the SLDC and has found that this data was being retrieved from the AMR and not from the JMR. Holding so, the Ld. Forum in the Impugned Order concludes that the billing as per the AMR data is as per actual consumption and is required to be compensated by the Consumer.*
- xii. *If the AMR data was so easily available to the Discom, including on the website of the SLDC, that too on a monthly basis, the Discom could have, with reasonable diligence, obtained this data way back in 2016 itself and cross-checked it with the JMR. On the contrary, the Discom has, consistently, since June 2015, for a period of more than four years, affixed its signatures on the JMR and has been raising bills in accordance therewith (which have admittedly been promptly paid by the Consumer). Therefore, the Discom has not exercised reasonable diligence in unearthing any alleged discrepancy or mistake in the billing and therefore cannot seek shelter under Section 17(1)(c) of the Limitation Act. In any case, the Impugned Order does not even deal with this issue and deserves to be quashed for this reason alone. Section 56 (2) of the Electricity Act bars recovery of arrears which are claimed after a period of two years from the date when such sum became first due. It is now well settled that a sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. The payment becomes due and payable only when the liability is quantified, and a bill is raised in terms of JMRs. Thus, for the purposes of Sub-section (1) and Sub-section (2) of Section 56 of the Electricity Act, a sum can be regarded as due from the consumer only after a bill for the electricity charges is served upon him and such charges are not paid by the consumer within specified time. In the present case, no bill was raised for the demanded amount of INR 8,96,88,671/-.*
- xiii. *The Impugned Order erroneously considers the Demand Notice itself to be a supplementary or a provisional bill, merely because the subject line in the Demand Notice mentions the words “Regarding Provisional billing”. A bare perusal of the*

Demand Notice, juxtaposed with the bills issued by the Discom in the ordinary course of business would show that the Demand Notice, by no stretch, can be considered to be a 'bill'. None of the details that are mandatorily required to be provided in a bill raised in accordance with law are present in the Demand Notice. Till date, no such bill has been raised on the Consumer.

- xiv. *The Impugned Order further errs in holding that the Consumer never raised the issue of not having been issued a bill in its response to the Demand Notice and subsequent correspondence. Even more egregious is the finding that even in the original application submitted before the Ld. Forum, the Consumer had not contended that it had not been issued any bill. Consumer has repeatedly contended that no bill has been issued to it for the alleged arrears demanded by the Discom. The responses issued by the Consumer to the various notices clearly and unequivocally refute any liability on the Consumer's part and state that the Consumer had been duly paying all the bills that were raised by the Discom. Crucially, not once in any of the correspondence did the Consumer admit that the Demand Notice was a validly issued bill.*
- xv. *The Impugned Order also errs in concluding that because the Consumer deposited a total sum of INR 4 crores against the Demand Notice as per the Hon'ble Court's directions, the Consumer assumed the Demand Notice to be a bill. It is a matter of fact that this deposit was made under protest and as a desperate measure to avoid immediate disconnection of the Solar Project, which would have caused tremendous losses to the Consumer.*
- xvi. *It is a matter of record that the alleged demand raised via the Demand Notice have never been shown to be recoverable as arrears, much less continuously, at any point of time in the previous bills raised by the Discom or any other communication issued by it. The Impugned Order very vaguely and summarily holds in one sentence that the demand for the alleged dues was made continuously through the Demand Notice. The Ld. Forum's conclusion is incomprehensible, since, for a sum to be claimed as 'arrears' it is necessary that the said sum should have been demanded previously and remained unpaid, thereby accumulating as arrears. In the present case, the Discom has not been able to furnish a single document where this alleged sum was claimed, remained unpaid and was thereafter shown as arrears, much less in a continuous fashion. The Impugned Order gravely errs in reaching such an unfounded conclusion, for which reason alone, it deserves to be set aside.*
- xvii. *It is submitted that the Discom has, without any basis or justification issued Demand Notice (i) even after having specifically consenting, agreeing and executing Joint Meter Readings (JMRs), (ii) issuing invoices on basis of the same, and (iii) which were duly paid by the Consumer. The issue relating to the demand*

or payment of electricity bills stands final and conclusive upon payment of electricity charges in terms of monthly electricity bills raised pursuant to the JMR.

