

**CONSUMER GRIEVANCE REDRESSAL FORUM – URBAN
LEVEL NOIDA POWER COMPANY LIMITED, GREATER
NOIDA**

**OLD COMPLAINT NO. 53 -C/2019
NEW COMPLAINT NO. UF/01/2023**

M/S MRL TYRES LIMITED

...Complainant

Versus

NOIDA POWER COMPANY LIMITED

...Respondent

Quorum:

1. Shri Jitendra Kumar Dhamat (Chairman)
2. Smt. Veenita Marathia (Independent Member)
3. Shri Mulendra Kumar Sharma (First Nominated Member)
4. Shri Satya Prakash Sharma (Second Nominated Member)

Appearance:

1. Shri Nitin Tyagi, Counsel for the Complainant
2. Shri Kapil Dev Sharma, Senior Manager (Legal) on behalf of Noida Power Company Limited

Order:

Date of Hearing: 08.05.2024

Date of Order: 07.06.2024

Order Pronounced By: Smt. Veenita Marathia (Independent Member)



The instant Complaint has been preferred by M/s MRL Tyres Limited (hereinafter referred to as the “**Complainant**”) which is a Company registered under the provisions of Companies Act, 1956 and is engaged in the business of manufacturing tyres at Plot No. 10,11,12 SITE B, Surajpur Industrial Area, Greater Noida, Gautam Budh

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Nagar-201308. The Complainant is having an electricity connection bearing Consumer No. 2000043238 under HV-2 Rate Category (Large & Heavy Power). The Complainant has prayed for the following reliefs against M/s Noida Power Company Limited (hereinafter referred to as "**the Respondent**"), the distribution licensee.

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- a. Refund the amount of Rs. 20,47,122/- (Rupees Twenty Lakhs Forty-Seven Thousand One Hundred Twenty-Two Only) illegally demanded and taken by the Opposite Party from Complainant on the basis of illegal debit note dt. 29.08.2021 along with interest @ 18% p.a. from due date till date of return;
- b. Direct the opposite parties to pay an amount of Rs. 2,00,000/- as compensation for causing mental harassment, agony and cruelty to the Complainant;
- c. Direct the Opposite Parties to pay the litigation expenses of Rs. 50,000/- as well as cost of complaint to the Complainant; and



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d. Pass such other and further/order/s or direction as this Hon'ble Forum may deem fit and proper in the fact and circumstances to be case.

.....”

2. The Complainant has stated that it has been availing services of the Respondent for several years for Industrial use under BP No. 2000043238, Rate Category HV-2, Meter No. NOPL009875, Meter Make Sure, Meter Type E3M054.
3. Further, the Complainant stated that the Respondent, for the purpose of issuing of bill, sent their technicians on monthly basis to ensure the working condition of the Commercial meter installed in the factory of the Complainant. During one such visit, the technician of the Respondent stated that there was a problem in the B phase voltage which was resolved on 07.01.2018 and the Respondent issued an assessment for the duration of 15.12.2017 till 07.01.2018, which was duly paid by the Complainant to the Respondent.
4. The Complainant further added that thereafter, on 29.08.2018, the Respondent issued a debit note dated 29.08.2018 for Rs. 20,47,122/- (Rupees Twenty Lakhs Forty-Seven Thousand One Hundred Twenty-Two Only)



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on the ground of missing B phase voltage electricity consumption during the period of 16.05.2017 to 14.12.2017 due to carbonization resulting in recording of 33.33% less energy.

5. The present Complaint of the Complainant is based mainly on five grounds against the additional debit note dated 29.08.2018 to be unjustified:

- a) The meter box is fully sealed and nothing can enter there, hence carbonisation can be there permanently and not periodically.
- b) Delay of 1 (one) year and 3 (three) months in issuing the debit note is not justifiable.
- c) Absence of any justification on the part of the Respondent regarding why the carbonization was not noticed or brought to the knowledge of the Complainant between May, 2017 till November, 2017 when the meter was found sealed and not tampered with during first inspection in December, 2017
- d) Failure in adopting a transparent process and giving sufficient opportunity to complainant
- e) Raising demand in arbitrary and discretionary manner merely on the basis of self-compiled data.

