

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai – 400 001

Telephone No. 22853561

Representation No. N-G(N)-48-08 dt . 14/2/2008

Hi-Tech Communication N. Business Centre..... Complainant

V/S

B.E.S. & T. Undertaking Respondent

Present

Quorum

1. Shri. M.P. Bhave, Chairman
2. Shri. S. P. Goswami, Member
3. Smt. Vanmala Manjure, Member

Complainant

1. Shri. Asif Khan
2. Shri. Saeed Ahmed

On behalf of the Respondent

1. Shri. Deshpande – AO. G(N)
2. Shri. Gaitonde –Supdt. CC (GN)
3. Shri. P.V.Dhoble-Dy.L.A.

Date of Hearing: 4/4/2008

Judgment by Shri. M.P. Bhave, Chairman

M/s Hi-Tech Communication N. Business Centre the complainant has come before the Forum for his grievance regarding waiver of total outstanding amount of Rs.1,09,517.09/- pertaining to previous old consumer M/s. A-1 Traders and requested for immediate sanction of meter connection for the new premises.

Brief history of the case

1. M/s Hi-Tech Communication N. Business Centre, ground floor Room No 2, ground floor, Zaitton Apartment, Cadel Road, Mumbai-16, has approached licensee i.e. BEST undertaking on 1st June, 2007 in Annexure 'C' Format regarding his grievances pertaining to waiver of arrears of old consumer and connection of new meter in their premises. Unsatisfied by the reply of licensee the consumer approached CGR Forum in schedule 'A' Format on 14/2/2008

Consumer in his application, in written submission and during Hearing stated the following

1. The complainant had applied for new meter vide requisition No 70709941 dated 8/3/2007. However, it was learnt that the amount of an arrears of Rs. 1,09,517/- was pending against the name of A-1 Traders. He would like to draw attention to the fact that he had purchased the premises from Lakdawala developers Pvt Ltd., and was unaware of their (A-1 Traders) whereabouts. As per MERC rules and regulations, BEST cannot hold them responsible for the payment of arrears as he doesn't have the details of the same. He has requested to waive the said arrears and connect new meter to their premises in order to start his business at the earliest. He has mentioned that a registered agreement is attached for BEST's reference and needful action at their end.
2. M/s. A-1 Traders was the old tenant of the subject premises. In this context the complainant has enclosed documentary evidence viz copies of Shops and Establishment license issued by BMC under the Bombay Shops and Establishment Act, 1948, in the name of old tenant M/s. A-1 Traders. He has also submitted rent receipts in name of A1 Traders.
3. The old building which was in dilapidated condition was demolished by the developers M/s. Lakdawala Developers Pvt. Ltd., and thereafter the old tenant surrendered his right of tenancy to Hi-Tech Communication. It may please be noted that owners of the property were K. B.H.S. Meherbaksh 1st Wakf and not Amjad Meherbaksh as mentioned by BEST, Mr. Amjad was a Mutavalli of KBHS Meherbaksh 1st Wakf and is also the Proprietor of Hi-Tech Communications.
4. As per the Hon'ble High Court's Order, the sale of the subject property was sanctioned and accordingly M/s. Lakdawala Developers have developed the property and have rightly allotted the shop to the Proprietor of M/s. Hi-Tech Communications as the old Tenant M/s. A-1 Traders has surrendered the Tenancy. It may please be noted that the BMC had sanctioned the plans of this building under section 347(1) of BMC Act and as per rules the building has been constructed.
5. The amount payable if any is due from the old tenant M/s. A-1 Traders as they have used the electricity hence they are liable to pay the same. By no imagination the owner/landlord can be held responsible for the payment of dues of the tenant and moreover the bill is also in the name of the tenant and not in the name of landlord.
6. The alleged dues of Rs. 1,09,517/- were due from A-1 Trader during his occupancy i.e. during the year 1992-93. However, the BEST has taken no action for recovery of the outstanding dues in spite of having full knowledge and information that the old tenant A-1 Traders was in occupation of the premises

and using the power. Surprisingly now in the year 2007 i.e. after 15 years the BEST is claiming the old dues of tenant from the present owner of the premises which has been allotted to him by the Developers.

