



WP-11345-2023.036 BHC-AS:14611

Digitally signed
by SHAGUFTA
QUTBUDDIN
PATHAN
Date:
2026.03.26
18:30:22
+0530

SHAGUFTA
QUTBUDDIN
PATHAN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11345 OF 2023

Maharashtra State Electricity Distribution
Company Limited,
Office of the Superintending Engineer,
Vashi Circle, Vidhyut, 1st Floor, Plot No.5,
Section 17, Vashi, Navi Mumbai-400703
Navghar (E), Vasai Road
Email Id :- sevashi@gmail.com

...Petitioner

Versus

M/s. Revive Realty Private Limited,
Plot No.D-41/1, Turbhe Mide Road,
MIDC Industrial Area,
Turbhe, Navi Mumbai,
Maharashtra 400705

... Respondent

*Mr. Rahul Sinha a/w Mr. Soham Bhalerao and Mr. Harshit Tyagi i/b DSK
Legal for the Petitioner -MSEDCL*

*Mr. Akshay Patil a/w Mr. R. P. Shirole i/b Khare Legal Chambers for the
Respondent*

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : MARCH 23, 2026

PRONOUNCED ON : MARCH 26, 2026

JUDGMENT :

1. By the present petition, the challenge is to the order dated 31st October 2022 passed by the Appellate Authority under Section 127 of the Electricity Act, setting aside the final assessment order and bill



amounting to Rs.4,04,31,638/-, and the Petitioner has been directed to revise the final assessment bill to Rs.1,46,72,398/- for usage of total 6,31,940 units, excluding the non-tariff components.

2. It is submitted in the petition that on 8th December 2010, the Respondent had applied for fresh connection of electricity for the purpose of manufacturing of rolling mill machineries and accessories and an electricity connection was granted with connected load of 950 KW and maximum demand of 800 KVA. On 8th July 2011, the electricity was connected to the Respondent's premises. On 16th November 2017, the Petitioner's officers conducted a spot inspection of the Respondent's premises, where it was observed that the electricity connection had been extended to (a) SBI Global, having a load of 389.83 KW, and (b) M/s. Primetals Technologies India Private Limited, having a load of 574.42 KW. During the visit, the officers found that the Respondent had installed four sub-meters for distributing electricity to SBI Global and M/s. Primetals, and for the Respondent, who was using it only for office purpose and not for the sanctioned industrial activity. The combined total load of the premises was 1048.9 KW, which was much above the sanctioned load of 950 KW. On 10th January 2017, after the spot inspection was conducted, an application was made by the Respondent for release of electricity connection



through a tripartite agreement. On 3rd November 2018, the findings of the inspection report dated 16th November 2017 were confirmed, and it was found that the Respondent was raising electricity bills to SBI Global and M/s. Primetals through separate bills, which was an unauthorised supply of electricity.

3. The revised sanction for power supply in respect of SBI Global and M/s. Primetals was granted under the multi-party agreement, subject to payment of assessment charges, which was subject to the outcome of the inspection reports. On 22nd January 2019, the Assessing Officer raised a provisional bill of Rs.11,37,57,474/- on the Respondent for the period from July 2011 to November 2018. After considering the objections of the Respondent, a detailed final assessment order was passed by the Assessing Officer on 20th February 2019, directing the Respondent to pay a sum of Rs.4,04,31,638 for the period from July 2011 to November 2017, i.e., up to the first inspection report dated 16th November 2017. The final assessment order dated 20th February 2019 was challenged in appeal under Section 127 of the Electricity Act, 2003, and the impugned order came to be passed. Hence, the present petition.

SUBMISSIONS :

4. Mr. Sinha, learned counsel appearing for the Petitioner submits that the Respondent had sub-let the entire premises to SBI Global and



M/s. Primetals and had installed sub-meters. He submits that there was a single-point connection and the provisions of Section 12 of the Electricity Act does not permit the Petitioner to distribute the electricity for which the Respondent has to follow either the franchise model or apply for individual connections. He submits that there was an unauthorised use of electricity under Section 126 of the Electricity Act, by reason of parting with the electricity connection and usage of excess load. He submits that the provisional assessment was by reason of the unauthorised use and the final assessment had taken place by considering the usage of electricity by Primetals, SBI Global, and the Respondent. He submits that the impugned order directs revision of the assessment bill for 6,31,940 units for which there is no basis and there is also no basis for reduction of the non-tariff components. He submits that the intention is not a material factor to be considered in unauthorised usage under Section 126, which assumes importance under Section 135 of the Electricity Act pertaining to theft of electricity, drawing support from decision of **Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO) & Anr. vs. Sri Seetaram Rice Mill**¹. He has taken this Court in detail through the findings of Appellate Tribunal in **K. Raheja Corporation Pvt. Ltd. vs. Maharashtra Electricity Regulatory Commission & Anr.**²

1(2012) 2 SCC 108 : 2011 SCC OnLine SC 1419

2Appeal Nos.155/2010 & 156/2010 decided on 11.07.2011 by the Appellate Tribunal for Elec.