- xviii. *The present matter is a classic case of waiver, wherein (i) a public authority after verifying energy consumptions and applicable charges, (ii) consenting and agreeing to JMRs by signing the same, all the same having access to the AMR data, and (iii) while acting upon such JMRs issued invoices on the Consumer which are final and conclusive evidence for the liability of the Consumer, has now raised Demand Notice without any legal justification or basis for the same at a belated stage contrary to statutory provisions. Having consciously and consistently billed the Consumer on the basis of the JMRs, while contemporaneously having access to the AMR data, the Discom has intentionally and voluntarily relinquished its right to raise bills basis the AMRs (assuming the data to be accurate on a demurer). It is submitted that the acts of the Discom are arbitrary and erroneous. Therefore, the Demand Notice and Disconnection Notices being ex-facie illegal and erroneous deserve to be quashed and set aside. This aspect of the matter has not been considered in the Impugned Order at all.*
- xix. *It is a matter of fact that the bills issued on the basis of JMR agreed, consented, and verified by the Discom, Transco and the Consumer. These bills were duly raised and promptly paid by the Consumer. All this, while the Discom had access to the AMR data both directly and through the SLDC. At this stage, the Discom, vide the Demand Notice cannot unilaterally raise a demand contrary to JMRs which have attained finality. The Discom and the Transco after agreeing on the charges by executing JMRs and raising bills on basis of the same, are stopped from raising any fresh demand for the said period.*
- xx. *The readings of meter were duly taken by the authorised representatives of not only the consumer but also the licensees in accordance with the M.P. Electricity Supply Code, 2013. The readings so taken are binding and conclusive between the Consumer and the Discom as to the amount of electrical energy supplied to the Consumer.*
- xxi. *The Discom is obliged to, within fifteen days after the expiration of each calendar month or after the date of reading/ JMR, deliver a bill to the Consumer, stating the number of units supplied to the Consumer by the Discom and the amount payable thereof based on the reading of the meter/ JMR. The Consumer is obliged to pay the same within fifteen days from the date of issue of the bill. In view of the process of raising bill by licensee as provided under M.P. Electricity Supply Code, 2013, it is clear that JMR which is signed by the representatives of Consumer and licensees, is conclusive proof of units of energy supplied.*

- xxii. *It is very clear that the Discom, after waiving its right to demand or claim arrears, if any, after raising the monthly invoices pursuant to JMRs which were consented and agreed by the parties, is erroneously raising the arbitrary demand of INR 8,96,88,671/- for the period from July 2016 to November 2019 vide its Demand Notice.*
- xxiii. *It is submitted that the Demand Letter and Disconnection Notices have no legal basis. The same have been issued on basis of surmises and conjectures. It is a settled principle of law that bill or demand can only be raised on basis of justified and legally tenable grounds.*
- xxiv. *That the Distribution Licensee in addition to the erroneous Demand Notice, has also threatened the Consumer with its Disconnection Notices. Despite there being a specific prayer for the First and Second Disconnection Notices to be set aside, the Impugned Order does not delve into this issue at all.*
- xxv. *The Consumer reiterates its contentions that the Distribution Licensee cannot disconnect the power supply of the Consumer as the same is barred by limitation under Section 56 (2) of the Electricity Act, 2003 and the same stands specifically waived by the Distribution Licensee in light of execution of the JMRs and raising invoices on basis of the same on Consumer, which have been also duly paid by the Consumer.*
- xxvi. *The Distribution Licensee has power neither under Section 56 (1) nor under Section 56 (2) nor under Clause 9.11 of M.P. Electricity Supply Code, 2013 to disconnect/ discontinue the supply of electricity to the Consumer. The Consumer has duly made the payment of INR 3,00,00,000/- (Rupees Three Crore Only) under protest vide its letter dated 11.02.2020, and a further sum of INR 1,00,00,000/- was paid pursuant to the Orders of the Hon'ble High Court dated 18.03.2020 and 08.02.2023. The said sum of INR 4,00,00,000/- (Rupees Four Crore Only) is more than to average charge for electricity paid by the Consumer during the preceding six months.*
- xxvii. *It is important to note that the right to recover the electricity charges is one part of Section 56 of Electricity Act and right to discontinue supply of electrical energy to the consumer who neglects to pay such charges is another part of it. The power to disconnect supply can only be exercised by Distribution Licensee when the Consumer neglects to pay the charges under the bill raised by licensee. The intendment appears to be that the obligations are mutual. The Distribution Licensee would supply electrical energy and the consumer is under corresponding duty to pay the sum due towards the electricity consumed. Admittedly, the Discom raised the invoices based on JMR signed by itself and Consumer made the timely payment of the same. Since no negligence in payment of dues under invoices raised by the*

Discom can be attributable on the part of Consumer, the Discom has no right under Section 56 of the Electricity Act to disconnect the supply of power to the Consumer.

xxviii. *The Impugned Order incorrectly assumes that the Consumer has not raised any objection on the data related to electricity consumption of the disputed period recorded in the meter nor on the functioning of the meter. Upon receiving the Demand Notice and the Disconnection Notices, the Consumer, by its letter dated 06.02.2020 requested for verification and reconciliation of the data. However, the Discom, by its letter dated 11.02.2020, denied the Consumer an opportunity to verify the data, stating that there was no further reconciliation/ verification of the bill amount. At no point in time, therefore, did the Consumer accept the data as accurate or sacrosanct. It is also worth pointing out that the Discom did not produce any documents to substantiate or explain the basis of the demand.*

xxix. *The Impugned Order holds that the JMR did not have any column/ row of maximum demand and hence the actual maximum demand of the month recorded in the JMR was not taken and actual maximum demand was not billed as per the tariff rates by the Discom. The Consumer respectfully submits that the JMR is a standard format document that has been furnished by the Discom itself. The Consumer has absolutely no role in deciding which readings would be taken and which parameters would be recorded. Having consciously or otherwise omitted to include a column for 'maximum demand' in the JMR, after having signed the JMRs, after having issued bills in accordance therewith, and after having received payments there under, the Discom cannot be heard to say that the format of the JMR was incorrect. The Consumer is advised to submit that the rule of contra proferentum would squarely apply in this case.*

