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-04-2020-21
Complainant	M/s. Panoli Intermediate (India) P Ltd., Sara Niwas 20-21, Harinagar Co.op. Society, Gotri Road, Vadodara
Respondent	Smt U V Parmar, EE (O&M) (on dated 30.07.2020 & 29.09.2020) & Shri N A Shah EE (O&M) on dated 17.12.2020 & Shri M N Prajapati, Deputy Engineer, both from MGVCL OP Road, Vadodara (O&M) division
Date of hearing	30.07.2020, 29.09.2020 & 17.12.2020 all hearings at Corporate office, MGVCL Vadodara

QUORUM	NAME
Chairperson	Smt Mala Y Shah, Ahmedabad
Independent Member	Mr A G Shaikh, Nadiad
Technical Member	Shri K B Dhebar (RA&C) MGVCL Vadodara

The complaint dated 02.06.2020 (recd on 03.06.2020) regarding wrong billing in case of merger of 2 HT connections bearing consumer No.13076 & 14107 in respect of M/s. Panoli Intermediate (India) P Ltd., Nandesari, Dist: Vadodara.

1.0 On 30.07.2020, 29.09.2020 & 17.12.2020, the case of the Complainant Grievance was heard before Consumer Grievance Redressal Forum wherein Shri Ramesh V Dabgar, Shri D S Doshi, appeared on behalf of complainant M/s. Panoli Intermediate (India) P Ltd., whereas Smt U V Parmar, EE (O&M) (on dated 30.07.2020 & 29.09.2020) & Shri N A Shah EE (O&M) on dated 17.12.2020 & Shri M N Prajapati, Deputy Engineer, both from MGVCL OP Road, Vadodara (O&M) division 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 HT connection Cons. No: 13076 released. (for Plot No: 157) on 20.02.1989.

2.2 HT connection Cons. No: 14107 released. (for Plot No: 159/5A,) on 28.03.2014

2.3 M/s Panoli Intermediates (India) Pvt Ltd has applied for Area extension in its connection No. 13076 (located at Plot No. 157, GIDC Nandesari) and another separate request for area extension in its

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connection No.14107 (located at Plot No.159/5A, GIDC Nandesari) on dtd 27/7/2018 and 31/07/2018

2.4 Survey carried out in 1st week of Aug' 2018 and Proposal for extension of Area in respect of M/s Panoli Intermediates (India) Pvt Ltd for Con.No.13076 was submitted by SE(O&M), Baroda Circle vide Letter No. BC/T/DE_1/18/ 5663 Dtd. 18.08.18, and for Con.No. 14107 the proposal was submitted vide Letter No. BC/T/DE1/18/5662 Dtd. 18.08.18. As narrated in those Proposals, there is an operative gate existing between the two HT Connections of M/s Panoli Intermediates Pvt Ltd i.e. between Con.No. 13076 (Plot No. 157, CD=1500KVA) and Con.No.14107 (Plot No. 159/5A, CD=1500KVA). Same was conveyed to representative of consumer verbally that both the connections are liable for merging on same day.

2.5 The consumer had a personal meeting and discussion with CE (Project) on date 31.01.19 and the consumer claimed the two areas to be different (and not liable for merging). He further insisted for some time to submit documents in the subject matter. As a result, he was informed to submit documents within 7 Days vide this Office Letter No. 11.02.19. In response to same, the consumer further requested that they need some more time to collect the documents showing that the plots are different. Hence, he was allowed further 15 Days time vide this Office letter dtd. 02.03.19. **However, the consumer has failed to submit any documents to substantiate his claim (about different plots and not liable for merging).Instead, the consumer has shown his readiness for merging of the HT connections (con.No.13076 and Con.No.14107) vide letter dtd. 12.03.19.** The consumer has requested to extend the existing Express Feeder of Con.No.14107 to Con.No.13076 and need 6 to 7 months time to set up new cables, transformers etc.

2.6 Suppl. Bill issued by EE (O&M) MGVCL Vadodara for merger of HT connection No: 14107 with Conn. No: 13076 for the month of Jan to Mar 2020 for the amount of Rs. 15,25,905.76 considering merger and considering merged demand of 3000 KVA on 09.04.2020.

2.7 MGVCL issued monthly energy bill of Conn. No: 13076 as merged demand of 3000 KVA for the month of April-2020 and discontinued monthly bill of Conn. No: 14107 on 16.04.2020.

2.8 EE (O&M) letter conveying that connection No: 13076 & 14107 are merged with effect in the month of April 2020 bill and Suppl. Bill of Rs. 15,25,905.73 issued for the period from Jan-2020 to Mar-2020 vide Suppl. Bill dated 09.04.2020 on 20.04.2020.

2.9 MGVCL issued another Supplementary bill of Rs. 2,45,36,457.54 for the period from Apr-2014 to Dec-2019 for merger of HT Conn. No: 13107 with Conn. No: 13076 considering effective date from the date of release of second connection i.e. 28.03.2014 (HT Conn. No: 14107 on 13.05.2020). **in violation of GERC rules / regulations.**

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2.10 Monthly bill issued to Conn. No: 13076 for the month of May -2020 with merged demand of 3000 KVA on 19.05.2020.

2.11 Aggrieved by the date of effect of merging & supplementary bill issued, complainant approached CGRF MGVCL Vadodara stating that at the most, MGVCL can initiate action for physical merging of connections but has no legal basis to charge the consumer on deemed merger basis that too with retrospective effect from release of 2nd connection and need to be withdrawn with immediate effect as per GERC Supply Code 2015.

The representative of the complainant contended that -

Note on grievance

(A)Grievance Details:

We were having two HT connections as under;

Sr. No.	HT Connection No.	Contract Demand in KVA	Date of Connection	Name
1	13076	1500	20/02/1989	Panoli Intermediates (India) Pvt. Ltd.
2	14107	1500	28/03/2014	Panoli Intermediates (India) Pvt. Ltd.

The applicant would like to refer below stated facts and events for the kind consideration of the forum.

1. The chronological events relevant to the case are as under;

Sr. No.	Date	DESCRIPTIONS
1	20/02/1989	HT connection Cons. No: 13076 released. (for Plot No: 156A, 156B, 157)
2	29/11/2013	After site verification and verification of land documents Estimate dated 29.11 2013 was issued by MGVCL for 1500 KVA new connection in Plot No: 159/5A, Nandesari GIDC. - Cons. No: 14107
3	28/03/2014	HT connection Cons. No: 14107 released. (for Plot No: 159/5/A, 159/4 & 5)
4	16/01/2020	MGVCL issued notice to merge HT connections NO: 13076 & 14107 on the ground that premises of Conn. No: 13076 & 14107 are adjoining to each other and therefore two connections are liable for merging

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		into one connection as per provisions of Clause No: 4.28 of GERC Supply Code 2015.
5	20/02/2020	PIPL informed to MGVCL to merge both the connections keeping point of supply at Conn. No: 14107 and surrendering Conn. No: 13076 keeping total contract demand 1500 KVA only.
6	19/03/2020	GUVNL guideline to DisComs in regard to merger of connections and period to be considered for supplementary bill
	09/04/2020	Suppl. Bill issued by EE (O&M) MGVCL Vadodara for merger of HT connection No: 14107 with Conn. No: 13076 for the month of Jan to Mar 2020 for the amount of Rs. 15,25,905.76 considering merger and considering merged demand of 3000 KVA
5	16/04/2020	MGVCL issued monthly energy bill of Conn. No: 13076 as merged demand of 3000 KVA for the month of April-2020 and discontinued monthly bill of Conn. No: 14107.
6	20/04/2020	EE (O&M) letter conveying that connection No: 13076 & 14107 are merged with effect in the month of April 2020 bill and Suppl. Bill of Rs. 15,25,905.73 issued for the period from Jan-2020 to Mar-2020 vide Suppl. Bill dated 09.04.2020
7	13/05/2020	MGVCL issued another Supplementary bill of Rs. 2,45,36,457.54 for the period from Apr-2014 to Dec-2019 for merger of HT Conn. No: 13107 with Conn. No: 13076 considering effective date from the date of release of second connection i.e. 28.03.2014 (HT Conn. No: 14107)
	19/05/2020	Monthly bill issued to Conn. No: 13076 for the month of May -2020 with merged demand of 3000 KVA

2. MGVCL has decided to merge the connection No: 13076 & 14107 and issued Supplementary bills for amount of Rs. 2,60,62,363.27 and monthly bills for the month of April & May 2020 **on deemed merger basis considering effective date of merging from date of release of second connection i.e. 28.03.2014 in violation of GERC rules / regulations.**

Sr. No.	Bill Date	For the Period From	To	Amount (in Rs.)	Remark
2	09/04/2020	Jan-2020	Mar-2020	15,25,905.73	Suppl. bill considering Deemed merger
1	16/04/2020	Apr-2020		21,66,064.08	Monthly bill for Conn. No: 13076. Deemed merger bill for Conn. No: 13076

	13/05/2020	Apr-2014	Dec-2019	2,45,36,457.54	Suppl. bill considering Deemed merger with effect from date of release of second connection
1	19/05/2020	May-2020		31,09,773.94	Monthly bill for Conn. No: 13076. Deemed merger bill for Conn. No: 13076
Total				3,13,38201.19	

(B) Representation to MGVCL:

Upon receipt of Supplementary bills and monthly bills on deemed merger basis (merger bills) considering deemed merging of HT connection No. 13076 & 14107 from the date of release of second connection i.e. from 28.03.2014, the applicant has visited the officials of MGVCL and made a represented that the Supplementary bills (merger bills) issued by MGVCL is without any legal ground and need to be withdrawn with immediate effect since as per the GERC Supply Code, at the most, MGVCL can initiate action for physical merging of connections but has no legal basis to charge the consumer on deemed merger basis that too with retrospective effect from release of second connection.

