CGRF formed under the provision of IE Act 2003, sub clause 42(5) as well Notification No.2/2011 of GERC (CGRF & Ombudsman)

BEFORE THE CONSUMER GRIEVANCES REDRESSAL FORUM
MADHYA GUJARAT VIJ CO LIMITED
CORPORATE OFFICE, 5TH FLOOR SP VIDYUT BHAVAN,
RACECOURSE, VADODARA 390 007

Subject	Consumer Grievances Complaint No. MG-I-04-2021-22
Complainant	M/s. Nishant Organics P Ltd., At & Post: Dabhasa, Tal: Padra, Dist: Vadodara
Respondent	Shri J H Shah, Executive Engineer Jambuva division & Shri P B Patel, Dy Engineer, Padra - 2 s/dn both from MGVCL.
Date of hearing	23.07.2021 at Corporate Office, Vadodara

QUORUM	NAME
Chairperson	Smt Mala Y Shah, Ahmedabad
Independent Member	Shri M B Kaka, Vadodara
Technical Member	Shri K B Dhebar, (RA&C) MGVCL Vadodara

The complaint dated 23.06.2021 regarding Supplementary bill dated 07.04.2021 amounting to Rs.20,42,719.96 towards demand of difference in rates between LT connection and HT connection upon merger of Lakshya Enterprise PVT. LTD., having Con No.50138/01802/2 into Nishant Enterprises Pvt. Ltd., having Con No.50138/02538/0 as per High court merger order dated 31.08.2016.

1.0 On 23.07.2021,the case of the Complainant Grievance was heard before Consumer Grievance Redressal Forum wherein Shri Vijay S. More & Shri Irfan Mansuri appeared on behalf of complainant M/s. Nishant Organics P Ltd., whereas Shri J. H. Shah, Executive Engineer, Jambuva division & Shri P. B. Patel, Dy Engineer, Padra - 2 s/dn appeared as respondent on behalf of MGVCL before the Forum. Both the parties were heard.

2.0 The brief history of the case is as under:

2.1 Registration of new HT 300 KVA was done on dated 25.2.2021 under Jambuva division under Baroda (O&M) circle office.

2.2 Site survey was done on dated 3.1.21. Based on the survey and from the documents submitted by Nishant Organics Pvt Ltd , following was observed,

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2.3 As informed and supported with documents by party, LS No. 418 has two parts.

2.4 One part 418/P - 12962 sq.mtr in name of Lakshya Enterprise Pvt Ltd , where a LT connection exists with Consumer No. 50138/01802/2 , Consumer name: Lakshya Enterprise Pvt. Ltd. CD - 100 KW , Date of connection . 23-1-98 .

2.5 Second part 418/P - 12962 sq. mtr in name of Nishant Enterprise Pvt Ltd , where a LT connection exists with consumer No:- 50138/02538/0, Consumer name: Nishant Enterprise Pvt. Ltd CD - 39 KW Date of connection - 31/7/2015 .

2.6 Both these parts are adjacent to each other having no boundary between each other at the time of survey.

2.7 Company Name was changed from of Nishant Enterprise Pvt Ltd to Nishant Organics Pvt Ltd on 23.6.2015 with Registrar of Companies. However, the change of name in the land records for the survey no 418/P (second part) is still pending due to online software issue as informed by Mamlatdar, Padra. As per the company petition No: 180 of 2016 in Company application no: 201 of 2016 with Company petition No.181 of 2016 in Company Application no. 211 of 2016 , in the high court of Gujarat at Ahmadabad, in the matter of the scheme of Amalgamation of Lakshya Enterprise Pvt. Ltd. With Nishant Organics Pvt. Ltd, it was submitted by the petitioners and observed by the Court in the Common Oral Order dated 01.07.2016 at point no 2 that both these companies belong to the same group of management and are engaged in commercial activities which are similar in nature, viz. Manufacturing and marketing aromatic chemicals. And the High court, considering all facts and circumstances and taking into account all the contentions raised by the affidavits and reply affidavits, undertakings provided vide additional affidavit dated 24.06.2016, had sanctioned this scheme of amalgamation.

2.8 Accordingly, the Registrar.(Judicial) had authenticated the scheme of amalgamation of the aforesaid companies in to Nishant Organics Pvt. Ltd vide the order dated 29.08.2016 delivered on 31.08.2016.

2.9 From the above facts, it is evident that both the companies viz. Lakshya Enterprise Pvt. Ltd and Nishant Organics Pvt. Ltd (erstwhile Nishant Enterprise Pvt. Ltd) were amalgamated into Nishant Organics Pvt. Ltd since 31.08.2016 which is a single legal entity now. Also, there is only one GST registration on the name of Nishant Organics Pvt. Ltd.

2.10 As per the GERC Electricity Supply Code and Related Matters Regulations, Notification No.4 of 2015, clause No. 4.28; "The Distribution Licensee will not provide more than one connection for one premise OR in adjoining /contiguous premises belonging to same owner if these are not separated by a public road or by private premise."