3. The applicant has sought the following relief in the representation :-

- i. *Pass an Order, setting aside the Impugned Order dated 29.11.2023 (communicated on 08.12.2023) of the Ld. Electricity Grievance Redressal Forum, Bhopal in Case No. BT-01/2023;*
- ii. *Pass an Order declaring the Impugned Demand Notice dated 06.01.2020, Impugned Disconnection Notice dated 27.01.2020, Impugned Disconnection Notice dated 03.03.2020 and Impugned Demand notice dated 26.12.2023 issued by the Discom as illegal and set aside the said notices;*
- iii. *Call for entire record from Ld. Electricity Grievance Redressal Forum, Bhopal of Case No. BT-01/2023;*
- iv. *Pass any other Order(s) as this Ld. Electricity Ombudsman may deem fit and proper in the facts and circumstances of the instant case.*

4. The Respondent, M.P Madhya Kshetra Vidyut Vitran Co.Ltd. Bhopal (Discom) in its reply and additional submission (as translated) broadly submitted the following:-

- (i) While analyzing the monthly bills issued by the Respondent to M/s. Waaneep Solar Pvt. Ltd. (HT consumer in village Mogra Ichhawar), short billing was found for the month of July '2016 to November' 2019. Taking into cognizance of the aforesaid short billing made in past, the actual billing as per Tariff category HV-3.1 was done on the basis of actual Maximum Demand used by the Applicant. In the instant case, billing of Rs. 2,091,2159.00 was issued earlier to the Applicant/consumer whereas, the billing for Rs. 11,06, 00830.00 was to be issued to the Applicant for actual meter reading, contract demand and other charges in terms of the Tariff Order issued by MPERC. Accordingly, supplementary billing of Rs. 8,96,88,671.00 was made and informed to the Applicant, by the General Manager Sehore circle vide letter No. 6126 dated 06.01.2020;
- (ii) The bills already issued to the Applicant were corrected in accordance to the Tariff Order issued by MPERC. The Applicant has to pay the electricity bills as per the relevant MPERC Regulations and the Power Purchase Agreements executed by it for FY-2015-2016 to FY-2020 and onwards.
- (iii) M/s. Waaneep Solar Pvt. Ltd. was informed by the General manager Sehore circle vide letter dated 06.01.2020 and 07.01.2020 (through e-mail) for payment of supplementary billing mentioning the details of billing of Rs.8,96,88,671.00. Subsequently, a disconnection notice dated. 27.01.2020 was also issued to M/s. Waaneep Solar Pvt. Ltd. in case of non-payment of supplementary billing by the consumer within 15 days.
- (iv) The representative of M/s. Waaneep Solar Pvt. Ltd. approached the General Manager (Commercial) of the Respondent in this matter when he was explained the reasons along with details of the aforesaid supplementary billing. In response to Applicant's letter dated 06.02.2020 to the Respondent, vide letter dated 11.02.2020, the Respondent informed the Applicant in details about the supplementary billing..
- (v) M/s.Waaneep Solar Pvt. Ltd. has deposited Rs.3.00 Crore on 11.02.2020 against the supplymentary/short billing. M/s. Waaneep Solar Pvt. Ltd. has been paying regular electricity bills since December, 2019 without any objection which shows that there no panel billing was done by the Respondent. The applicant raised demand note for supplementary billing on 06.01.2020 for difference in the billing made earlier and the actual billing to

be done during July, 2016 to November, 2019 after review of metring data by HT-E cell.

- (vi) M/s. Waaneep Solar Pvt. Ltd. filed an Appeal No. 6428 of 2020 before the Hon'ble High Court and deposited Rs. 50.00 Lakh on 16th April, 2020 in compliance with the Order dated 18th March, 2020 issued by the Hon'ble High Court. It was directed by the Hon'ble High Court that the Applicant's connection should not be disconnected subject to deposit of Rs 50.00 Lakh more within a period of four weeks.
 - (vii) Thereafter, as per the directions in the final Order dated 8th Feb 2023 passed by the Hon'ble High Court, the Applicant has further deposited Rs. 50.00 lakh. Accordingly, total amount of Rs. 4.00 Crore was deposited by the Applicant with an outstanding amount of Rs. 4,96,88,671.00 towards supplementary billing. Hon'ble High Court in the aforesaid Order directed the Applicant to approach the Electricity Consumer Grievance Redressal Forum (ECGRF/Forum) in the matter. Therefore, the Applicant / Consumer approached ECGRF and the case was registered as BT-01/2023 by ECGRF Bhopal. After hearing both the parties in the aforesaid case (BT-01/2023), the Forum vide Order on 29th November 2023 rejected the application with directions to the Respondent Madhya Pradesh Madhya Kshetra Viduyut Vitran Company Limited (MPMKVVCL) to issue a demand notice to the Applicant to deposit the balance outstanding amount within the time limit as per rules. In compliance with the aforesaid Order of ECGRF, a Demand Note for Rs.4,96,88,671/- was issued to the Applicant vide Respondent's letter No. 5433 dated 26.12.2023 through Registered post.
 - (viii) Since the Applicant had not deposited the aforesaid amount therefore, the Respondent issued 15 days' Notice vide letter No. 5706 dated 10.01.2024 to the Applicant. Since, the Applicant had not deposited the amount in response to the aforesaid demand notice also therefore, the Respondent (General Manager Sehore Circle) vide his letters dated 24.01.2024 and 25.01.2024 issued the DGM Sehore Division and GM (T&D), MPPTCL Bhopal respectively asked them to disconnect the supply of Applicant temporarily. A copy of the aforesaid letter was endorsed to the Applicant also. Thereafter, the Consumer/Applicant deposited the balance amount Rs. 4,96,88,671/- in parts on 15.01.2024, 19.01.2024 & 25.01.2024. Thereafter, the Respondent informed GM (T&D) MPPTCL not to disconnect the supply of the Applicant.
5. In its additional submission dated 21st Feb 2024, the Respondent has further submitted the following:-

