

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 8 of 2009**

In the matter of  
**Petition filed by Mahindra Lifespace Developers challenging a provisional order  
of assessment issued under Section 126 of the EA 2003**

**Shri. V.P. Raja, Chairman**  
**Shri A. Velayutham, Member**  
**Shri. S.B. Kulkarni, Member**

Mahindra Lifespace Developers Ltd.  
5<sup>th</sup> Floor, Mahindra Towers, Worli  
Mumbai – 400 018

....Petitioner

Vs.

Maharashtra State Electricity  
Distribution Company Ltd.  
Superintending Engineer  
Rasta Peth Urban Circle  
Pune 411011

... Respondent

**ORDER**

**Dated: June 15, 2009**

Mahindra Lifespace Developers Ltd., (formerly known as GESCO Corporation Ltd), filed a petition on 13.4.2008 challenging an order of provisional assessment dated 12.3.2009 for an amount of Rs. 21,64,04,390/- issued by MSEDCL under Section 126 of the Electricity Act, 2003 (“EA 2003”) which alleges that the Petitioner had been given HT power supply at single point which had been, unauthorisedly extended to eight users. As per the said order of provisional assessment power supply has been



given by the Petitioner from the main HT meter through 58 sub-meters installed at the basement. It has been alleged that the Petitioner charges tariff to these users at a tariff which is higher than that determined by this Commission. It has also been alleged in the order of provisional assessment that the user of the aforesaid premises has been unauthorisedly changed to 'commercial' whereas the connection granted was for 'industrial' activity, as in fact, the activities conducted in the aforesaid premises are of 'commercial' nature. Thus, the order of provisional assessment was issued under Section 126 for unauthorised use of electricity.

2. The Petitioner has challenged the aforesaid order of provisional assessment on inter alia the following grounds:-

- (i) that the aforesaid order of provisional assessment is illegal because the Petitioner has since the date of application for supply has disclosed that the premises at Great Eastern Plaza, Airport Road, Yerawada, Pune 411014, was a 'Commercial Complex';
- (ii) since the Commission's tariff Order dated 20.6.2008 creates a new category viz. HT II Commercial to cater to consumers availing supply at HT voltages and currently classified under existing HT I 'Industrial' and that therefore the usage by the Petitioner is not illegal and that therefore the tariff difference assessment bill could have been issued on the basis of the difference between the rates of HT II Commercial and HT I Industrial for the period from 1.6.2008 onwards;
- (iii) that this Commission is seized with the question of supply of power to multiple users through a single point connection wherein an interim order dated 26.3.2008 (Case No. 75 of 2007) was passed in the matter of a petition filed by Maharashtra Chamber of Commerce, Industries and Agriculture with regard to supply on single point to commercial building/ industrial complexes for mixed load where an interim direction had been passed restraining distribution licensees



from disconnecting power supply to consumers who supply power to multiple users through a single point connection;

- (iv) the method of assessment under Section 126 as done by the aforesaid assessing officer is wrong and that the Respondent has issued the order of provisional assessment with malafide intentions.

3. The prayers made in the Petition are as under -

(A) *That the Hon'ble Commission be pleased to specify and enforce the standard of service of the Respondent as set out sub-paragraphs (1) to (vi) of paragraph 52 set out hereinabove.*

(B) *The Petitioner further requests that the Hon'ble Commission pass such further and other orders as it deems fit and necessary to regulate the conduct of MSEDCL (the Respondent herein) and order it to maintain the required standard and quality of service including as stated above in order to protect the present and future interests of the consumers of the MSEDCL.*

(C) *That after hearing this Petition, the Hon'ble Commission be pleased to direct the Respondent not to take any further steps or to raise or make any claim or demand or recover any amounts from the Petitioner or initiate or continue any proceedings against the Petitioner under Section 126 of the Electricity Act, 2003.*

(D) *The Petitioner humbly requests that this Hon'ble Commission be pleased to clarify the correct tariff classification for the Petitioner.*

*The Petitioner further requests that the Hon'ble Commission pass such orders as it deems fit and necessary to regulate the conduct of distributor, the MSEDCL and in order to maintain the standard and quality of services of the same, in order to protect the present and future interests of the consumers of MSEDCL.*

*The Petitioner also humbly requests that in the interim*

*a) This Hon'ble Commission kindly stay the assessment and / or other proceedings under Section 126/127 of the Electricity Act, 2003 as pending between the Petitioner and the MSEDCL. The Petitioner humbly requests that the present proceedings between the MSEDCL and itself be stayed, till such time that the question of Single Point Use and its further dissemination by*



*certain commercial users of electricity is a topic which is currently sub judice, with this Hon'ble Commission and is decided.*

*b) This Hon'ble Commission be pleased to direct MSEDCL that it shall not disconnect power supply to the Great Eastern Plaza commercial complex till further orders."*

4. Subsequently, the Petitioner, through its Advocate, filed a letter dated 5.5.2009 stating therein that the assessing officer has passed a final order on 11.4.2009 and being aggrieved therefrom the Petitioner has filed a Writ Petition before the Hon'ble Bombay High Court. On the basis of this letter, the Petitioner sought an adjournment of the hearing before the Commission scheduled for 6.5.2009, to enable to take appropriate steps before the Commission.

5. As scheduled a hearing was held on 6.5.2009. The Petitioner and the Respondent were represented through their respective Counsel. During the hearing, the Respondent objected to the maintainability of the present petition in view of the affirmation made in the Writ Petition as filed by the Petitioner before the Hon'ble Bombay High Court that the Petitioner has filed an application before this Commission which it will take steps to withdraw. According to the Counsel appearing for the Respondent, it is not permissible in law to permit the Petitioner to file a petition before this Commission and at the same time pursue a writ petition before the High Court. The Petitioner cannot use diverse forums for the same relief. He also urged that either the Petitioner should withdraw the present petition in accordance with the affirmation made in his Writ Petition that he would withdraw the same or that the Respondent's Counsel will point this out to the Hon'ble High Court to enable the High Court to dismiss the writ petition. According to him, both these Petitions cannot be allowed to subsist at the same time. Counsel submitted that the present petition is not maintainable in view of the affirmation made by the Petitioner in the Writ Petition.



6. The Commission asked the Counsel for the Petitioner about the statement made in the Writ Petition as filed by him affirming that the Petitioner will take steps to withdraw the Petition as filed before this Commission. Though, the Petitioner did not deny the affirmation as made in the Writ Petition, the Petitioner refused to withdraw the Petition despite making the solemn affirmation in the Writ Petition. On perusal of a copy of the aforesaid Writ Petition from the file, the Commission has found that the Petitioner has indeed made such an affirmation to the Hon'ble High Court as aforesaid.

7. In view of the above, the Commission expresses its displeasure that the requisite disclosure was not made before the Commission. Considering the fact that the Petitioner was making contradictory representation before it, the Commission deems it necessary that the present petition deserves to be dismissed forthwith. The Petition accordingly stands dismissed in view of the solemn affirmation made by the Petitioner in the Writ Petition. However, this order will not affect the matter on merits. This order will not have a bearing on the proceedings before the Hon'ble High Court.

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(V.P. Raja)  
Chairman



(P.B. Patil)  
Secretary, MERC