(C) Facts of Case:

1. It is stated that the earlier HT Connection bearing connection No. 13076 was released by erstwhile GEB on 20.02.1989.

2. The HT connection bearing Connection No. 14107 (being referred to as Second Connection by MGVCL) was released on 28.03.2014. The Connection No: 14107 was released after following due process of law and after completion of all requisite procedures and formalities including site verification, verification of power boundary and verification of documents of premise & entity in whose name connection was sought and recovery of applicable charges.

3. It is stated that since the time of release of Connections, the premise of HT Connection No. 13076 & HT Connection No. 14107 is completely separate, separated by compound wall and also having separate entry gates for Point of Supply. Thus, both these connections are having separate and independent legal status on the record of MGVCL. These HT connections are being fed power supply independently since release and the billing thereof is also being done separately namely connection wise. Being premise is completely separate for the connections, at no point of time, specifically at the time of release of Connection No. 14107, MGVCL would have pointed out that the applicant is not entitled for the Connection. On the contrary, MGVCL

had legally and validly released the Connection No. 14107 in the year 2014.

4. The Power Supply Agreement in respect of both these HT connections are also executed separately between applicant and MGVCL. This factual legal position has been accepted and confirmed by MGVCL and at no point of time it was disputed earlier about the same by MGVCL.

5. It is submitted that MGVCL has all of sudden, without any legal basis, has raised supplementary bill on 9.04.2020 initially for the period from Jan-2020 to March-2020 (amount of Rs. 15,25,905.73) on deemed merger basis and thereafter vide letter dated 13.05.2020 issued another supplementary bill for the period from April-2014 to December-2019 for amount of Rs. 2,45,36,457.54 considering effective date of deemed merger of HT connections from the date of release of second connection. The supplementary bills are issued towards difference of the amount of merged bill and separate bill. As stated in the letter dated 13.05.2020, this has been done as per the provision of GERC Supply Code, 2005. It is relevant to mention that the supply code 2005 is already repealed upon notification of new Supply Code by GERC effective from 24.09.2015. It is further to state that monthly bills for the month of April-2020 & May-2020 issued by MGVCL are also on deemed merger basis. Thus, even before effecting physical merger of HT connection No. 13076 & 14107, MGVCL has commenced merged billing on deemed merger basis that too with retrospective date from the date of release of second HT connection on 28.03.2014. This action of MGVCL is without any merit and bad in law.

D. Provisions of Supply Code& order of GERC:

1. It is stated that the second HT Conn. No: 14107 was released during the applicability of earlier GERC Supply Code 2005. The GERC Supply Code, 2005 remained effective for the period from 01/04/2005 to 23/09/2015 until new Supply Code came into effect from 24/09/2015.

   (i) The applicable Clause 4.1.17 of Supply Code, 2005 is reproduced hereunder;

   "4.1.17 The Distribution Licensee will not provide more than one connection/meter, for one premise. The consumers opting for second meter will have to produce separate legal entity such as documents of separate income Tax No/Soles Tax No. ration card and rent or lease agreement."

   (ii) The new Supply Code referred to as Supply Code - 2015,which became effective from date of 24/09/2015, the correspondingClause 4.28 of the Supply Code 2015 is read as under.

"4.28 The Distribution Licensee will not provide more than one connection for one premise <u>or in adjoining/contiguous premises belonging to same owner if these are not separated by a public road or by private premise</u>. The consumers opting for second connection will have to produce separate legal entity documents such as separate Income Tax No/ Sales Tax No., ration card and rent or lease agreement."

It is difficult to appreciate the actions of MGVCL for recovery of charges from the consumer for the period prior to the effective date of physical merger, on deemed release basis considering deemed merging effective from year 2014, which is not only contrary to settle position of law but also against the principle of natural justice, in view of the fact that the two HT connections in question are already having separate premises and connection was released in accordance with provisions Supply Code, 2005 effective at the relevant time when connection was released.

2. **It is stated that as per the clause 4.1.17 of prevailing Supply Code, 2005 under which HT connection no 14107 was released, there was no bar to release second connection in the same name in the adjoining premise.** It is new Supply Code, 2015 which do not allow to provide more than one connection in adjoining premise belonging to same owner. The new Supply Code become effective from 24/09/2015 only and not from retrospective date. As such the clause 4.28 of new Supply Code, 2015 does not provide that more than one connection already released prior to the effective date of new supply code shall be required to be merged into one connection. In fact, the clause 4.28 is applicable to new connection to be released in future but do not provide to merge already released connections.

3. Thus, as per the clause 4.28 of the new supply code, two connections in adjoining premises of same owner are not required to be merged but no such new connections be released.

4. The second connection of the applicant was released on 28.03.2014 under the applicability of Supply Code, 2005. The connection was released without raising any objections and all of sudden MGVCL issued supplementary bills of difference for the retrospective period i.e. from April 2014 and hence such action is not legal and valid.

5. The action of MGVCL for merger of HT connections and raising of supplementary bills on deemed merger basis with effect from date of release of second connection is without proper consideration of the relevant factual and law position settled by the judgments/orders of Hon'ble APTEL, Hon'ble Ombudsmen and Hon'ble High Court and

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therefore interference in this regard by the Forum is earnestly required in the interest of justice.

6. None of the rules and regulations of GERC and also the Electricity Act, 2003 allows MGVCL to raise charges on deemed merger basis and that too when reasons for merger is not attributable to consumer.

7. Tariff schedule decided by GERC is for single point of supply and not for more than one point of supply. Therefore, actions taken by UGVCL to raise bills considering deemed merger prior to effective date of physical merger is in violation of GERC's rules / regulations / orders.

8. It is also relevant to mention that while raising supplementary bills on deemed merger basis, MGVCL has failed to cite exact provisions of rule / regulation under which MGVCL has issued supplementary bills for on deemed merger basis that too effective from the date of release of second connection as none of provisions of Regulations/order provides for issuance of bill on deemed merger basis prior to physical merging of connections.

9. As such, as per standard procedures, MGVCL has to convey us its written approval for merger, then we have to change our electrical network to supply power from premise of connection no. 14107 to the premise of connection 13076 and then to submit test report of Government approved electrical contractor along with payment of applicable fees.

   On completion of above formalities, MGVCL will issue the letter giving effect of actual merger of two connections. Only after completion this formalities, MGVCL can commence billing towards demand and energy charges considering single connection i.e. HT connection no. 14107 considering merger of both connection.

10. Since, two connections in two different adjacent premise exist, MGVCL cannot in its own way and without any legal basis and lawful reasons ask the Applicant to merge the connection on the basis of provisions of regulation 4.28 of new Supply Code, 2005 and raise supplementary bills on deemed merger basis with effect from 28.03.2014 by retrospective applicability of new supply code.

(D)Legal Provisions:

1. Even assuming but not admitting that the existing two connections in the adjoining premises belonging to same owner which was legally and validly released as per the provisions of earlier Supply Code, 2005, is to be merged due to operation of new Supply Code,2015, in that case what MGVCL entitled for is, at the most to initiate actions for physical merging of two connections after following due procedures and formalities including issuance of notices, approvals, revision in power

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boundary etc. However, MGVCL has no legal rights and cannot impose liability upon the consumer to recover charges on deemed merger basis that too with retrospective effect from date of release of second.

Therefore, the issues also herein involved is whether MGVCL is entitled for recovery of previous period merger bill with effect from April 2014.

