BEFORE THE CONSUMER GRIEVANCES REDRESSAL FORUM

MADHYA GUJARAT VIJ CO LIMITED

CORPORATE OFFICE, 2ND FLOOR SP VIDYUT BHAVAN,

RACECOURSE, VADODARA 390 007

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| Subject | Consumer Grievances Complaint No.MG-I-10-09.10 |
| Complainant | M/s. Agrawal Mittal Concast P Ltd., at Chandrapur, Tal: Halol. |
| Respondent | Shri S R Pandya, DE Halol s/dn MGVCL |
| Date of hearing | 19.06.2009 |

| QUORUM | NAME |
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| Chairman | Shri S A Pota, MGVCL |
| Member | Shri K R Shah, MGVCL |
| Independent Member | Dr R C Desai, Vadodara |
| Convener | Shri P L Mistry, MGVCL |

This complaint is directed against the non-release of new HT connection of 4000 KVA due to pending arrears of previous consumer at the premises.

Today on 19.06.2009, the case of the Complainant Grievance was heard before Consumer Grievance Redressal Forum wherein Ajay B Mittal and Shri Narendra Shantilal Dani appeared on behalf of M/s. Agrawal Mittal Concast P Limited as complainant whereas Shri S R Pandya, DE Halol s/dn appeared as respondent on behalf of MGVCL before the Forum. Both the parties were heard.

The facts of the case are as follows. M/s. Agrawal Mittal Concast P Ltd., registered their application with GEB for a new HT connection for 4000 KVA on 07.05.09 for their proposed factory at plot No.2348 (Survey No.219P3) at Chandrapura. In the same survey number, an HT connection No.41363 for 3500 KVA was given to M/s. Jalan Forging Limited on 14.03.1992. However, the said connection was disconnected due to pending arrears amounting to Rs.3,61,88,241.27 in 1998. The Board for Industrial and Financial Reconstruction (BIFR), during their hearing of case No.131/98 held on 20.07.98 declared M/s. Jalan Forging a sick Industrial unit. The BIFR at the hearing held on 31.10.2002 in this case confirmed its opinion of winding up this company as the promoters were not serious about rehabilitation of that company. The GEB lodged their claim of recovering arrears with the liquidator at Ahmedabad. The said land premises were later purchased by M/s. Agrawal Mittal from the official liquidator.

As per the rules of MGVCL, the purchaser M/s. Agrawal Mittal Concast Pvt Ltd is liable to pay to MGVCL all statutory dues, if any, of the previous owner of the same premises.

On account of pending arrears of the previous owner M/s. Jalan Forging, there appears to be delay in releasing new HT connection to M/s. Agrawal Mittal Concast P Ltd., Aggrieved by undue delay, the party has filed an application dated 2.6.09 before this Forum for Redressal of grievances.

Shri Ajay B Mittal and Shri Narendra S Dani who appeared on behalf of complainant made oral as well as written submission. Their main contention is about the undue delay in release of the HT connection after their application of 7.5.2009 and consequently financial losses. Further, the demand by MGVCL of payment of arrears to the tune of Rs.3,61,88,241.27 plus DP charges pending with the previous owner M/s. Jalan Forging with erstwhile GEB is unjust and not tenable. The land was purchased through the liquidator in High court and as per clause No.15 of Company rule No.1/2003, the purchaser is not required to pay the past dues of the liquidated company. The arrears amount sought to be paid is almost the same as the cost of the land purchased and they can not afford to pay.

The matter of outstanding dues was not conveyed to them by Liquidator or the MGVCL earlier. They further contended that the condition No.2(j) of the erstwhile GEB to recover the pending arrears of previous owner from the new purchaser seeking electric connection was valid only upto 31.03.2005 after which the conditions framed by GERC came into force wherein such a condition of recovery of past arrears from new purchaser does not appear. They finally urged to release the HT connection as soon as possible and withdraw the demand for payment of past arrears of the liquidated company. Any delay would put them into financial losses resulting from delay in production in absence of electric supply.

The Respondent Shri S R Pandya contended that the condition No.2(j) of the erstwhile GEB still applies after the MGVCL has taken-over and demand for recovery of the arrears of old owner from the new purchaser of the premises seeking new connection from MGVCL is in order. The connection will be released as soon as the payment of arrears and estimate for new connection is made. In support of his say, he cited the latest judgement of the Hon’ble Supreme Court dated 07.11.2008 in the matter of Civil Appeal No.6565/2008 in the case of Paschimanchal Vidyut Vitran Nigam Limited and others versus M/s. DVS Steels and Alloys Pvt Ltd., for which the Hon’ble Supreme Court has held that “the Distributor can stipulate the condition that the arrears due in regard to the supply of electricity to the previous owner / occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided”. The relevant provision of the aforesaid judgement is reproduced as under:

> *“When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms*

*subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them."*

*"A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may."*

The Forum Members present at the hearing considered contention of both the parties and perused the records. The members sympathize with the complainant for the delay in release of the HT connection and also for the mental agony arising from the demand for payment of arrears due to previous owner. It is also true that the substance of the condition 2(j) of the erstwhile GEB and now of MGVCL is not found in the conditions framed by GERC. But where GERC is silent, the judgement of the Supreme Court cited above is quite clear and imperative. On perusal of the last judgment of the Supreme Court dated 7.11.2008, the Forum members are of the opinion that the non- release of the new HT connection to the complainant by MGVCL, pending the payment of past arrears of the previous owner by the new purchaser to the MGVCL, is not untenable.

## O R D E R

The Forum is not able to direct the Madhya Gujarat Vij Company Limited to consider granting the new HT connection to the complainant, pending the payment of past arrears due to previous owner.

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| P L Mistry | K R Shah | Dr R C Desai |
| Convener | Member | Independent Member |

S A Pota
Chairman