6. The Complainant contended that it kept on following up with the Respondent on this issue but the Respondent every time threatened the Complainant to pay the bill in



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terms of debit note dated 29.08.2018.

7. Further the Complainant submitted that despite several attempts and efforts, no justification has been provided by the Respondent. Therefore, the Complainant has approached this Forum through this instant Complaint wherein it prayed for the refund of Rs. 20,47,122/- along with interest @ 18% from due date till the date of return along with compensation of Rs.2,00,000/- has been made against the Respondent.
8. The Respondent filed its Reply dated 13.06.2020 to the said Complaint. The Respondent stated that the Meter Testing Team of the Respondent visited the Complainant's premises on 28.12.2017 for periodic testing of the meter, wherein, upon inspection it was found that Voltage of B phase in the meter was missing. The old Test Terminal Box (TTB) was carbonized from the B phase. The same was rectified on 07.01.2018 by replacing the old TTB with a new TTB.
9. The Respondent had issued the Meter Inspection Certificate dated 07.01.2018, wherein it was mentioned that the assessment for the affected period had to be done on the basis of Common Meter Reading Instrument Data (CMRI Data). The Respondent based upon the CMRI data raised a debit note of Rs. 20,47,122/- due to 33.33% less energy recorded by the meter for the period of 16.05.2017



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to 14.12.2017 (wrongly mentioned in the Complaint as 14.12.2018) along with the calculation sheet and meter inspection certificate.

10. The Respondent further clarified that the assessment was to be prepared in accordance with inspection dated 28.12.2017 read with Meter Inspection Certificate dated 07.01.2018 for the entire period. The said assessment was conveyed to the concerned department of the Respondent for issuing a debit note, however; the concerned department vide its letter dated 08.03.2018, mistakenly issued a debit note for a period of 15.12.2017 to 07.01.2018 only. Later on, the concerned department, after the end of the relevant Financial Year audited its records for the last Financial Year wherein it was found that the debit note dated 08.03.2018 did not cover the period from 16.05.2017 to 14.12.2017. Therefore, the Respondent vide its impugned letter dated 29.08.2018 raised an additional debit note of Rs. 20,47,122/- (Rupees Twenty Lakhs Forty-Seven Thousand One Hundred Twenty-Two Only) for the period from 16.05.2017 to 14.12.2017 on the basis of the inspection dated 28.12.2017 read with Meter Inspection Certificate dated 07.01.2018.



11. Further, the Respondent mentioned that vide its additional debit note dated 29.08.2018, it had also furnished the calculation sheet comprising of the assessed

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units.

12. In Pursuance to the Reply dated 13.06.2020 filed by the Respondent, the Complainant filed its Rejoinder dated 07.12.2020 refuting all the averments made by the Respondent in its Reply dated 13.06.2020.

13. Thereafter, on 15.09.2021, after hearing the arguments of both the parties at length, both the parties were directed to bring on record precedents/conventions wherein the exact procedure/exact scientific method as adopted in similar/identical circumstances have been carved out.

14. The Forum specifically directed the Respondent to file the '*additional grounds covering the alleged scientific method and description of devices on the basis of which additional demand has been raised by producing the scientific recognized material*'. Further, the Forum directed the Respondent to produce all such materials/documents/procedure on account of which the additional demand in question had been raised. The Forum also directed the Respondent to stick to the circumstances which gave rise to the raising of the demand in question as the matter is to be disposed on the scientific dictum.

15. Thereafter, in pursuance of the Order dated 15.09.2021, the Respondent filed reply-cum-Application dated 12.10.2021 explaining the entire procedure of fetching the



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meter data, CMRI Report and its legal status with the support of relevant judgments. The Complainant filed its Reply dated 07.03.2022 to the said Application along with an alleged expert report.