In this regard, it is well settled position of laws that the recovery of supplementary bills for previous period i.e. retrospective period is without any legal ground and therefore not valid. In this context, the Applicant would like to rely on the various judgment/orders of various authorities:

(a) <u>Hon'ble APTEL ORDER:</u>

In Appeal No. 131 / 2014, in the matter of M/s. Vianney Enterprise V/s Kerala State Electricity Regulatory Commission and others, vide order dated 31/07/2018 **Hon'ble APTEL has ordered that arrears for difference in tariff could be recovered only from the date of detection of the error and not for the retrospective period.**

(b) <u>Hon'ble OMBUDSMAN order:</u>

Relying on the judgment of Hon'ble APTEL, in the similar cases of involving merger of connections, Hon'ble Ombudsman for Electricity of Gujarat in numbers of cases, has directed DISCOMs to cancel supplementary bills for the previous period.

i) Case No. 88 / 2017 of M/s. Shri Umiya Stone Quarry V/s DGVCL
ii) Case No. 44 / 2018 of M/s. Destiny Developers V/s DGVCL
iii) Case No. 54 / 2018 of M/s. Sutlej Textiles & Ind. Limited V/s DGVCL
iv) Case No. 112 / 2018 of M/s. Galaxy Mall Pvt. Ltd. V/s UGVCL
v) Case No. 99/2019 of M/s. Pyramid Technoplast Pvt. Ltd V/s DGVCL

(c) **<u>GUVNL guideline dated 19.03.2020 for merger of connection:</u>**

It is submitted that GUVNL vide letter dated 19.03.2020 has issued guideline to DisComs in relation to merger of connection and period to be considered for raising of supplementary bill for merger. Taking cognizance of order(s) of Hon'ble Ombudsman and also taking into account the stands taken by other DisCom by settling the cases by issuing supplementary bills from the date of issuance of notice/merged the connection from the date of notice, GUVNL has issued guidelines to adopt the same practice as per the orders of Ombudsman.

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Therefore, the action of MGVCL of raising of supplementary bill on deemed merger basis with effective from the date of second connection i.e. from April -2014, is against the order of Hon'ble APTEL/Ombudsman and also against the common guideline issued by GUVNL.

(d) **Hon'ble Gujarat High Court judgment dated 22/05/2020:**

In the R/SCA No. 19890 of 2018- DGVCL V/s M/s. Rahulraj J Mall Co OP Service Soc Ltd, has held as under:

Considering the fact that the connections were issued after 2005, notification no. 11/2005 was very much in existence, in spite of that the petitioner has granted two connections in the name of the same person taking into consideration the clause 4.1.17 of the Code2005. In such circumstances when the Code2015 has come into effect from 24th September, 2015 and notice for merger was issued on 19th September 2017, the petitioner cannot be permitted to issue supplementary bill from the date of connection.

The above judgment of Hon'ble High Court is squarely applicable to the case of the Applicant. Therefore, in terms of the above judgment of Hon'ble High Court, the supplementary bill issued by MGVCL on deemed merger basis from the date of connection is not legal and valid.

2. Despite of above settled legal position, MGVCL has issued supplementary bills on deemed merger basis from the date of second connection. This has caused unnecessary financial liabilities upon the Appellant which too at the time when the Industries are passing through a unprecedented economical and financial crises due to lockdown on account of Corona Pandemic and struggling for its survival. Under such scenario, it would be difficult for the industries to survive on account of actions of MGVCL imposing huge liabilities of past period upon the Applicant, without any legal grounds.

(I) Supplementary bill for the period prior to April-2018 is barred by time.

Without prejudice to the stated hereinabove, it is stated that Supplementary bill for the period prior to April-2018 is barred by time in view of Section 56 (2) of the Electricity Act, 2003. Accordingly, MGVCL cannot recover any charges for the period prior to two years of raising the bill i.e. prior to April-2018 being in violation of Section 56 (2) of the Electricity Act, 2003 and therefore need to be cancelled.

"Provisions of Section 56(2) of the Electricity Act, 2003, reads as under:

"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.""

In this regard, it is also relevant to refer the decision given by Hon'ble Electricity Ombudsman in case no. 62/2012.

"The Electricity Ombudsman order was challenged before The Hon'ble High Court of Gujarat in SCA No. 15289 of 2012. The Hon'ble High court vide order dated 07/11/2012 upheld the order passed by The Electricity Ombudsman.

The LPA No. 885 of 2013 filled by UGVCL was disposed of on 15/07/2013. UGVCL had submitted compliance report in Dec.2013 of implementing the order dated 09/08/2012 passed by The Electricity Ombudsman."

Again similar kind of order is issued by Hon'ble Ombudsman in case no. 119/2017. In view of above supplementary bill for the period prior to April-18 is barred by time.

Other issues:

Without prejudice to the submission of the Applicant hereinabove, the Applicant would like to state, in the merger bills MGVCL has wrongly worked out Maximum Demand on notional basis being arithmetic summation of demand recorded in the individual connection. It is stated that as per the GERC Supply Code, 2015:

the Maximum demand refers to maximum demand in Kw or KVA as the case may be shall mean average KW/KVA supplied during consecutive 30/15 minutes (depending type of meter being used) period of maximum use where such meter with the features of reading the maximum demand in KW/KVA directly, has been provided.

As per the above definition of supply code, Demand supplied during the consecutive 30/15 minutes as recorded in the meter is to be considered as Maximum Demand. Since, Maximum Demand actually used and recorded in the individual meter of both HT connection would have not be occurred simultaneously, the arithmetic summation of non-coincidental maximum demand of individual connections will not representing the correct demand that would have been occurred in the single merged connection. Thus, MGVCL has charged for demand which have never been occurred / utilized by the applicant and recorded in the meter. Therefore, MGVCL has resorted to overcharge the Applicant for the maximum demand charge which never has been occurred. The correct way could have been to derive simultaneous Maximum Demand from meter 30/15 minute logged data (load survey data) of two meters of individual connection. However, MGVCL may not be allowed to take a plea that such meter logged (load survey data) is not available/not preserved. In case, MGVCL is not in position to retrieve such meter logged data of two HT connections, the demand charge is need to be worked out based on 85% of merged contract demand and not based on the arithmetic sum of demand of both connections as it is settled position of law that one cannot be allowed to take the benefits of its own wrong/mistake. Accordingly, in case MGVCL is not in a position to derive the maximum demand simultaneous utilized, MGVCL may be directed to work out demand charges considering 85% of merged Contract Demand.

It further to state that MGVCL has unilaterally decided to merge the HT connection no. 14107 in HT connection no 13076. In facts, the requirement of the Applicant is otherwise i.e. merging of HT connection no 13076 in HT connection no 14107. Therefore, MGVCL may be directed to allow such change in the merging of connection.

(II) <u>The Electricity Act, 2003:</u>

Section 45 of the Electricity Act, 2003 read as under;

"45. (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;"

Tariff schedule decided by GERC is for single point of supply and not for more than one point of supply. As such MGVCL is authorized to charge for single point of supply only. To recover charges considering deemed merger of two separate connections is violation of Section 45 of the Electricity Act, 2003.

Section 62 (6) read as under;

"62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the

bank rate without prejudice to any other liability incurred by the licensee."

In view of Section 62 (6) stated above, MGVCL cannot be allowed to recover supplementary bills issued on deemed merger basis that too from the date of release of second connection. Without prejudice to this, MGVCL cannot allowed to charge demand charges in the merger bills for the demand which has never been utilized otherwise the sane is to construed as excess recover as per the section 62(6) of Act, 2003.

(E) Prayer:

(a) To direct MGVCL to withdraw supplementary bills raised considering deemed merged for the period from (i) April-2014 to Dec-2019, (ii) for the period from Jan-20 to March-20 and (iii) monthly bills issued on deemed merger basis for the month of April-20 & may-20 .

(b) To direct MGVCL not to bill the Applicant on deemed merger basis till the physical merger of two HT connections is carried out. Till the period, MGVCL be directed to carry out monthly billing separately i.e. individual connection wise.

(c) Direct MGVCL to allow merging HT connection No. 13076 in HT Connection No. 14107 as per the requirement of Applicant.

(d) To direct MGVCL not to take any coercive steps against the Applicant and not to insist for payment of merger bills during the pendency of this application before Hon'ble Forum.

(e) Passed any further order and directives as may be deemed proper by this Hon'ble Forum in the interest justice.

The respondent contended that on the hearings as mentioned above dates is as under:

(B) As stated in **'Representation to MGVCL'**: - **Not correct**. The merger of the two HT connections i.e. Consumer No.13076 and 14107 is as per the provisions of GERC's Supply code Regulations and directives of GUVNL.

1. **Clause 4.1.17** of the Supply Code, 2005 prescribes that a licensee shall not provide more than one connection/ meter for one premises.

2. The said provision further prescribes that for second meter, the consumer shall have to provide appropriate documents and certificate to establish that such second undertaking is a separate legal entity. The documents required for such purpose are identified by the opponents viz. Income Tax Number,

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Sales Tax Number of the Establishments, Lease Agreement or rent agreement.

3. The applicant undisputedly failed to submit any document out of the documents identified under the rules.

4. Clause No.3.5.1 provides inter alia that the licensee may reclassify the consumer under appropriate category" if it is found that consumer has been classified in a particular category erroneously, or the purpose of supply as mentioned in the distribution service agreement has changed or consumption of power has acceded limit of that category."

5. The language and tenor of the said provision clearly gives out that even if the classification is made during any period prior to the date on which the notification came in force, then also the distribution licensee is empowered to reclassify" such consumer under appropriate category, in pursuance of and after the said Rules came into force. Actually said provision obliges the licensee company (i.e. the opponent Electricity Company) to bring the connections in consonance with the provisions under the said Rules.