- (i) The monthly bills of the consumer were reviewed by the HT-E billing cell of Respondent in the month January 2020. On the review by the HT-E billing cell on 02.01.2020, the Applicant M/s.Waaneep Solar Pvt. Ltd. was informed about the billing Rs. 8,96,88,671.00 vide letter No. 6126 dated 6th January 2020 by GM Circle Office Sehore.
- (ii) The word “*Provisional Billing Against Under Billing (Short Billing)*” was mentioned by the Respondent in its aforesaid letter dated 06.01.2020 because an amount of Rs.8,96,88,671/- was billed separately which was to be paid within an appropriate time given by the Respondent. Accordingly, the date i.e. 06.01.2020 of aforesaid letter vide which the information about short billing was conveyed to the Applicant/Consumer to deposit the aforesaid amount is the first date of bill.
- (iii) On receipt of no response from the Consumer, 15 days’ disconnection Notice was issued to the Applicant /Consumer vide letter No. 6809-10 dated 27 January 2020. It is clear from the letter dated 06.02.2020 written by the Applicant/Consumer to the Respondent that the information regarding additional billing has been provided earlier to the Consumer and the Consumer has made part payment of Rs. 3.00 Crore on 11.02.2020 towards the additional/short billing. Another disconnection Notice was issued to the Consumer vide Respondent’s letter No. 7756 dated 03.03.2020 seeking deposit of the balance amount.
- (iv) Subsequently, a Writ Petition No. WP 6428/2020 was filed by the consumer on 12.03.2020. Hon’ble High Court vide Order dated 18 March, 2020 directed the Respondent not to disconnect the connection of consumer subject to deposit of Rs. 50.00 Lakh by the consumer. The Consumer has deposited Rs. 50.00 Lakh on 6th April, 2020 in compliance with the aforesaid Order.
- (v) Since the matter was *Subjudice* before the Hon’ble High Court therefore, no correspondence was made by the respondent to the Consumer during 18.03.2020 to 08.02.2023.
- (vi) The contention of Consumer that he has received only disconnected Notices directly and never been informed in the past to deposit the amount of aforesaid additional billing is incorrect because it is mentioned in the stay Order dated 18th March, 2020 of the Hon’ble High Court that “*This petition is directed against the demand notices made by respondents on 06.01.2020, 27.01.2020 and 03.03.2020 where by total demand of Rs. 8,96,88,671/- is raised from the petitioner.*”

- (vii) Subsequently, M/s. Waaneep Solar Pvt. Ltd. deposited Rs.50.00 lakh in compliance with the Order dated 08.02.2023 passed by the Hon'ble High Court. Accordingly the Consumer has deposited Rs.4.00 crore and therefore there was an outstanding of Rs. 4,96,88,671/-. As per directive of Hon'ble High Court in Order dated 08.02.2023; M/s. Waaneep Solar Pvt. Ltd. approached the Electricity Consumer Grievance Redressal Forum (ECGRF) Bhopal which was registered as BT-01/2023. This time also no disconnection notice issued to the consumer.
- (viii) The M/s. Waaneep Solar Pvt. Ltd. had neither deposited Rs.50.00 lakh after the final order passed by the Hon'ble High Court nor informed the Respondent about filing its case before Electricity Consumer Grievance Redressal Forum (ECGRF) Bhopal. The Applicant vide letter dated 15th March 2023 informed the Respondent that it has deposited Rs. 50.00 Lakh and has registered a case before Electricity Consumer Grievance Redressal Forum (ECGRF) Bhopal in the matter which is under process.
- (ix) Hon'ble High Court in Order dated 08.02.2023, directed the consumer to deposit Rs. 50.00 Lakh within 30 days from the date of order and to approach Electricity Consumer Grievance Redressal Forum (ECGRF) Bhopal, however the consumer has failed to comply with both the directions within the time frame. Therefore, the electricity connection of the consumer was temporarily disconnected on 16.03.2023 at 19:03 Hrs. On disconnection of supply, M/s. Waaneep Solar Pvt. Ltd. filed an I.A no. 3785/2023 before Hon'ble High Court seeking reconnection of supply and time extension to approach Electricity Consumer Grievance Redressal Forum (ECGRF) Bhopal. Hon'ble High Court passed an Order on 17th March 2023 in the aforesaid I.A where by the Respondents were directed to restore the electricity supply of the consumer by 18th March 2023. Accordingly the electricity of the Consumer was restored on 17th March 2023 at 21:05 Hrs.
- (x) As per direction of Electricity Consumer Grievance Redressal Forum (ECGRF) Bhopal, a meeting was convened at the Regional Office, Bhopal of the Respondent wherein the representatives of both the parties were present. The representative of the consumer stated that the supplementary/short billing by the Respondent beyond a period of 2 years is in contravention to the Section 56(2) of the Electricity Act 2003. They also pointed out that there should not be any change in the billing based on the readings taken by Joint Meter Reading (JMR). In response, the representatives of the Respondent informed the representatives of consumer that after centralization of billing in the year 2019, it has been found that the data obtained from MRI was not