2.11 Looking to the above, it is evident that from the date of amalgamation i.e. 31.08.2016 there is only one legal entity named Nishant Organics Pvt. Ltd., in land survey no.418 comprising of two parts viz. 418/P and 418/P, having single management doing a single business.

2.12 Therefore both the aforesaid existing LT connections were liable for merging into one HT connection (The contract demand being 100 KW + 39 KW) since 31.08.2016 hence, a supplementary bill Rs. 2042719.96 of the merged demand as per the rules of the company was served to party on dated 7.4.21 as per the guidelines received by circle office vide their letter no:- BC/T/DE-II/2766 Dated 6.4.21 , which they are liable to pay before releasing the new merged HT connection on the name of Nishant Organics Pvt. Ltd.

2.13 Estimate for new HT connection was served to the party vide letter No. BC/T/DE-II/21/83/ S.R.NO.6141891 /2363 Dated 18.3.21. The payment of new HT connection except supplementary bill was done by party on dated. 1.4.21.

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2.14 The work was completed on 21.4.21 and release order was issued vide letter No:- BC/T/DE-II/21/3171 Dated 26.4.21. TMN was already released on 25.6.21 vide letter No:- JMB/T/DE-II/ 4212 Dated. 14.7.21.

3.0 The representative of the complainant contended that-

3.1 LT connection in the name of Lakshya Enterprises Pvt Ltd. having consumer no. 50138018022 was for industrial purpose under LTMD tariff which was demanded as separate entity whereas LT connection in the name Nishant Enterprises Pvt Ltd having Consumer No.: 50138025380 was a separate legal entity connection demanded under NRGP tariff.

3.2 Both the connections were demanded on separate legal documents and entity in past and were in compliance to the Supply code-2015, Section-4, clause: 4.28.

3.3 Merger of Lakshya Enterprises Pvt Ltd into Nishant Organics Pvt Ltd was affected from 31.08.2016 as per Hon'ble High Court of Gujarat order. Upon receipt of merger order, we had approached Sub-division office MGVCL for the procedure of change of name procedure of our electric connection.

3.4 Sub-division officer at MGVCL Padra had refuse to accept our application stating to bring revenue record in favor of M/S Nishant Organics Pvt. Ltd. Please note that we have on the basis of merger order got name change in all the statutory documents.

3.5 We had approached Mamlatdar office Padra for getting document of "Name change in revenue record" as demanded by MGVCL and accordingly Mamlatdar, Padra, had given us letter dated 26.09.2017, mentioned technical reason for not giving effect of name change in revenue record.

3.6 Once again we had approached MGVCL Sub-division Padra offices in October 2017 for name change procedure in favor of M/S Nishant Organics Pvt. Ltd, but again SDO, MGVCL refused to accept stating further procedure was not possible without change of name in revenue record.

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3.7 In view of above, we continue to pay bills as raised by MGVCL in the name of Lakshya Enterprises Pvt Ltd for LTMD tariff connection and Nishant Enterprises Pvt Ltd. for NRGP tariff connection. Both connections are in separate plots having separate N.A. orders, and separate permissions from Town planning department copies are attached. In the revenue records also, names are different and payment of taxes are in different names copy of the taxes.

3.8 We have opted for enhancement of load on account of upcoming expansion in our company i.e. LT to HT connection for 300 KVA and got our HT load enhancement application on dted-25.2.2021 with required supported documents and paid estimate Rs.25,25,49,854/- vide Receipt No.1043 dated 01.04-2021.

3.9 Surprisingly before accepting our LT to HT application EE MGVCL had surveyed our site on dated-3.1.2021 and registered our application on 25.2.2021.

3.10 We have received letter no: JMB/Tech/DE-2/21/855, dated- 17.0.2021 from EE Jambuva where he has referred GERC supply code clause- 4.28 but for the said matter we are not at fault. We are bonafide customer having no intentions of breaking rules of MGVCL. The situation was beyond our control.

3.11 We further state hereby that the supplementary bill issued of Rs.20,42,719.96 is totally wrong and issued to us against natural justice.

3.12 GERC Supply code, Section-4, clause-4.28, restrict for giving new one connection in one premises but does not speak regarding issuance of supplementary bill.

3.13 Both the above electric connection was taken on separate legal entity and for different tariff.

3.14 GERC Supply code clause No.4.69 states only upon prior consent of DISCOM consumer can merge /change name of premise. In this case SDO MGVCL had not accepted our application twice and even not given any notice though we had shown high court order of merging approval/documents too.

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3.15 As per GERC supply code-2015, clause-4.76, *if it found that Consumer has been classified in a particular category erroneously or any order of reduction or enhancement of contract demand has been obtained, the Distribution Licensee may reclassify him, under appropriate category after issuing notice,(minimum notice period of 30 days),In* our case no such notice period is given for LT to HT tariff category.

3.16 It is further to state that LTMD is based on Demand based tariff and NRGP is non-demand based tariff (i.e. connected load base tariff), hence merging of both tariff connections (100 KW + 39 KW=139 KW) is not true. Looking to the calculated bill summary sheets, KW recorded at column 9, for NRGP connection is taken as 43.33 KW throughout against 39 KW which is incorrect. Hence calculated demand charges are false and so the supplementary bill issued is false.