7. **Consumer in his written submission dtd. 17.03.2008 and received in CGRF on 31.03.2008 stated as follows:**

- 7.1 It is true that the old meter was removed by the BEST, in the month of April 2001, for the dishonor of Cheque of Rs. 1,00,407/- paid by or on behalf of the old tenant/Occupier (A1 Trader) and not by the Applicant which may please be Noted.
- 7.2 It is true that the Old dilapidated Building was demolished by the Developers M/s. Lakdawala Developers Pvt Ltd. Same was explained in our letter dated 11thDecember, 2007. Attached along with the Application.
- 7.3 It is pertinent to note that M/s A-1 Traders, (Old Consumer) had given the premises on License to M/s. Refco & Wessamat Pvt Ltd an Associate of M/s. Perfect Ice Co. Delhi. Who were in the possession of the premises and were paying the Bills to BEST since last many years, same can be verified by the Records of BEST. Which surprisingly have not been submitted by the DECC (N/W).
Annexed herewith is Exhibit-A Copy of Shops & Establishment License of Refco during the disputed period clearly proves that the Licensee of M/s. A-1 Traders, Refco & Wessamat Pvt Ltd, were in possession of the premises and not the Applicant.
- 7.4 Though the dilapidated building was demolished by the Developers, as per the necessary permissions and Orders. M/s. Hi Tech Communication with the Consent of Developers agreed to take the rights, on the specific agreed terms and conditions of the proposed developments by Lakdawala Developers Pvt Ltd and subject to the old Occupant vacating and giving possession back to Developers for the construction of a New Building which has been done.
- 7.5 It is an undisputed fact that the Old building was demolished and the Developers for the first time gave the actual physical possession of the shop premises to Hi Tech Communication in the month of August 2006, same is recorded in the Agreement dated 8/8/06, submitted earlier. And prior to this the premises were in occupation and in use of M/s. A-1 Traders and their Licensee as is explained above.
- 7.6 Hence M/s. Hi Tech Communications for the first time were put in actual and physical possession on 8th of August 2006 of the premises. Accordingly thereafter an application was given to BEST for New Connection which is pending for reason that old Consumer A-1 Traders cheque has been dishonored and they have an Outstanding Bill of Rs.1,09,517/-. Hence this grievance for redressal.
- 7.7 As explained above that M/s. Refco & Wessamat Pvt Ltd, were occupying the premises as Licensee of M/s. A-1 Traders and they were paying Bills etc to BEST. Accordingly the dishonored cheque of Rs.1,00,407/- was issued by them and not by the Applicant M/s. Hi Tech

Communications and now we, the Applicants are being harassed unnecessarily for their wrong doings and BEST has till date not taken any action against them since last several years for the reasons best known to them only. It is submitted that BEST concerned officer should be held responsible for taking No action and supporting the earlier consumer by not taking any action against them.

- 7.8 It is pertinent to note that BEST in last several years since 2001 was sleeping over the matter and took No Action against the person whose cheque was dishonored and only after receiving our Application for the first time after 6 years is taking action on the matter and not giving us the connection for no fault or ours.
- 7.9 It is true that Hi Tech Communication has been given physical possession in August 2006 by M/s. Lakdawala Developers as explained above, M/s. Hi Tech Communication was unaware of the bouncing of the cheque and also unaware of the present addresses of M/s. A-1 Traders and their Licensee M/s. Refco & Wessamat Pvt Ltd, who were originally from Delhi. It may please be noted that they were consumers of BEST in Mumbai as they were running another premises at Worli. Hence BEST is and was well aware of the addresses of their Consumers. And are now putting the blame on the Applicant, whereas they are and always were well aware of the addresses of their old Consumers.
- 7.10 It is vehemently denied that We/ Hi Tech Communications were in possession of the premises in 1998, As explained above the building was to be demolished and we got the physical possession only in the year 2006 and same is recorded in the Agreements submitted.
- 7.11 Through the Letter from A1 Traders is on Stamp Paper of 1998, and clearly mentions that "the Undersigned would like to handover possession" however same was pending as the premises was in use and occupation of the Licensee M/s. Refco & Wessamat P Ltd, as the matter was under dispute since 1998 and same was settled later and we got the actual and physical possession from Developers in August 2006. The Learned DECC (N/W) is misguiding this Forum by mentioning that A-1 Traders had handed over the premises to Hi Tech Communication. The letter Annexed as Ex-C is attached and can be read by the learned officer which clearly mentions "the Undersigned would like to handover possession".
- 7.12 It is surprising that The learned DECC(N/W) is wrongly stating that Mr. Amjad Aziz is Proprietor of A-1 Traders, whereas he himself has Annexed the shops and Establishment License of A-1 Traders which clearly mentions the name of the Employer. Secondly at the time of giving Connection to M/s. A-1 Traders all papers documents must have been submitted by them and same are on records of BEST. It is requested that DECC (N/W) may please be asked to submit all the papers which would automatically spell the truth, as who is the Owner of A-1 Traders, which the learned officer is hiding for reasons best known to himself, as same is in the records of BEST and has been purposely not submitted only to misguide the Forum and to side with Old Consumer and their Licensee for reasons best known to the learned officer. As these documents are on BEST office record which would prove that