matching with the Joint Meter Reading. Therefore, the supplementary/short billing was done on the basis of the discrepancies found after analysis of the MRI data. The additional billing was done after adjusting the payment already made by the consumer and no penalty was imposed in the supplementary billing. In this regard, the representatives of M/s. Waaneep Solar Pvt. Ltd; stated that they did not have the records to verify aforesaid explanation by the Respondent. The Representative of M/s. Waaneep Solar Pvt. Ltd. were assured by the Respondent to provide any document which may be required by them for verification of supplementary billing. However, no reconciliation was made by M/s. Waaneep Solar Pvt. Ltd. during and after the meeting.

6. Details of Hearings before Electricity Ombudsman:

- (i) M/s. Waaneep Solar Pvt. Ltd. has filed this Representation/Appeal on 23rd January 2024. The case was fixed for hearing on 8th February 2024 and simultaneously the records in this matter were sought from ECGRF (Forum) Bhopal.
- (ii) During the hearing held on 08.02.2024, Shri Parag Gupta, Advocate and Shri Ashish Jaiswal appeared for the Consumer/Applicant. Shri Rizwan A. Khan DGM (Office) Sehore Circle appeared for the Respondent.
- (iii) Ld. Counsel for the Applicant stated during the hearing that the Applicant has deposited the entire alleged recoverable amount to the Respondent Discom "under protest," hence, no disputed amount is outstanding /pending as on date. Thus, no undertaking is required to be submitted by the applicant in accordance with Regulation 3.38 of MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievances of the Consumers)(Revision-II) Regulations, 2021 {RG-3(ii) of 2021}. He also submitted in writing the above statement and sought liberty to withdraw the interim prayer at 9(h) (ii) in the representation filed by the Applicant. The representative of the Respondent also admitted the above facts as stated by the Applicant.
- (iv) During the hearing, Ld. Counsel for the Applicant while reading provisions under Section 56(2) of the Electricity Act, 2003 presented his case emphasizing the meaning of terms "demand notice and bill", "*first due*" and "limitation period' applicable in this matter. He stated that the Respondent has not followed the provisions under Section 56(2) of the Electricity Act 2003 and issued demand notice in place of bill that too after the limitation

period. He drew attention to the internal correspondence made by the Respondent which are Annexed at page no. 237 and 238 of the representation wherein the words like “Review of data”, “Short billing”, and “Provisional billing” are used. He stated that these terms for the supplementary/short billing for the past period of July, 2016 to November, 2019 are in contravention to the aforesaid provisions in the Electricity Act 2003. A letter dated 30th January 2024 (Received on 5th February 2024) filed by the applicant was taken on record.

- (v) During the course of hearing held on 8th February 2024, the representative appeared for the Respondent filed his reply dated 6th February 2024. A copy of aforesaid reply was served to the Ld. Counsel of Applicant also. The representative of the Respondent also placed his oral submissions in reply to the issues raised by the Applicant. The Respondent had sought time to file his additional submission on the issues raised by the Applicant during the hearing. The case was fixed for hearing on 29th February 2024.
- (vi) During the next hearing held on 29th February 2024, Ld. Counsel for the Applicant sought adjournment on the ground that Senior Counsel of Applicant was unable to attend the hearing. The Respondent also sought adjournment in the matter stating that the Office In-charge (OIC) in this matter has been transferred and other OIC is to be appointed in this matter.
- (vii) The applicant filed an application dated 29th February 2024 to withdraw the interim prayer at para 9(h) (ii) of its representation which was taken on record. The Respondent Discom filed an additional submission dated 21st February, 2024. A copy of the same was served to the Applicant on the same day. Considering the request made by both parties, the next hearing in the matter was fixed on 12th March, 2024 which was re-scheduled to 8th April, 2024 due to unavoidable circumstances.
- (viii) During the next hearing held on 8th April 2024, Shri Akshay Sapre Advocate and Shri Parag Gupta Advocate appeared on behalf of the M/s. Waaneep Solar Pvt. Ltd. Shri Sandeep Shakya DGM and Shri Anunay Kulshresth appeared on behalf of the Respondent. Arguments were placed by both the parties. The Applicant filed its written submission on the arguments placed by him on 8th April 2024 along with a copy of the Judgment passed by the Hon’ble Supreme Court of India in the matter of ***Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited And Another Appellant V/s Rahamatullah Khan, Alias Rahamjulla Respondent in Civil Appeal No. 1672 of 2020.***

- (ix) The Respondent was asked to file his rejoinder if any, by 19th April 2024 and the case was fixed for hearing on 19th April, 2024. During the hearing held on 19th April 2024, the Respondent through written and oral submission as well, stated that no rejoinder is to be filed by the Respondent. Both the parties stated that no more submission or arguments are to be submitted by them in this matter. The case was reserved for order.