16. Thereafter, on direction of the Forum, the Respondent arranged a meeting with their technical officer, Mr. Navin Kumar (Deputy Manager – Metering) and the Counsel of the Complainant wherein the officer of the Respondent explained all the details and procedure. Mr. Navin also clarified before this Forum that the Respondent had not changed the meter as carbonisation was found in the TTB terminal only (which is changed) and not in the meter.

Arguments of both the parties were heard and available material on record was perused.

It is in this back drop, this Forum thinks it is proper to scrutinize and discuss the relevant question involved in the case, relief – wise, as sought by the Complainant. For brevity, the main issues invoked by the Complainant are as follow:

- A. Whether Carbonisation is a continuous process or an intermittent process and in case Carbonisation is intermittent then CMRI Data can be used or not?
- B. Whether raising a supplementary bill for the period (16th May, 2017 to 14th December, 2017) is justifiable or not?



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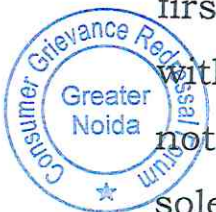
Issue (A)

A. Whether Carbonisation is a continuous process or an intermittent process and in case Carbonisation is intermittent then CMRI Data can be used?

At the outset, it becomes imperative to deal with the concept of carbonisation being the epicentre of the instant Complaint. The Complainant has argued that *Carbonisation cannot be intermittent and it has to be continuous*. The instrument through which CMRI has been done was *never shown and never produced before this Forum*. In the same regard, the Complainant has also annexed an alleged expert report dated 19.02.2022 issued by Mr. Vishnu Gogia of 'Intraiatek-Lightning & Electric'.

On the other hand, the Respondent has submitted that carbonisation was persistent in the TTB, which was replaced immediately during the inspection dated 07.01.2018 and the meter was sealed properly. Further, the Respondent argued that the additional debit note was raised on the same grounds as the first debit note which was paid in full by the complainant without any objections/questions. However, the additional debit note comprised of detailed calculation sheet and was raised solely on the basis of CMRI Data.

The Forum has perused the documents placed on record in this regard. It is observed that the Common Meter Reading Instrument (CMRI) is widely used and is an authentic way of



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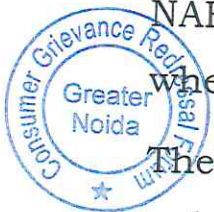
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getting information from the meter installed at any consumer's premise. Since, there is no manual intervention in data extraction through CMRI, error-free reports for activities like energy accounting, technical loss, calculation and industry load patterns can be derived.

Further, this Forum has examined the CMRI Data and observed that CMRI data corroborates the contention of the Respondent that due to the Carbonisation of B Phase energy was not recorded. The process of Carbonisation is dependent on external factors like heat, moisture, temperature etc. Thus, it depends on various external factors. This Forum cannot rely on the so-called expert report attached by the Complainant being done post facto & obtained by agency for which no certification or document was provided proving it to be an expert body.

Therefore, the forum holds that the said meter testing and alleged expert opinion stands no ground as the same has not been done in compliance with the provisions of Supply Code, 2005. The Complainant should have followed the procedure established for meter testing under Clause 5.5(c) of the supply code, 2005; which provides for third party testing of meters from NABL accredited test labs on request of consumer's request when meter is defective.

The arguments in support of continuous carbonisation submitted by the Complainant couldn't be substantiated by the Complainant. The Respondent issued additional debit note (Supplementary Bills) on the basis of the same CMRI data and



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furthermore, the same data was used to raise the first debit note which was already paid by the Complainant relying on the assessment of technician.

Furthermore, as per the settled principles of law, the process of fetching of CMRI data is without any human intervention/involvement since the entire operation of the instrument is automated. Therefore, the objections raised by the Complainant regarding the authenticity and genuineness of CMRI data cannot be accepted.

Further, it is beyond any doubt that the deposition of carbon can be at parts of the cable/terminal/box which may affect the recording of energy intermittently. It is not necessary that the carbon is deposited evenly on the surface of cable/terminal/box.