statement of the Officer is false and frivolous and is given only to misguide the Authorities.

- 7.13 It is once again denied that Mr. Amjad Aziz is Owner of A-1 Traders or M/s. Refco & Wessamat Pvt Ltd, as is falsely alleged by the DECC(N/W).
 - 7.14 It is respectfully submitted that the BEST since 2001 has taken No Action on the Old Consumer or their Licensee and surprisingly neither did they take any action proceeding for the Dishonourment of Cheque since last several years, and now are harassing us for their taking No Timely Action against the Old Consumer.
 - 7.15 Accordingly it is respectfully submitted that this Forum should direct the concerned department of BEST to take action against the Non Payer and take action as per law against the old Consumer / Occupier or the person whose cheque has been Dishonoured and dues if legitimate be recovered by BEST form them and not from the applicant. It may also be further ordered that Connection to the Applicant be given immediately and the Applicant should not be harassed by the department.
 - 7.16 That on page 53/C, of their submission the OAGN Comm. On 26/2/08, conveys in writing that the File 107060 is not traceable. It is requested that this Forum should take a serious note of same as to Why and how can the old File goes missing from the records of BEST. And the Applicant is now being harassed by BEST.
8. Except M/s. Hi Tech Communication all others have got meter connection. BEST should have received the outstanding amount from M/s. Lakdawala Developer at the time of giving meter connection to the premises.
 9. He is ready to give address/Tel No. of M/s. A1-Traders.
 10. The shop premises might have been divided among A1-Traders and M/s. Refco & Wessamat Pvt Ltd.
 11. If the premises are same they cannot be held responsible for the whole outstanding amount as per 10.5 clause of MERC Regulation.
 12. Mr. Amjad Aziz was one of the partners of the developers.
 13. M/s. Lakdawala Developer Ltd, have cheated us as regards installation of meter.
 14. Till the year 2000 M/s. Refco & Wessamat Pvt Ltd was using the premises.

BEST in its written statement and during hearing stated the following:

1. The meter No.L852834 was installed under A/c No. 638-185-027 in the name of A1 Traders. The meter was removed on 27/4/2001 for non payment of arrears of Rs.1,09,517.09/-. On 16/5/2001 consumer had made payment of Rs.1,00,407/- by cheque, which was dishonoured.