7. Decision of the Forum (ECGRF):-

The Electricity Consumer Grievance Forum, Bhopal in the impugned order while rejecting the application of the Applicant/consumer held that the bill amount for the difference amount related to less billing of Rs. 8,96,88,671/- initially became first due on 03.01.2020, the demand for which was made by the non-applicant to the consumer through a demand letter on 06.01.2020. The Forum has also held that the consumer/applicant has neither raised any objection on the data related to electricity consumption recorded in the meter during the disputed period nor on the functioning of the meter.

It was also held by the Forum that the Applicant in its various applications/letters in response to the demand note dated 06.01.2020 issued by the Respondent, has never stated that he was not given the bill for Rs.8,96,88,671/-.Therefore, the supplementary billing amount of Rs.8,96,88,671/- made by the non-applicant is as per law.

The Forum directed the Respondent that after adjusting the amount already deposited by the consumer as per the demand letter dated 06.01.2020, the demand letter for the remaining amount should be given to the consumer within 15 days of receipt of the order and the consumer should be given time to deposit the remaining amount as per rules.

8. Observations and Findings:-

The applicant has filed the subject representation /Appeal on the following grounds:-

- i. The demand raised by the Discom was time-barred.
- ii. The amount demanded did not become first due on 03.01.2020.
- iii. Without prejudice, even assuming the amount became first due on 03.01.2020, no bill has been raised.
- iv. The alleged demand was not continuously shown as 'recoverable'.
- v. Discom has waived its right to re-open the bills issued on the basis of the duly signed JMRs.
- vi. The Appellant's alleged lack of challenge to the meter readings.

9. It is undisputed that M/s. Waaneep Solar Pvt. Ltd. has established a 50 MW solar power generation project in District Sehore of the Respondent Distribution Company (Discom). The aforesaid solar power project was commissioned in June, 2015 and connected with the Grid. All power generated from this solar project is injected into the Grid. The Electricity generated by this solar project is exported during the day and imported from grid during the night through a common meter for charging various equipments of the project and also for lighting the premises of the solar project. The billing for the imported energy is being done by the Respondent Discom as per the provisions under applicable Retail supply Tariff order issued by the Ld. Madhya Pradesh Electricity Commission (MPERC).

10. It is also undisputed that appropriate metering devices, load limiter, tamper proof boxes and other equipments were installed by the Respondent Discom at the Consumer's premises of the Solar Project. Similar metering devices are also installed at the premises of the Transco under the Discom's supervision, for recording the supply of electricity by the Discom and consumption of the same by the Consumer's Solar Project.

11. Based on the readings in the meters installed at the premises of the Consumer and the Transco, a joint Meter Reading ("JMR") has been recorded every month since June' 2015. These JMR sheets were signed by three representatives i.e., one from the Applicant Consumer, one from the Discom and one from the Transco. The JMRs are signed by representatives of all the three different entities. Based on JMRs, monthly bills were issued by the Respondent Discom to the Applicant/Consumer and all such bills had been paid by the Applicant regularly without any dispute.

12. In the month of July, 2019, a centralized HT-E Billing cell was formed by the Respondent Discom. After formation of the aforesaid HT-E Billing cell, the process of reviewing analysis of the metering data obtained through automatic meter readings started. During the course of review of billing data of the Applicant/consumer by the HT-E Billing cell, it was found in the month of January' 2020 that there had been short billing during the period of July, 2016 to November, 2019 on account of certain discrepancies in the meter reading taken by JMR and the metering data analysed by the HT-E billing cell. Accordingly, the short billing was found first time in January, 2020 during review of billing data by special cell i.e HT-E billing cell of the Respondent Discom. The aforesaid fact is recorded in internal correspondence dated 03.01.2020 between the CGM (Commerical) and General Manager (O&M) Sehore of the Respondent Discom.

13. It is the mentioned in the aforesaid correspondence that the above short billing was found on the basis of meter data and information made available by the State Load Dispatch Center, a body Constituted under Section 31 Electricity Act 2003, and responsible to keep accounting of the quantity of Electricity transmitted through the state Grid. Subsequently, the Respondent vide

letter dated 06.01.2020 (demand notice) informed M/s. Waaneep Solar Pvt. Ltd. about the recoverable amount Rs. 8,96,88,671/- on account of short billing for the period of July, 2016 to November, 2019 along with the month wise detail of recoverable amount with the request to deposit the amount within 15 days.

14. Vide same letter dated 06.01.2020, the consumer was also asked to inform the date of commissioning of metering along with the commissioning certificate of the plant within 3 days. The term “provisional billing” was used in the aforesaid demand note since the date of commissioning of Applicant’s solar power plant was to be confirmed from the Applicant for final billing however; the aforesaid date was confirmed by Applicant on 06th February, 2020. The contents in aforesaid demand notice dated 06.01.2020 are reproduced below:

“ With reference to above cited letter, it is to intimate that the meter data and information available with HT E-Billing cell month wise recovery has risen against under billing done for your connection no. 8497386117 for the period from July 16 to November 2019 is Rs 89688671/- only. Month wise details of recoverable amount are enclosed herewith.

Hence you are requested to deposit the under billing amount Rs 89688671/- within 15 days from the received of this letter.

Further, you are requested to send the commissioning date in your premises of metering and commissioning certificate of the plant within 03 days positively.”