6. The aforesaid aspect becomes clear from the expression Consumer has been classified in a particular category. The said expression clarifies and emphasises that even if any action had been taken at any prior point of time and if by virtue of such action, any consumer came to be classified in particular category, which is not proper as per the Electricity code (which came into force by Notification No.11/05), then in such circumstances, the licensee is obliged to reclassify such consumer and bring the connection/ consumer in consonance with the Rules.

7. From the said provision, it becomes clear that that power and authority to reclassify a consumer after the code came into force is conferred on the licensee even in case of those consumers who were reclassified in different category, before the Code came into force.

8. In light of the scope and effect of said provisions and in view of the object of said provision and clear language and intent of said two clauses, there is no room to claim and contend that the opponents have tried to give retrospective effect to the said two clauses though the Rules do not provide for retrospective operation. The said clause clearly postulate that even in the cases where the classification has been

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made and/or more than one connections/meters are provided to single consumer not having separate legal entities, then appropriate corrective measures must be taken and reclassification should be done.

9. In light of the said clauses it cannot be said that the respondent has retrospectively enforced the Rules.

10. In this view of the matter, the contention of applicant cannot be accepted and entertained. Besides this, when the HT Connections granted by Opponent Company are still in operation, then the existing two connections would stand covered by Electricity Supply Code and merely because it was granted and released earlier, it will not take the said connections out of the reach of the Act and the purview of the Electricity Supply Code, which came into force on the Notification No.11/05.

(C) As stated in **Facts of the case**:-

There is an operative gate existing between the 2 HT connections of M/s. Panoli Intermediates Pvt. (India) Ltd. between the Consumer No. 13076 (Plot No.157) and Consumer No. 14107 (Plot No. 159/5A). Hence as per provision of Clause 4.1.17 of Supply Code 2005 and clause 4.28 of Supply code 2015, both the connections are liable for merging. Thus, the averment that "Both these connections are having separate and independent legal status on the record of MGVCL" is not true and denied in totality.

- As stated in facts of the case:-

  The Contentions are not true because documents required to prove separate legal identity are not yet provided by the applicant in spite of regular correspondence/ reminders and giving ample opportunities to provide the same by MGVCL.

- As stated in facts of the case:-

  The contentions are not true and the procedure done by MGVCL is as per provision of GERC's Supply code.

(D) As stated in para (1 to 8) :

The applicable Clause 4.1.17 of Supply Code, 2005 and the new Supply code 2015,

" *4.1.17 The Distribution Licensee will not provide more than one connection/meter, for one premise. The consumers opting for second meter will have to produce <u>separate legal entity</u> such as documents of*

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separate income Tax No/ Sales Tax No. ration card and rent or lease agreement."

"4.28 The Distribution Licensee will not provide more than one connection for one premise <u>or in adjoining/contiguous premises belonging to same owner if these are not separated by a public road or by private premise</u>. The consumers opting for second connection will have to produce separate legal entity documents such as separate Income Tax No/Sales Tax No., ration card and rent or lease agreement."

In light of the above mentioned provisions of Supply code, many dispute arose at various level and DISCOMs and the Hon'ble Gujarat High Court has given following findings to decide that if separate documents of identity are not available then it should be considered one premises and merger should be done from date of release of second connection.

- LPA no. 1483/2013 filed by Aarvee Denims & Exports Ltd. V/s. UGVCL, Hon'ble High Court has considered by its order dtd. 21.06.2019 that when separate legal identity is not available or not provided by the party then **<u>it should be considered as one premises.</u>**

- Moreover, in SCA No. 15105/2012 filed by Lakhani Filament Pvt. Ltd. V/s. DGVCL, Hon'ble High Court has considered by its order dtd. 08.04.2015 that merging is to be considered **<u>from the date of second connection.</u>**

As stated in para No. 9:-

The contentions given in this para are not true. The fact is that MGVCL has came to know on date 18.08.2018 that the premises involved in the matter is a single premises and therefore issued letter/correspondence since 2018 to the applicant for merging of connections. But inspite of several reminders/letters applicant failed to submit requisite documents. Therefore MGVCL has finally issued 7 days notice vide letter no. MGVCL/ CE(Project)/HT/151, dtd.11.02.2019 and 15 days notice vide letter No. MGVCL/CE(Project)/HT/229 dtd.02/03/2019 for providing documents proving the separate legal entity.

As stated in para No. 10:-

Reply already given in para D (1 to 8) above.

(D) Legal provision:-

Contentions taken by the applicant in para 1 & 2 of the legal provisions pertaining to APTEL Order, Ombudsman Order and the Order of Hon'ble Gujarat High Court are not in favor of applicant as facts are different from the existing issues.

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However following points regarding Section 56 and Section 45 of the Electricity Act also needs to be considered.

1. The Applicant has wrongly relied on Section 56 of Electricity Act, 2003. Section 56 of the Electricity Act deals with the disconnection of supply in the case of default of payment. Sub-section (2) of section 56 deals with the recovery of dues from any consumers under section 56 (this section) as specifically stated. It refers to the recovery of the amount in terms of sub-section (1) of section 56 pursuant to the notice in writing given with consequence of disconnection of electricity and non-restoration of such supply until the amount is duly paid by the consumer.

2. The only consequence of the outstanding amount being not shown in the bills for a continuous period of two years as set out in section 56 of the Electricity Act is that for recovery of such amount, the petitioner - the distribution licensee cannot cut off / disconnect the supply of electricity to the consumers concerned. It does not bar other remedies that can be availed by the distribution licensee for recovery of the amount.

3. Thus Section 56 does not prevent the raising of the invoices and recovery of such amounts.

4. The Hon'ble Supreme Court in Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited and others v/s. Rahatmulla Khan dated 18.02.2020 in Civil Appeal No. 1672 of 2020 has held as under:
" 6. The next issue is as to whether the period of limitation of two years provided by Section 56(2) of the Act, would be applicable to an additional or supplementary demand.........
7. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years, it only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand"
Once the Hon'ble Supreme Court has held as above, there can be no issue of any claim being time barred in view of Section 56.

<u>Section 45 of Electricity Act, 2003:</u>

5. The claim of Applicant on Section 45 is erroneous. The claim has been raised on the basis of merged connection and there is no error in the computation.

6. The DISCOMs suffer loss due to the maintenance of two connections as against one connection. The fact of the revenue loss has been pointed out by the Comptroller and Auditor General and this has been noted by the

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Hon'ble High Court in Modern Denim Limited v. Uttar Gujarat Vij Company Limited in SCA No. 15262 of 2012 and 15263 of 2012 decided on 12.08.2013 while upholding the corrective action taken by the DISCOM:

> *"11. Learned Counsel for the Electricity Company has also placed reliance on the communication addressed by the Comptroller and Auditor General of India and copy of the Audit Report of the distributing licensees and practices adopted by the Electricity Company / distribution licensees granting two different electricity supplies and meter system for such units which were not separate legal entities which resulted into loss of revenue, sizeable in nature. It is submitted that the direction then issued by the Electricity Company is not only on basis of the above Audit Report of CAG but takes into consideration the nature of tariff prescribed for HT connection and details of various charges viz. demand and energy charges to be levelled for consumption of electricity in a case of single meter and what is existing as on date with two meters........*
>
> *16.....That Audit Report by the Comptroller and Auditor General of India was a reminder to the distributing licensees about practices followed by such a licensee which was contrary to law and provisions of the Act, 2003 and the action taken in this regard rejecting the application of the petitioners for extra and/or extension and/or separate meter cannot be said to be in any manner contrary to law."*

7. Even otherwise, the Hon'ble High Court has noted that there is an effect of allowing consumers to have two connections:

> *"14... If a consumer like the petitioners are allowed to have different meters and supply of electricity, it would certainly have effect on the distribution of electricity and contracted demand and also will have bearing on fixation of tariff and consumption charges. The above fact is correctly demonstrated by the illustrative example of demand and consumption charges in case of single meter and of two meters by one legal entity......"*

8. Thus it is clear that the maintenance of two separate connections results in loss to the DISCOM which has been noted above. It cannot be that despite the loss suffered by the DISCOM, there can be no compensation , cannot be accepted.

9. When the issue is of rectification/correction of the position, the billing also has to be for the period from which correction is to be considered.

10. Even in the decision of the Hon'ble High Court relied on by Applicant being Special Civil Application No. 19890 of 2017 with Special Civil Application No. 1897 of 2019 dated 22.05.2020, DGVCL v. M/s Rahulra

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J Mall Co Op Service Society Ltd, the Hon'ble High Court had upheld the supplementary bills being raised. Therefore there is no error in raising the supplementary bills. The Hon'ble High Court in the said case had however only considered the issue of date from which bill is to be raised and upheld the Order of the Hon'ble Ombudsman which allowed bills from date of merger notice for submission of documents.

However it is submitted that in that case, the facts were different as the end users were different as noted in Para 10:

10. Therefore, in facts of the case, when the end users of the individual premises are different and separate and electricity bills are being paid by users of the said premise and merger notice was issued on the ground of want of documents as per clause 4.28 of the Code2015, it cannot be said that there is any error in directing the petitioner to issue supplementary bills with effect from date of notice.