This Forum on examining the CMRI data for the disputed period concludes that Carbonisation was prevalent which affected the energy recording. The Respondent has charged the Complainant according to the time frame of Carbonisation which affected the recording of energy as recorded during the day not for the entire day/period on the basis of CMRI Data.



As per the above discussion, Issue (A) is adjudicated in favour of the Respondent and against the Complainant.

Issue (B)

Whether raising a supplementary bill for the period (16th May, 2017 to 14th December, 2017) is justifiable or not?

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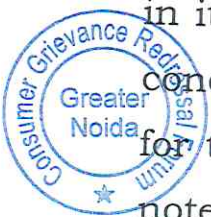
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As per the version of the Respondent, technician of the Respondent visited the site on 28.12.2017 and stated that there is a problem in B phase voltage due to carbonation of TTB which was resolved on 07.01.2018 and subsequently, first assessment was issued for the duration of 15.12.2017 to 07.01.2018 which was duly paid by the Complainant. The Complainant has admitted in its Complaint that the issue and details were shown to them and further, they also relied on the assessment of the technicians.

Thereafter, the Respondent issued an additional debit note (Supplementary Bill) dated 29.08.2018 raising the demand of Rs. 20,47,122/- on the ground of same missing B phase voltage for the period of 16.05.2017 to 14.12.2017. This Forum has examined the objections raised by the Complainant. The Complainant has raised objections regarding the limitation on issuance of additional debit note (Supplementary Bill) dated 29.08.2018, on the basis of principles of natural justice. The Respondent has raised the supplementary bill for the period 16.05.2017 to 14.12.2017 which was not included while raising first debit note dated 08.03.2018. The Respondent has clarified in its reply that after the end of relevant of financial year, the concerned department in its routine practice audited its records for the last financial year wherein it was found that the debit note dated 08.03.2018 had not covered the period of 16.05.2017 to 14.12.2017 while analysing the consumption history and the CMRI data. The Respondent has placed on the record



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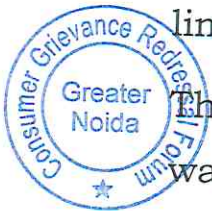
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precedents of the Hon'ble Supreme Court and Hon'ble Electricity Ombudsman on the similar issue in dispute. The Respondent has also clarified that debit note in dispute has been raised on the basis of the inspection report and CMRI data which was used for earlier (first) debit note Dt. 08.03.2018. It is an admitted fact the first debit note was paid by the Complainant. The Hon'ble Apex Court in Assistant Engineer (D1), Ajmer Vidyut Nigam Limited & Anr. V. Rahamatullah Khan alias Rahamjulla, (2020) 4 SCC 650 held as under:

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

From the above Judgement it is clear from the observation of the Hon'ble Apex Court that the law empowers the licensee to raise an additional or supplementary demand. In this instant matter the additional debit note was hence not barred by limitation under any applicable law.

The additional debit note (Supplementary Bill) dated 29.08.2018 was raised on the same grounds as that of the earlier (first) assessment which was raised for the period of 15.12.2017 to 07.01.2018 and the Complainant admittedly paid the said assessment. Therefore, the Complainant cannot now raise the



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grounds of limitation, principles of natural justice and right to be heard.

This Forum in light of the judgment of the Hon'ble Apex Court, judicial precedents and according to the settled principles of law, decides that the Respondent was justified in raising an additional debit note (Supplementary Bill) dated 29.08.2018 amounting to Rs. 20,47,122/-.

As per the above discussion, Issue (B) is adjudicated in favour of the Respondent and against the Complainant.

In terms of above the above complaint stands disposed of.

**Jitender Kumar Dhamat
(Chairman)**

**Veenita Marathia
(Independent Member)**

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उपभोक्ता व्यथा निवारण फोरम
शहरी स्तर, ग्रेटर नोएडा

**Mulendra Kumar Sharma
(First Nominated Member)**

02/08/24

**Prem Kumar
(Prosumer)**



Date: _____

Place: Greater Noida