2. During site investigation on 2/4/2004 it was noticed that the old premises was demolished and construction of new building was in progress. Efforts were made on 3/11/2005, 4/5/2006, 8/11/2006, 2/7/2007, however, concerned customer was not traceable at site.
3. M/s. Hi-tech Communication has registered requisition No 70709941 dtd. 8/3/2007 for new connection of supply at 10, S.V.Savarkar Marg, Cadel Road, Zaitton Apartment, Mahim, Mumbai-400 010. As there was outstanding bill of Rs.1,09,517.09/- pending against the old consumer M/s. A-1 Traders the same bill was served to new applicant.
4. Proprietor of M/s. Hi-Tech Communication had stated in his letter that they had purchased the premises from Lakdawala Developers Pvt. Ltd., and were unaware of their whereabouts and as per the MERC Rules and Regulations the undertaking could not recover the previous consumer's arrears from them. They have enclosed the copy of the agreement dtd. 3/8/2006 and tax receipt for the month of April 2007.
5. The notice dated 21/2/1998 submitted by M/s. Hi-Tech Communication along with the application dtd. 14/2/2008 under Annexure 'A' is self explanatory that A-1 Traders of Aziz Manjil had handed over the premises to M/s. Hi-Tech Communication.
6. It is clear that same premises is occupied by M/s. Hi-tech Communication from 21/2/1998.
7. Now outstanding accumulated from the year 1/6/1999 to 16/11/2000 amounting to Rs. 1,09,517/- and during the said period the premises was in possession of M/s. Hi-Tech Communication.
8. They have scrutinized the agreement submitted by the consumer and it is observed that agreement is executed with M/s. Lakdawala Developers Pvt. Ltd., who is Developer of the one part and (1) Mr. Aziz A. Meherbaksh (2) Mr. Abdul Haq Shaikh and (3) Mr. Amjad Aziz Meherbaksh of the Second part and M/s. Hi-tech Communication business Centre through its proprietor, Mr. Amjad Aziz Meherbaksh. Schedule of the property also refers to shop No 2, Ground floor known as A-1 Traders of the building, Zaitoon Apartment at Cadel Road, Mumbai-400016. The earlier consumer was A-1 Traders having A/c No 638-185-027, Meter No L852834 installed in the premises was removed on 24/7/2001 due to non payment of arrears from 1/6/1999 amounting to Rs.1,09,517.09/-. The fresh requisition is now made by M/s. Hi-tech Communication Business Centre whose proprietor is Mr. Amjad Aziz Meherbaksh. It is significant to note that the owner/confirming party is also Mr. Amjad Aziz Meherbaksh. This clearly indicates that A-1 Traders was also the business of Mr. Amjad Aziz Meherbaksh. In order to avoid payment of arrears of A-1 Traders, M/s. Hi-tech Communication is taking cover of being a new consumer. In fact there is an agreement dated 14/10/2002 between the developer and the tenant i.e. M/s. Hi-tech Communication regarding allotment of ownership flat/block in the new building to be constructed on the said property by way of alternate accommodation. Same has been informed to the customer vide our letter dated 16/11/2007.

9. In view of the above, we say that M/s. Hi-tech Communication and A-1 Traders proprietor is same, as such consumer's request for relief is not justified, hence consumer may be directed to pay the outstanding amounts of Rs. 1,09,517.09/- which is legitimate to BEST Undertaking.
10. Consumer is registered as A-1 Traders.
11. BEST decided that premises of A-1 Traders and Hi Tech Communication are the same. Premises were handed over by M/s. A-1 Traders to M/s. Hi Tech Communication in the year 1998 as per agreement dtd. 21.02.1998.
12. Outstanding amount is from 5/01/1999.
13. BEST doesn't know anything about M/s. Refco & Wessamat Pvt Ltd as the said firm is not BEST consumer.

During the discussion

1. The complainant could not give satisfactory answer for the rent receipt of shop premises in the name of M/s. Hi Tech Communication for the month March 1998.
2. The complainant agreed to give the address of the A1 Trader to BEST if required.

Observations

1. Consumer during Hearing and in his written submission stated that they have received actual/physical possession of the premises from M/s. Lakdawala Developers in August 2006.
2. The agreement between the developer and the complainant clearly shows that the complainant has not purchased the said premises. It has been given to the complainant because complainant was occupying the premises before reconstruction.
3. The rent receipt submitted by the complainant (Receipt No 790) clearly shows that M/s. Hi Tech Communication was in the possession of shop premises from March 1998.
4. In view of above observations it is evident that the complainant M/s. Hi Tech Communication was in possession of shop premises from 1998. Hence, the outstanding amount for the disputed period pertains to Complainant himself.

ORDER

1. The request of the complainant to waive the amount is rejected.
2. Copies be given to both the parties.

(Shri. M. P. Bhave)
Chairman

(Shri. S. P. Goswami)
Member

(Smt. Vanmala Manjure)
Member