However in the present case, the end users of the premises were never different and were always the Applicant. Therefore the basis of the said decision is not applicable to the facts of the present case.

11. It is to further reiterate that the party in spite of all efforts from the side of MGVCL has not provided the documents for separate legal ownership.

(E) Prayer :-

- The relief claim by the applicant in para 9 should be rejected in totality.
- The relief sought for withdrawing the Supplementary bill served with effect from the date of release of the second connection i.e. 28.03.2014 and direct for merging as per their requirement is not acceptable and therefore the applicant's application is required to be quashed.
- The complaint/grievance of the applicant is vexatious, frivolous and speculative. Therefore, caused should be imposed over the applicant for its malafide act.

However, the facts of the case and events are as under:

- HT connection no 13076 for contract demand of 400 KVA was released on dated: 20.2.1989 in the name of M/s. International Dystuff Industries (Now Panoli Intermediates (India) Pvt. Ltd.) at Plot no: 157 GIDC Nandesari.
- HT connection no. 14107 for contract demand of 1500 KVA was released on 28.03.2014 in the name of M/s. Panoli Intermediates Pvt. Ltd in the plot no: 159/5A GIDC Nandesari.
- On Dated: 26.04.2018, HT connection bearing connection no.13076 was booked under Section 126 for unauthorized Extension of area as

MGVCL CONSUMER GRIEVANCES REDRESSAL FORUM consumer was found utilizing power of HT 13076 in the adjoining plot no: 156-A & B.

A Supplementary bill amounting to Rs. 22,70,458.89 was served to consumer on 29/05/2018 which was paid by consumer under protest and had approached in the office of CEI under section 127 , the decision of which is pending.

- Subsequently, on dated: 27.07.2018, HT connection no. 13076 has applied for area extension Plot No. 156/A & 156/B with their existing area of Plot No. 157 at Nandesari GIDC.

- On dated 27.07.2018 HT connection no.14107 has applied for extension of area of Plot No. 159/4 & 159/5 with their existing area of Plot No. 159/5 at Nandesari GIDC.

- During site visit it was observed that there is an operative gate existing between both HT connections of M/s Panoli Intermediates Pvt. Ltd i.e. Between Cons. No. 13076 (Plot no 157, 1500 KVA) & Cons. No. 14017 (159/5, 1500 KVA).

- Based on the various correspondences between MGVCL Corporate office and M/s. Panoli Intermediates Pvt.(I) Ltd, regarding submission of documents for separate legal entity on dated 11.02.2019 and on 02.03.2019 , which was not provided. therefore, vide letter dated MGVCL/CE (Project)/HT/Merging/32, dated: 16.01.2020 was issued by Corporate office directing for merging of above 2 connections with effect from date of Second connection released (i.e. 28.03.2014) (Annexure-A) for issue and recovery of supplementary bill owing to merging of the contract demand.

- Based on above letter, the contract demand of two HT connections bearing Cons no. 13076 (CD 1500 KVA) & 14107 (CD 1500 KVA) have been merged in consumer no. 13076 to raise its contract demand to 3000 KVA & initially provisional supplementary bill of amounting Rs. 15,25,905.73 was issued to consumer vide letter no. BD/Rev/5564, on dated 09.04.2020 from Jan 20 to March'20, which is paid by the applicant.

- Thereafter, vide MGVCL Corporate office letter no. MGVCL/ CE(Proj)/ HT/merging/ 333 Dated: 12.5.2020 (Annexure-B) the Supplementary bill of Rs. 2,45,36,457.54 was issued to applicant vide letter ref: BD/Rev/HT/Merger/13076/6729, dated 13.05.2020 on the merged contract demand from the date of second connection i.e. 28.03.2014 to December 2019.

MGVCL has given the supplementary bill for the merged connection as per the provision of GERC's Supply code Regulations and requires to be paid by the consumer.

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Submission of rejoinder by applicant on dated 29.09.2020

In response to written submission filed by the Opponent, Executive Engineer MGVCL on 25.08.2020.

At the outset, the applicant hereby denies all allegation and averments made by Executive Engineer, MGVCL (hereinafter referred to as MGVCL) in the written submission dated 25.08.2020 except the same are not specifically admitted by the applicant in the captioned matter. Any omission to respond any specific averment in the written submission should not be construed as an acceptance thereof by the Applicant.

The Applicant craves liberty of this Hon'ble Forum to rely on the submission made in the memo application and the content of the same is not repeated for sake of brevity. However, the content of the application is to be read as forming part of present rejoinder cum written submission.

It is further stated that instead of rejoinding parawise to the written submission filed by MGVCL, the Applicant hereinafter prefers to respond to the specific issues / allegations raised by MGVCL as under:

A. **Rejoinder to the written submission of MGVCL on the fact of case:**

1. That, it is wrong and denied that under the provisions of GERC Supply Code 2005, there was requirement to submit documents to prove separate legal entity for availing connection in the adjoining separate premises in the same name.

2. It is submitted that another HT connection of Applicant being Connection No: 14107 were released in the year 2014 in the separate premises during the applicability of GERC Supply Code 2005. The clause 4.1.17of the Supply Code 2005 read as under:

   "4.1.17 The Distribution Licensee will not provide more than one connection/meter, for one premise. The consumers opting for second meter will have to produce separate legal entity such as documents of separate income Tax No/ Sales Tax No. ration card and rent or lease agreement."

3. That, the above provision of the Supply Code 2005 makes it abundantly clear that the documents in relation to separate legal entity was required to be produced in case the consumer seek for second connection in **same premise.** However, there was no bar to provide connection in same name in the separate premises akin to the present case wherein the new connection was given by MGVCL in year 2014 in the separate premises in the same name. Since, in present case, the issue of release of second connection in the same premises was not involved, at relevant time, following the provisions of Supply Code 2005, MGVCL had released the new HT connection to the applicant without requiring documents to prove separate legal entity.

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4. That, it is respectfully stated that the premise of HT Connection No. 13076 & HT Connection No. 14107 is completely separate, separated by compound wall and also having separate entry gates for Point of Supply. The new connection was released after due process of law namely (a) site verification by officials of MGVCL to confirm that the premises for the second connection is different and distinct than premises of existing HT connection, (b) land documents related to premises where new connection was sought, (c) verifying the power boundary of new connection. At no point of time, MGVCL had pointed out that the Applicant is not entitled for new connection. On the contrary, MGVCL had legally and validly released the Connection No. 14107 in the year 2014.

5. It is further stated that MGVCL in vague and casual manner has alleged that the premises of HT Connection No: 13076 and HT Connection No: 14107 is single premises, without providing any documentary evidences in support of the same. The Applicant vehemently denies such allegation and approach of MGVCL. On the contrary, the Applicant submit that as stated hereinabove and stated in the memo of application, premises of both the HT connections is separate and distinct premises and cannot be said to be single premises in any manner. There is no commonality between the premises let alone electrical connectivity between the premises.

6. It is further submitted that MGVCL is seeking to mislead the Hon'ble Forum by reading provision of Clause - 4.28 of Supply Code 2015 with Clause - 4.1.17 of Supply Code 2005 to state that the new connection in separate adjoining premises was even not allowed in Supply Code 2005. It is to state that provisions related to not allowing separate connection even in adjoining premises belonging to same owner if not separated by public road or private premises, is came into effect by virtue of Clause 4.28 of Supply Code 2015 notified in the month of September 2015. Therefore, it is wrong to state that the applicant was not eligible for new connection in the adjoining separate premises even under Supply Code 2005.

7. MGVCL is also seeking to mislead Hon'ble Forum by selectively referring the Clause No: 3.5.1 of Supply Code 2005 in an attempt to support their case for claim of supplementary bill on deemed merger basis effective from date of release of second connection in the year 2014. While referring Clause 3.5.1 of Supply Code 2005, MGVCL has conveniently / mischievously ignored the express provision of said clause providing for issuance of 30 days' notice for execution of fresh agreement for effecting such reclassification. The Clause No: 3.5.1 read as under:

   If it is found that a Consumer has been classified in a particular category erroneously, or the purpose of supply as mentioned in the distribution service Agreement has changed or the consumption of power has exceeded the limit of that category or any order of reduction or enhancement of Contract Demand has been obtained,

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the Distribution Licensee ***may reclassify him under appropriate category after issuing notice (with minimum notice period of 30 days)*** *to him to execute a fresh Agreement on the basis of the altered classification or modified Contract Demand. If the Consumer does not take steps within the time indicated in the notice to execute a fresh Agreement, the Distribution Licensee may, subject to the provisions of the Acts, Rules and Regulations for the time being in force, after issuing a clear 21 days show cause notice and after considering his explanation, if any,* ***disconnect the supply of power.***

8. In view of the above, the provision of Clause 3.5.1 of Supply Code 2005 is not supporting the case of MGVCL for issuance of supplementary bill from the date of second connection. The Clause 3.5.1 allows the reclassification of consumer category only **after issuance of 30 days' notice and then 21 days' notice**. And if required thereafter, **may only disconnect power supply**. In the present case, MGVCL has issued supplementary bill on deemed merger basis from the date on which MGVCL itself had released new connection to the Applicant in accordance with provisions of Supply Code 2005. The Clause No 3.5.1 expressly provides that reclassification, if any is to be made effective only after issuance of 30 days' and 21 days' notice period to execute new agreement. Thus, the Clause 3.5.1 do not provide for issuance of any supplementary bill for past period. Therefore, action of MGVCL is even contrary to the Clause No: 3.5.1 on which MGVCL is relying.