15. It is observed from Respondent’s other letter dated 27.01.2020 addressed to M/s. Waaneep Solar Pvt. Ltd. that the Applicant through e-mail dated 22.01.2020 had sought extension of time period to pay the aforesaid recoverable amount communicated to it vide above demand letter dated 06.01.2020. In view of all aforesaid facts on record, the contention of Applicant/consumer that no bill for supplementary billing of Rs.8,96, 88,671/- on account of short billing was issued to the applicant is found devoid of merit.

16. It is observed that the Applicant M/s Waneep Solar Pvt. Ltd. vide its letter dated 06.02.2020 while informing the date of commissioning of the plant (June, 2015) to Respondent had requested for reconciliation and verification of the readings and amount of supplementary billing. In response to the above request, the Respondent vide its letter dated 11.02.2020 informed the consumer that the parameters for supplementary billing have been taken from the data available in the meter upto November, 2019 and that such data has been retrieved from the meter which is functioning and recording properly for the units generated and exported by the consumer as well therefore, there is no need for any reconciliation or verification of readings.

17. Subsequently, on the proposal of the Applicant before the Forum on 28th July, 2023, both the parties were directed by the Forum to convene a meeting to resolve the issue of disputed supplementary billing with reference to the period. Accordingly, a conciliation meeting was held on 03.10, 2023 at the regional office of the Respondent. This meeting was attended by two representatives of the Applicant and six representatives of the Respondent. On perusal of the “minutes of meeting”, it is observed that the representatives of the Applicant raised issues related to supplementary billing in light of Section 56(2) of the Electricity Act 2003. The Applicant insisted that no billing should be done based on the data other than the JMR. The representatives of the Respondents informed the Applicant that since the data obtained through MRI of the meter by the centralized HT-E billing cell is not matching with the JMR therefore, the supplementary billing was done on the basis of MRI data which is more reliable than the JMR. During the aforesaid meeting, the representative of the Applicant stated that they do not have all the records to verify the supplementary billing raised by the Respondent. In reply, the Respondent assured the Applicant that all documents which are required by the Applicant for verification shall be provided by the Respondent. However, no re-conciliation was under taken by the Applicant/consumer during and after the meeting.

18. It is noted that on 04.10.2023, the Applicant was asked by the Forum to file a list of all the documents which he needs for reconciliation and verification of metering data or supplementary billing. However, Ld. Counsel of the Applicant stated during hearing before the Forum held on 17.10.2023 that he needs no document in this regard. In view of aforesaid facts recorded in the minutes of meeting and the impugned order passed by the Forum, the contention of Applicant/consumer that he was not given any opportunity or provided any document to verify the basis of supplementary billing is also found devoid of merit.

19. It is observed from the impugned order that the copy of supplementary bill/demand note of Rs. 8,96,88,671/- along with the computation details and the data recorded in the meter (retrieved through MRI) have been examined by the Forum also. The Forum has mentioned in the impugned order that the format in which the joint meter reading (JMR) was taken by the representatives of the Consumer, Respondent Discom and MPPTCL did not have any column/row for recording the “Maximum Demand”. Therefore, the Maximum Demand recorded in the meter was not registered in JMR sheet and consequently the billing for recorded Maximum Demand was not billed by the Respondent as per relevant HT Tariff Schedule. The Forum has also examined the correctness of the billing details in demand notice dated 06.01.2020 for provisional/short billing and found that the same was correct as per the Maximum Demand recorded in the meter and retrieved through MRI.

20. It is observed from the documents on record that the Applicant has not challenged the functioning of the meter or the data retrieved through MRI. However the Applicant has raised issues on the legality and validity of the demand notice and short billing/supplementary billing issued by the Respondent. Moreover, the Ld. Counsels for the

applicant/consumer have also not pressed upon any issue related to functioning of meter or metering data retrieved through MRI during hearing before the Electricity Ombudsman.

21. The Applicant has contended that the aforesaid demand note was much beyond the stipulated limitation period or time barred. On this issue of limitation period, Section 17(1)(c) of the Limitation Act,1963 provides as under:

“17. Effect of fraud or mistake.—(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(c) the suit or application is for relief from the consequences of a mistake;

(d).....

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production.”

22. Section 56 (2) of the Electricity Act, 2003 provides as under:-

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

23. The observations and findings of Hon’ble Supreme Court in the following Civil Appeals on almost similar issues are reproduced below :

(A). Some part relevant to the subject matter in the Judgment passed by Hon’ble Supreme Court of India on 18.02.2020 in the matter of ***Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited And Another V/s Rahamatullah Khan, Alias Rahamjulla Respondent in Civil Appeal No. 1672 of 2020. Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited And Another Appellant V/s Rahamatullah Khan, Alias Rahamjulla in Civil Appeal No. 1672 of 2020 and C.A No. 1673 of 2020 are as below:***

“ 6.3 “The obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company. The bill sets out the time within which the charges are to be paid. If the consumer fails to pay the charges within the stipulated period, they get carried forward to the next bill as arrears.”

6.6 “The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid.

Electricity charges would become “first due” only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.”

7.4 “The period of limitation of two years would commence from the date on which the electricity charges became “first due” under sub-Section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period.”.....

9. “Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56 (2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56 (2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17 (1) (c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. Vs. State of Madhya Pradesh, (1989)4 SCC 1, this Court held that:-

*“Section 17 (1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until **the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it.** In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake becomes known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.” (Emphasis Supplied)*

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.”