3.17 Though issued bill does not stand in totality, Calculation sheet is checked & found that p.f. was calculated erroneously as there is no KVRH reading of NRGP tariff meter is available on record. Hence there is no question to consider p.f. penalty in supplementary bill.

3.18 Both meters are of static type i.e. electronic meter so, stored MRI data of meters can be fetched, and accordingly maximum demand can be seen. However, no such data were retrieved from meter and huge bill is issued on false calculated demand charges &p.f. penalty charges. This is highly objectionable.

3.19 If notice regarding merger/removal of meter was issued by MGVCL in time, we could have removed NRGP connection keeping only LTMD connection being demand based tariff.

3.20 Infact, Supply code Cl:4.28, RESTRICT consumer for getting new connection as *"one connection in one premises" but* provision for issuance of supplementary bill is nowhere directed by commission. No such legal notice served to us by DE or EE MGVCL prior to supplementary is a violation of GERC supply code 2015 clause No.4.76.

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3.21 Even if person involved in theft or unauthorized use of energy under provision of section 126 or 135, he will served supplementary bill for maximum 12 months, thus issuance of bill for tariff difference bill from LT to HT without actual billing on HT side since 2016 to 2021 i.e. for almost 5 year is not justifiable.

3.22 We humbly request Hon'ble Chairperson, CGRF to consider our plea and kindly set aside supplementary bill.

4.0 The respondent contended that -

4.1 The respondent has repeatedly stated that complainant representations is not true regarding necessary changes have not been taken by Mamlatdar office in his revenue record due to system limitation and both the connections are physically separate entity, therefore, both separate bills are required to be issued and not considered by MGVCL.

4.2 But, we cannot consider due to (i) necessary changes are not made due to system limitation. However, Mamlatdar authority will consider the date of merger as per the order of Hon'ble High Court of Gujarat (ii) Revenue record will show one new unit only, therefore, it is to be considered as per the order of Hon'ble High Court of Gujarat.

4.3 MGVCL has issued the bills considering merged unit as per order of Hon'ble High Court of Gujarat.

5.0 The Forum Members present at the hearing considered contention of both the parties and perused the records and considering them in detail, findings are as under:

5.1 Forum has considered the order of Hon'ble High Court of Gujarat for merger of the connections on dated 01.07.2016 and therefore, everybody has to follow the order of Hon'ble High Court of Gujarat with Apex body.

5.2 Everybody has to consider the merger date mentioned in the order of Hon'ble High Court of Gujarat. Therefore, MGVCL has issued the supplementary bill which is in order.

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5.3 MGVCL has issued the bill to new merger unit i.e. M/s. Nishant Organics Pvt. Ltd., and deducted amount paid by consumer in past bill of the relevant period. Therefore, MGVCL has follow Hon'ble High Court of Gujarat is in order.

5.4 As per the order of GERC V/s PGVCL, vide order No.1642 / 2017 dated 09.09.2019, in case of merger, power factor should be considered at the time of conversion of KW to KVA. Consumer has pointed out that 43 KW is considered against 39 KW, this is to be clarified that as per the GERC order kW is required to convert into KVA. Therefore, 39 KW divided by 0.9 PF comes to 43.33 KVA, calculation is correct (39 kW ÷ 0.9 PF = 43.33 KVA), so there is no mistake in calculation.

ORDER

6.0 The Forum has considered that bill issued by respondent MGVCL is in order and balance outstanding amount to be recovered from the complainant M/s. Nishant Organics P Ltd., At & Post: Dabhasa, Tal: Padra, Dist: Vadodara.

(K B Dhebar)	*(M B Kaka)*	*(Smt Mala Y Shah)*
Technical Member	***Independent Member***	***Chairperson***

<u>PS :</u>

If the complainant is not satisfied with the order of this Forum, the complainant may approach Ombudsman only after payment of minimum 33% of the bill amount issued to the party in question. ***The Office address of the Ombudsman is*** *: The Staff Officer, Office of the Electricity Ombudsman, Gujarat Electricity Regulatory Commission, Barrack No.3, Polytechnic Compound, Ambawadi, Ahmedabad 380 015 in accordance with Clause No.3.19 (viii) of GERC Notification No.2 of 2019.*

Procedure to make representations before Ombudsman***

1. Representation should be in writing duly signed by the complainant with his name and address.
2. Representation should be supported with affidavit.
3. True copy of order of Forum and original complaint made before Forum should be attached. Enclosed documents should be certified copies of the original documents.
4. The representation before Ombudsman should be submitted within 30 days from the date of order of Forum.
5. Copy of representation should be submitted at the office of Ombudsman. Copy of representation should be submitted to all respondents.
6. If the complainant is required to pay any amount according to the order of Forum, one-third of such amount should be deposited by complainant and proofs should be attached along with the representation.
7. The matter should not be pending before the competent Forum or any other court, tribunal, arbitrator or any other authority.

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8. All representations should be with a sufficient cause, reasonable diligence causing the consumer prima facie loss and damages / inconvenience.
9. Representation may be submitted in English or Gujarati language

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