9. That the applicant would like to make it clear that the applicant in its application has not disputed for merger of two connections. What applicant has sought to agitate is the action of MGVCL to issue supplementary bill before effecting physical merger of both the connections that too from the date of release of new connection since year 2014. Therefore, the contention of MGVCL that both the connections are fall under the purview of the Electricity Act 2003 and Supply Code and is entitled to take corrective actions etc. in terms of Supply Code is misplaced and irrelevant.

10. The another contention of MGVCL is that it came to know on 18.8.2018 that premises involved in the matter is single premise and therefore made correspondence since 2018 and finally issued letter dated 11.02.2019 and 02.03.2019 for providing documents for separate legal entities. The said contention of MGVCL is misleading and not correct. It is to state that it was wrong on part of MGVCL to seek documentary proof to prove separate legal entity when the premises of both connections were distinct and different and there was no commonality between the premises let alone electrical connectivity to construe both premises as single premises. The said correspondence of MGVCL were replied appropriately by the applicant stating that there was no bar to release second connection in the adjoining separate premise under Supply Code, 2005. That, MGVCL was satisfied with the reply /

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explanation submitted by the applicant and which also fortified from the fact that no action was taken at relevant time.

11. It is only on 16.01.2020 when MGVCL had issued formal notice to the Applicant to merge HT Connection No: 13076 and 14107. Therefore, in any case, even assuming (but not admitting) that MGVCL is entitled to raise supplementary bill before physical merger of connection, the same can be allowed only after 30 days' and 21 days' notice period and not for past period from the date of release of second connection in 2014. Therefore, action of MGVCL to issue supplementary bill for past period is without any legal basis and bad in law.

B. Judgments of High Court & Supreme Court relied by MGVCL:

12. The reliance placed by MGVCL on the judgment of Hon'ble High Court in (i) LPA No: 1483 of 2013 in Aarvee Denims vs. UGVCL (ii) in SCA No: 15105 of 2012 in Lakhani Filaments vs. DGVCL and (iii) in SCA No: 15262 of 2012 in case of Modern Denim v/s UGVCL is irrelevant and not supporting the case of MGVCL.

13. It is respectfully state that the above judgments would not applicable in fact of the present case as in the decision of the Court in above cases was with respect to entitlement of Distribution Licensee to merge two connections and that the court was not dealing the issue involved in the present matter qua the date from which merger bill can be issued by the distribution licensee.

14. It is to state that in the above judgments, Hon'ble High Courts had upheld the merger of connections relying on the provision of the Supply Code for reclassification of consumer category as per Clause 3.5.1 under the Supply Code 2005 and Clause 4.76 of Supply Code 2015. In the said Provisions also, while reclassification is provided for, there is no provision for issuing supplementary demand for the past period.

15. It is also wrong on part of MGVCL to content that as per the decision of Hon'ble High Court in Lakhani Filament case, the merging is to be considered from the date of second connection. As stated hereinabove, the issue involved in said case was with respect to allowing distribution licensee to merge two connections and the aspect of date from which supplementary bill can be issued, was not under challenge in the said case. Therefore, it is wrong on part of MGVCL to contend that in judgment of Lakhani Filament case, Hon'ble High court has upheld supplementary bill for past period as done in the present case.

16. It is also wrong on part of MGVCL to contend that for maintaining two separate connections is resulting into the loss to DISCOM for which DISCOM is entitled for compensation. It is submitted that firstly MGVCL had released new connection to Applicant after following due process of law and in accordance with Supply Code 2005. The Supply Code 2005 did not put any bar or restriction to give second connection in same name in separate premises and the same was legally provided by MGVCL.

Further, the Applicant was and has been paying the monthly electricity bill regularly. Therefore, claim of any loss to MGVCL due to two connections is not acceptable. It is relevant to mention that in any case, the applicant is not disputing the entitlement of MGVCL to merge two connections in terms of Supply Code, 2015. What the applicant is disputing is the supplementary bills issued by MGVCL for past period before physical merger of connections and before issuance of formal notice for merger. The supplementary merger bill issued for past period is contrary to the provisions of supply code and therefore illegal and invalid in the eyes of law.

17. That MGVCL has failed to refer the relevant provision / Clause of Regulations/ Act under which it has issued supplementary bills for past period since year 2014. As such there is no specific provision for issuance of any supplementary bills in regard to merger of connections either in the Supply Code 2005 under which second was released or Supply Code 2015 under which merger actions can be initiated.

18. It is the first time that the Hon'ble High Court of Gujarat in case of DGVCL v/s Rahulraj Developers, in the SCA No.18890 of 2018and SCA No.1897 of 2019 in its judgment dated 22.05.2020 has dealt with **the issue of supplementary bill for past period** in case of merger of connections. In the said judgment dated 22.05.2020, Hon'ble High court has confirmed the various decisions of Ombudsman for supplementary bill to be issued from the date of notice only and not for past period. In the judgment dated 22.05.2020, Hon'ble High Court has also **distinguished the judgment of High Court in Lakhani Filament** case for deciding the date from which supplementary bill can be issued. The operative part of judgment dated 22.05.2020 is reproduced as under:

> *12. In view of above fact situation, as the petitioner detected the continuation of two electric connections in one name contrary to clause 4.28 of the Code 2015 for first time on19th September, 2017 when the notice for merger of two HT connections was issued, the petitioner was rightly directed to revise the supplementary bill from the date of merger notice issued for submission of the documents for change of name of HT connections.*
>
> *13 <u>With regard to the decision in case of Lakhani Filaments Pvt. Ltd. (supra), the same would not be applicable in facts of the case as in the said decision the Court was considering the retrospective applicability of the notification no. 11/2005.</u> Whereas in the facts of the present case, it is not in dispute that there was violation of clause 4.28 of the Code2015, however, the grievance of the petitioner is with regard to restricting the petitioner to issue supplementary bill from the date of issuance of notice for merger and not from the date of granting connection. Considering the fact that the connections were issued after*

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2005, notification no. 11/2005 was very much in existence, in spite of that the petitioner has granted two connections in the name of the same person taking into consideration the clause 4.1.17 of the Code2005. ***<u>In such circumstances when the Code2015has come into effect from 24th September, 2015 and notice for merger was issued on 19th September 2017, the petitioner cannot be permitted to issue supplementary bill from the date of connection.</u>***

(Emphasis supplied)

19. The above judgment of Hon'ble High Court is squarely applicable to the case of the Applicant and supports the case of the Applicant. Therefore, in terms of the above judgment of Hon'ble High Court, the supplementary bill issued by MGVCL on deemed merger basis from the date of connection is illegal and invalid.

20. In regard to the contention of MGVCL that in case of judgment dated 22.05.2020 of Hon'ble High Court, the facts was different and therefore the judgment is not applicable in present case, is misleading and denied. While contending so, MGVCL has sought to refer only few sentences of one of the para of judgment selectively. It is settled position of law that the statue is to be read as a whole for drawing contextual meaning. It is to submit that in the judgment dated 22.05.2020, Hon'ble High Court has confirmed the decision of the Ombudsman which is based on the judgment of Appellate Tribunal for Electricity. Hon'ble High Court, at para 10 has considered the fact that the end users were different in case of Rahulraj Mall. However, saying so, the Hon'ble High Court has also considered other facts and proceeded on the basis that the connections were released under Supply Code, 2005 and despite of Supply Code, 2005, DGVCL had granted two connections and further that even when Supply Code 2015 became effective from September 2015, the notice for merger was issued only on 19.09.2017.

21. In the matter of Rahulraj Mall case, the observation of Hon'ble High Court that the end users were different was only in respect to allowing change of name and reduction in load. However, this has no relation as regard to the decision of Hon'ble High Court in regard to the period/date from which supplementary bill can be issued.

22. Considering the above facts, Hon'ble High Court has correctly allowed the supplementary bills only from the date of notice and has not allowed for the past period from the date of second connection. Therefore, contrary to the contention of MGVCL, the judgment dated 22.05.2020 is squarely applicable in the present case.

23. On the issue of alternative contention of applicant that the claim of MGVCL for past period is being time barred under Section 56 of Electricity Act, 2003, MGVCL has referred the judgment of Hon'ble Supreme Court dated 08.02.2020. It is submitted that the judgment

dated 08.02.2020 is not supporting the case of MGVCL. It is submitted the facts involved in the judgment dated 08.02.2020 (Ajmer Vij Vitran case) is different than the present case. In case of Ajmer Vij Vitran case, the bill was in relation to recovery of wrong tariff due to mistake/error in the monthly billing and in that context court has decided the case. In the present case, issue of mistake/ error in billing is not involved but the issue is recovery of bills on deemed merger basis for the connection which was legally granted in accordance with applicable regulations/code. In any case, in said judgment, Hon'ble Supreme Court has rightly held that Distribution Licensee is not entitled to disconnect power supply due to non-payment of past period bills for the period after two years.