(B). In another Judgment passed on 5th October, 2021 in the matter of “**M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd. & ors’** in Civil Appeal No. 7235 of 2009 on almost similar issues in the present application/appeal, Hon’ble Supreme Court while referring Judgments in the matter of “Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited And Another V/s Rahamatullah Khan” and in the matter of “Mahabir Kishore and Ors. Vs. State of Madhya Pradesh, (1989)4 SCC 1” held the following:

“11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term “first due” in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due ; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become “first due” only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that “the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)”. This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. vs. State of Madhya Pradesh².

13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take

recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).....

16. *Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of section 56 of the Act".*

21. *The raising of an additional demand in the form of "short assessment notice", on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and not "deficiency in service".*

24. *Sub-section (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.*

25. *In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this Section", appearing in Sub-section (2)....."*

24. In light of above judgments, the following issues under provisions of Section 56(2) of the Electricity Act, 2003 are examined in the succeeding part of this order:

(i) the date on which the sum of supplementary/short billing made by the Respondent became “first due”.

(ii) the date by which the period of limitation of two years would commence as per Section 56(2) of the Electricity Act, 2003.

(iii) whether the sum of supplementary billing has been shown continuously to be recoverable for electricity supplied by the Respondent.

25. In the subject matter, the mistake or bonafide error on account of the difference between the Joint Meter Reading and the actual meter reading data (retrieved through MRI) was found by the Respondent on 03.01.2020 but the demand note containing the details of supplementary/Short billing was issued for the first time on 06.01.2020. Accordingly, the supplementary /short billing became first due on 06.01.2020.

26. The Applicant/Consumer has also responded on the aforesaid demand notice seeking time extension for making payments. Further, the Applicant/Consumer has made part payments of Rs. 3 crore on 11.02.2020 and Rs 50.00 Lakhs on two stances on the directions of Hon’ble High Court against the demand note issued by the Respondent. In view of the aforesaid facts, the ground/contention of the applicant/consumer in the present representation that no bill was issued/raised to the consumer is found misplaced and devoid of merit.

27. The mistake or bonafide error in billing for the past period could not be found/detected during the actual consumption of electricity/joint meter reading because the HT-E billing cell who has detected this mistake or bonafide error in reading through MRI, was formed in month of July 2019. Moreover, no carrying cost or penal billing/surcharge has been levied on the Applicant/consumer since the amount of short billing/supplementary billing has always been demanded separately by the Respondent and it was not added in the regular bills of the consumers.

28. Further, as held by Hon’ble Supreme Court in the above judgments, the period of limitation of two years would commence from the date of discovery of the mistake as provided under Section 17(1)(c) of the Limitation Act 1963. Accordingly, the limitation period in this case would commence from 03.01.2020 when the mistake or bonafide error was discovered with reasonable diligence by the Respondent.

29. As mentioned in the forgoing paragraphs of this Order, the disconnection notices on non-payment of the sum of supplementary/short billing were issued by the Respondent on 27.01.2020 and 03.03.2020. The Applicant/Consumer has made part payment of Rs. 3 crore on 11.02.2020. Thereafter, another disconnection notice for the balance amount

was issued by the Respondent on 03.03.2020. Subsequently, on 12.03.2020 the Applicant/Consumer filed a Writ Petition no. 6428 of 2020 before the Hon'ble High Court. The applicant/ consumer deposited Rs. 50.00 lakh on 06.04.2020 and Rs. 50.00 lakh subsequently, as per the directives of Hon'ble High Court in the aforesaid matter. Since the above WP was *Subjudice* before the Hon'ble High Court from 12.03.2020 to 08.02.2023 and the Hon'ble High Court vide order dated 18.03.2023 issued directions not to disconnect the supply of consumer subject to payment of Rs 50.00 Lacs by the consumer within four weeks therefore, no further correspondence was made by the Respondent with the consumer during the period of 18.03.2020 till final disposal of WP on 08.02.2023. Further, Hon'ble High Court vide Order dated 08.02.2023, directed that no coercive steps be taken against the applicant/consumer till final decision by the Forum.

30. As directed by Hon'ble High Court vide order dated 08.02.2023, the Applicant/Consumer approached the ECGRF (Forum). The Forum rejected the representation of the Applicant/consumer on 29.11.2023 with the directions to the Respondent that the demand letter for the remaining amount should be given to the consumer within 15 days of receipt of the order and the consumer should be given time to deposit the remaining amount as per rules. Consequently, the Applicant/Consumer has deposited the balance outstanding of supplementary/short billing on 25.01.2024.

31. In view of above facts and circumstances, the contention of the Applicant/Consumer that the demand was not shown continuously as recoverable of electricity supplied to the consumer is also found devoid of merits in terms of the provisions under Section 56(2) of Electricity Act, 2003.

32. In view of all foregoing observations and findings, the subject representation/Appeal filed by the Applicant/Consumer challenging the decision of Electricity Consumer Grievance Redressal Forum, Bhopal in its order dated 29.11.2023 is disallowed being devoid of merits. The aforesaid order dated 29.11.2023 passed by the Forum in this matter is upheld and this case is disposed of accordingly.

The copy of this order be issued to the parties free of cost. The original documents called from the Electricity Consumer Grievance Redressal Forum, Bhopal be returned to the Forum alongwith a copy of this Order.

(Gajendra Tiwari)
Electricity Ombudsman