It is further submitted that in the judgment dated 08.02.2020, Hon'ble Supreme Court has observed that, "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". In said case, there was mistake/error in applying tariff rate for energy consumed. Whereas, the issue involved in the present case is not related to wrong application of tariff rate but as rightly held by the Hon'ble High Court in the order dated 22/05/2020 in SCA No. 19890 of 2018 (supra), the matter in the present case can be considered as **reclassification of category of connection**. Thus, considering the facts and circumstances of case, as such, the reference to the order of Hon'ble Supreme Court dated 08.02.2020 is misplaced and not applicable in the present case.

C. No submission/comments of MGVCL on Other Issues raised by the Applicant:

24. It is respectfully submitted that in the application made to Hon'ble Forum, the Applicant also raised other issues that in the merger bills MGVCL has wrongly worked out Maximum Demand on notional basis being arithmetic summation of demand recorded in the individual connection during different time/day. Since, Maximum Demand actually used and recorded in the individual meter of both HT connection would have not be occurred simultaneously, the arithmetic summation of non-coincidental maximum demand of individual connections recorded at different time/day is not representing the correct demand that would have been occurred in the single merged connection. Thus, MGVCL has charged for demand which have never been occurred / utilized by the applicant and recorded in the meter. The correct way is to derive simultaneous Maximum Demand from meter 30/15 minute logged data (load survey data) of two meters of individual connection.

25. However, **no response/submission/comments is filed by MGVCL** in its Written Submission dated 25.08.2020 on the above issue, though the applicant has raised categorical and specific issue in its application. Hon'ble Forum is requested to draw adverse inference against MGVCL and accept the representation of the applicant for working out

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simultaneous demand by MGVCL in the supplementary bill as suggested by the Applicant.

26. It is further to state that the facts of case and events stated by MGVCL in the last para of their Written Submission, as stated, is not admitted. Further, MGVCL has made references to irrelevant and extraneous issues which have no bearing on the aspects involved in the present matter.

27. In addition to the above, the Applicant would like to place on record as under, the judgments of Ombudsman & Hon'ble High Court relied by the applicant in its application on the issue of the date from which supplementary bill for merger of two connections can be issued.

Judgements of Ombudsman:

1	Case No. 88 / 2017 of M/s. Shri Umiya Stone Quarry V/s DGVCL	**Annexure-R1**
2	Case No. 44 / 2018 of M/s. Destiny Developers V/s DGVCL	**Annexure-R2**
3	Case No. 54 / 2018 of M/s. Sutlej Textiles & Ind. Limited V/s DGVCL	**Annexure-R3**
4	Case No. 112 / 2018 of M/s. Galaxy Mall Pvt. Ltd. V/s UGVCL	**Annexure-R4**
5	Case No. 99/2019 of M/s. Pyramid Technoplast Pvt. Ltd. V/s DGVCL	**Annexure-R5**

Judgements of Hon'ble High Court of Gujarat:

6	R/SCA No. 19890 of 2018- DGVCL V/s M/s. Rahulraj Mall Co Op Service Soc Ltd	**Annexure-R6**

That, it is respectfully submitted that for the reasons as mentioned hereinabove and in the memo application and other reasons that may be argued at the time of hearing the present application, the prayer made in the application be allowed.

Reply to rejoinder of applicant dated 29.9.2020 submitted by opponent

Point no.1.to 3

Clause 4.1.17 of the Supply Code, 2005 prescribes that a licensee shall not provide more than one connection/meter for one premise. And in this case HT consumer no.13076 and HT consumer no.14107 is not having separate Legal entity and is one premise.

Point no.4

As stated in the rejoinder, both the HT connections are separated by compound wall. Hence as provided in clause 4.28 of GERC's Supply code 2015, 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. Hence, both connections are liable for merging.

Point no.5

As both the connections are separated by compound wall and adjoining to each other, as per Supply code 2015, clause no. 4.28, they are liable for merging and are treated as single premise.

Point no.6

As per the clause 4.1.17 of Supply Code, 2005, the applicant has to produce separate legal entity such as documents of separate income Tax No/ Sales Tax No. ration card and rent or lease agreement." which was not in the case of this two connection. Also as per Supply Code 2015, clause no. 4.28 both the connections are adjoining / contiguous premises belonging to same owner and separated by compound wall. Hence, both connections are liable for merging.

Point No 7:

The Hon'ble High Court of Gujarat has upheld the validity of clause no. 3.5.1 of Supply Code, 2005 in its judgment named under the title Lakhani Filaments Pvt. Ltd. V/s. DGVCL in SCA No. 15105/2012. The Hon'ble High Court in its Judgment has not laid any kind of stress for serving prior notice to the consumer for the purpose of reclassification. The only requirement of/or purpose of giving notice to the consumer is that the consumer must get an opportunity to present his case properly before the competent authority so that, no coercive action must be taken against the consumer without hearing him. The contention of the applicant is totally denied by MGVCL that no notice has been served to him before invoking the provisions of clause 3.5.1 and 4.1.17 of Supply Code, 2005. MGVCL has issued various notices to the consumer before acting on any of the clauses of Supply Code 2005. After going through the above stated section it is very clear that power to reclassify the consumers has been vested in the DISCOMs.

Point No.8 :

Clause 3.5.1 allows the reclassification of the consumers and further this clause is a corrective clause which means if any irregularity/mistake/ rectifications or other modification is required so that can be rectified or corrected. The Hon'ble High Court of Gujarat in Lakhani Filaments Pvt. Ltd. V/s. DGVCL in SCA No.15105/2012 has explained the spirit and intention of clause 3.5.1. No irregularity has been cited by the Hon'ble Court in regard to the provision 3.5.1. Further, the Hon'ble High Court has upheld that, the corrective measures implemented following the provisions of clause 3.5.1 can be enforced retrospectively therefore, issuance of supplementary bill for the past period to the consumer is proper and in accordance with the law.

Point No.9 :

The Hon'ble High Court of Gujarat in Lakhani Filaments Pvt. Ltd. V/s. DGVCL in SCA No. 15105/2012 vide order dtd. 08.04.2015 the Hon'ble Court has settled the confusion about merging of connection. The Hon'ble Court has very clearly stated that, merging is to be considered from the date of release of second connection into the premises of the consumer. Therefore, MGVCL by relying on the judgment of the Hon'ble Court has calculated the date of merger from the year 2014. MGVCL has not erred any error in regard to the computation date of merger at the time of decision.

Point no. 10 & 11

The applicant has failed to prove that both the connections are separate despite giving ample opportunity and hence MGVCL has finally issued order to merge both the connections and issue supplementary bill from the date of release of second connection. Accordingly, the demand of both the connections are merged and for physical merging of connection proposal is at process at corporate level .

Point No. 12:

The applicant is misleading the Hon'ble Forum without quoting the findings of Hon'ble Court in the judgment cited by the applicant in para 12. Further, all the issues framed by the Hon'ble Court in LPA No. 1483/2013, SCA No. 15105/2012 and in SCA No.15262/2012 is totally applicable in the present case without any modifications. The applicant is trying to mislead this Hon'ble Forum by raising doubt on the validity of clause 3.5.1 and 4.1.17. All the Three judgments quoted by MGVCL are totally relevant in the present case and all the issues raised by the applicant in the present case is in toto similar to the cases quoted by MGVCL to support this case.

Point No. 13:

The applicant is misleading this Hon'ble Forum about the applicability of the cited case by MGVCL.

Point No. 14:

The applicant has not gone through the findings and observations of Hon'ble High Court. The opponent will be deeply obliged if the Hon'ble Forum once again make a glance over the spirit and findings quoted by Hon'ble High Court in regard, to clause 3.5.1 and 4.1.17 of Supply Code 2005.

Point No. 15:

The contention made by the applicant at point no. 15 is totally denied by MGVCL. The Hon'ble Court has very clearly stated that, the provisions of supply code 2005 will be applicable retrospectively and any corrective measures initiated by the opponent in the light of clause 3.5.1 and 4.1.17 will be applicable retrospectively, the reason why Hon'ble Court has upheld the application of Supply Code 2005 retrospectively is because the report furnished by Comptroller and Auditor General of India.

Point no.16 & 17

For physical merging the applicant has to fulfill certain technical criteria i.e. layout with clear demarcation of new area of supply with merging and readiness to receive power at a single point of supply with requisite erection of electrical network and associated equipment, necessary approval from Energy and Petrochemical dept. i.e Electrical Inspector.

Hence, the directives to merge the demand of both the connections is implemented and billing of merged demand is required to safeguard the revenue of the company which is already mentioned earlier in the WS which is reproduced hereunder ;

> ["14...... If a consumer like the petitioners are allowed to have different meters and supply of electricity, it would certainly have effect on the distribution of electricity and contracted demand and also will have bearing on fixation of tariff and consumption charges. The above fact is correctly demonstrated by the illustrative example of demand and consumption charges in case of single meter and of two meters by one legal entity......"

8. Thus it is clear that the maintenance of two separate connections results in loss to the DISCOM .

Point No. 18:

The findings pronounced by the Hon'ble High Court in SCA No.1897/2019 is ambiguous in nature. Hon'ble Court has not pointed out from which connection i.e. to say from the date of issuance of second connection or first connection.

Point No. 19:

The findings of the Hon'ble High Court in SCA No. 1897/2019 is not applicable in the present case.

Point No. 20,21,22 & 23:

MGVCL has nothing to say in regard to the facts stated in para 20,21,22, & 23 because the facts pleaded in these para's are totally irrelevant to the present case.

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Point no. 24

As per the GERC's applicable tariff rate for HTP-1,the billing on the merged demand is done accordingly .

Point No. 25:

The contention raised by applicant in para 25 is not true. MGVCL has categorical replied to all the points of the applicant.

Point No. 26 & 27:

No comments for point no. 26 and 27.

It is further stated that the applicant/consumer has not proven separate legal identity since 2014. Applicant has hidden the facts at the time of taking Second connection. Therefore, the decision taken by MGVCL for merging of connection from the date of release of Second connection and for issuance of supplementary bill from the date of Second connection is proper and justified.

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:

Findings/conclusion of Independent Member:

HT connection of M/s. Panoli Intermediates, HT-13076 was released in plot no. 157 at GIDC, Nandesari on 20.02.89 and thereafter another connection in the name of M/s. Panoli Intermediates, HT-14107 was released in plot no. 159/5A at GIDC, Nandesari on 28.03.2014.

HT connection No. 14107 was released on 28.03.2014 at relevant point of time after verifying site and collecting required documents. At the time of releasing connection, the Electricity Supply Code and related matters regulation notification 11 of 2005 was in existence and clause 4.1.17 of the code was followed at that time, and connection was released accordingly.

As far as actions for merging is concerned, the same issue comes to the notice of MGVCL officers on 18/08/2018 at the time of site visit of both connections for area merging application.

At that time the consumer had a personal meeting and discussion with CE (Project) on 31.01.19 and the consumer claimed the two areas to be different (and not liable for merging). He further insisted for some time to submit documents in the subject matter. As a result, he was informed to submit documents within 7 Days vide this Office Letter No. 11.02.19. In response to same, the consumer further requested that they need some time to collect the documents showing that the plots are different. Hence, he was allowed further 15 Days time vide this Office letter dtd. 02.03.19. **However, the consumer has failed to submit any documents to substantiate his claim (about different plots and not liable for merging).Instead, the consumer has shown his willingness for merging of the HT connections (Con.No.13076 and Con.No.14107) vide letter dtd. 12.03.19.**

11. It is stated that the second HT Conn. No: 14107 was released during the applicability of earlier GERC Supply Code 2005. The GERC Supply Code, 2005 remained effective for the period from 01/04/2005 to 23/09/2015 until new Supply Code came into effect from 24/09/2015.

(iii) The applicable Clause 4.1.17 of Supply Code, 2005 is reproduced hereunder;

"4.1.17 The Distribution Licensee will not provide more than one connection/meter, for one premise. The consumers opting for second meter will have to produce separate legal entity such as documents of separate income Tax No/Soles Tax No. ration card and rent or lease agreement."

(iv) The new Supply Code referred to as Supply Code - 2015,which became effective from date of 24/09/2015, the corresponding Clause 4.28 of the Supply Code 2015 is read as under.

"4.28 The Distribution Licensee will not provide more than one connection for one premise <u>or in adjoining/contiguous premises belonging to same owner if these are not separated by a public road or by private premise</u>. The consumers opting for second connection will have to produce separate legal entity documents such as separate Income Tax No/ Sales Tax No., ration card and rent or lease agreement."

12. **<u>GUVNL guideline dated 19.03.2020 for merger of connection:</u>**

It is submitted that GUVNL vide letter dated 19.03.2020 has issued guideline to DisComs in relation to merger of connection and period to be considered for raising of supplementary bill for merger. Taking cognizance of order(s) of Hon'ble"The Electricity Ombudsman Gujarat State" Case No. 88/2017, 44/2018, 54/2018, 112/2018, 99/2019 and also taking into account the stands taken by other DisCom by settling the cases by issuing supplementary bills from the date of issuance of notice/merged the connection from the date of notice, GUVNL has issued guidelines to adopt the same practice as per the said orders of Ombudsman.

3 <u>Hon'ble Gujarat High Court judgment dated 22/05/2020:</u>

In the R/SCA No. 19890 of 2018- DGVCL V/s M/s. Rahulraj J Mall Co OP Service Soc Ltd, has held as under:

<u>Considering the fact that the connections were issued after 2005, notification no. 11/2005 was very much in existence, in spite of that the petitioner has granted two connections in the name of the same person taking into consideration the clause 4.1.17 of the Code2005.</u> In such circumstances when the Code2015 has come into effect from 24th September, 2015 and notice for merger was issued on 19th September 2017<u>, the petitioner cannot be permitted to issue supplementary bill from the date of connection.</u>

The above judgment of Hon'ble High Court is squarely applicable to the case of the Applicant. Therefore, in terms of the above judgment of Hon'ble High Court, the supplementary bill issued by MGVCL on deemed merger basis from the date of connection is not legal and valid.

As during the survey of area addition, it is found that both the connections are liable for merging and it was also conveyed verbally to representative of consumer, also enough time is given to consumer to give documentary evidence but consumer fails to submit the same, on the contrary applicant has given the written consent/statement to merge the connections by asking some time for rewiring.

Decision:

Therefore taking into consideration all facts and findings of this case, prayer of the consumer is partly allowed and MGVCL is directed to revise the supplementary bill considering 1st aug 2018 as effective date of merging. Also, if MGVCL is not in position to retrieve such meter logged data of two HT connections, the demand charge is to be worked out based on 85% of merged contract demand is in order.

<u>Findings/conclusion of Technical Member:</u>

It is clear that ample time is given to Complainant to prove or produce documents for separate legal entity. However, the consumer has failed to submit any documents to substantiate his claim (about different plots and not liable for merging).Instead, the consumer has shown his readiness for merging of the HT connections (con.No.13076 and Con.No.14107) vide letter dtd. 12.03.19.

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Now due to New supply code came in effect from 24/09/2015, earlier connection given by MGVCL is required to merge as Applicant had not provided documents for separate legal entity

However considering the reason for merging i.e. Change in clause of Supply code, effective date should be considered from effective date of new supply code instead.

Section 56 does not prevent the raising of the invoices and recovery of such amounts.

As in the present case, the end users of the premises were never different and were always the Applicant. Therefore the basis of the said decision is not applicable to the facts of the present case for consideration of effective date as date of notice.

It is to be derive simultaneous Maximum Demand from meter 30/15 minute logged data (load survey data) of two meters of individual connection.

However, if MGVCL is not in position to retrieve such meter logged data of two HT connections, the demand charge is to be worked out based on 85% of merged contract demand.

I am not agree with the decision of Independent Member regarding effective date of merging as per reasons shown above.

Note: In this specific case, only two members (i) Technical Member and (ii) Independent Member of the Forum were present and both the members does not agree with the conclusion/decision taken by other member. In that case, as per GERC Regulations (CGRF & Ombudsman) 2019, Notification No.2/2019 and clause No.2.26 & 2.27. For final decision Independent Member shall have a casting vote.

Clause No.2.26 & 2.27, is reproduced hereunder:

2.26 The quorum for any sitting of the Forum shall be two (2), out of which one (1) should be the Independent Member. Each member shall have one vote. If the matter is heard by two members only i.e. Chairperson and Independent Member or Technical Member, then Chairperson shall have a casting vote in case of tie. Where the matter is heard by the

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Independent Member and Technical Member, the Independent Member shall have a casting vote in case of tie.

2.27 All decisions of the Forum shall, as far as possible, be unanimous or be on the basis of decision by majority of the members present. If a member hearing the matter does not agree with the decision taken by other members, he may record his note of dissent with reasons but the decision taken by majority of members hearing the case will prevail.

ORDER

1.0 The Forum has come to the conclusion that the respondent Madhya Gujarat Vij Company Limited (MGVCL) is directed to revised the supplementary bill for merging considering effective date as 01.08.2018 within 15 days to complainant M/s. Panoli Intermediate (India) P Ltd., located at Plot No: 156A, 156B, 157, Nandesari, Dist: Vadodara,. Also, if **MGVCL is not in position to retrieve such meter logged data of two HT connections, the demand charge is to be worked out based on 85% of merged contract demand is in order.**

Not agreed as per my above note

(K B Dhebar)	*(A G Shaikh)*	*On leave*
Technical Member	***Independent Member***	*(Smt Mala Y Shah)*
		Chairperson

PS :

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.

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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.
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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