He submits that there was basis for calculation of the final assessment bill by taking into consideration the units consumed by the three entities. He submits that the Respondent had sub-let the premises since the year 2011 which was unauthorised use of electricity and hence, the entire usage from 2011 to 2017 was unauthorised.

5. *Per contra*, Mr. Patil, learned counsel appearing for the Respondent submits that in July 2011, there was only one entity and the entire usage could not have been termed as unauthorised. He submits that the multi-party connection was given in the year 2016 solely to enable pro-rata calculation of electricity usage by the three entities and the Respondent was unaware that it could be unauthorised distribution of electricity. The Appellate Authority has considered the entire units consumed by SBI Global. He submits that from 2011 to 2017, which has been accepted by the Respondent. He submits that subsequently, there were adjustments and points out to the document dated 24th March 2023 issued by the Petitioner accepting the order of the Appellate Authority. He submits that thereafter, the present petition has been filed. Which is not maintainable. He submits that the final assessment order dated 20th February 2019 imposing penalty of about Rs.4 crores, does not contain any calculation or working and therefore, the same was rightly set aside by the Appellate Authority. He submits that the fresh sanction



dated 21st May, 2019 granted by Petitioner is also for industrial activity confirming that there is no commercial activity. He submits that there is no warrant for interference with the well reasoned order under Article 227 of the Constitution of India.

6. In rejoinder, Mr. Sinha submits that as there was sub-lease of the premises in the year 2011, it constituted an unauthorised use of electricity. He submits that the provisional assessment assessed the electricity charges for the period from July 2011 to November 2018, which was reduced to the year 2017 and therefore the reduction from Rs.11 crores to Rs.4 crores.

REASONS AND ANALYSIS :

7. The Appellate Authority has crystallised the factual position based on the documents on record that on 26th November 2010, the entire subject premises was taken on lease by one M/s. Morgan Construction Company Private Limited from the Respondent and thereafter, the electricity connection was provided to the said premises on 31st January 2011 for industrial use. The name of M/s. Morgan Construction Company Private Limited came to be changed to M/s. Siemens Ltd. to M/s. VIA Metals Technologies Pvt. Ltd. to M/s. Primetals Technology India Private Limited.

8. On 28th July 2016, by virtue of an agreement executed between the Respondent and SBI Global, part of the Respondent's premises,



being the ground floor, first floor, and second floor, was taken on license by SBI Global. On 16th January, 2017, the Respondent set up separate sub-meters for Primetals Technology India Pvt. Ltd. and SBI Global.

9. There are no submissions canvassed to dispute the factual position that (a) in the year 2010, M/s. Primetals Technologies Pvt. Ltd. under the erstwhile name was in occupation of the entire premises and (b) in the year 2017, the Respondent set up sub-meters for distribution of electricity to SBI Global and M/s. Primetals Technologies Pvt. Ltd. As the assessment is based on unauthorised use of electricity, it would apposite to refer to the relevant statutory provisions. Section 12 of the Electricity Act, 2003 permits only the person authorised by grant of license under Section 14 or exempted under Section 13 to distribute electricity. Section 126 deals with assessment in case of unauthorised use of electricity and the Explanation to Section 126 defines unauthorised use of electricity to include usage of electricity by a means not authorised by concerned person or authority or licensee.

10. The statutory provision makes it evident that the usage of electricity through means which is unauthorised constitutes an unauthorised use of electricity. In the present case, the usage of electricity by SBI Global was by way of a sub meter which constituted unauthorised means. Till the electricity was consumed by M/s.



Primetals Technologies Pvt. Ltd., it was a single point supply and upon sub-meters being installed, the Respondent engaged in distribution of electricity which constituted unauthorised use of electricity.

11. The Appellate Tribunal in case of **K. Raheja Corporation Pvt. Ltd. vs. MERC & Ors.** in Appeal No. 155 of 2010 and Appeal No. 156 of 2010 (supra), considered the issue relating to discontinuation of single point supply while deciding the question of justification of order of Commission abolishing single point supply and instead directing HT industrial and commercial category consumers undertaking sub distribution to mixed load to operate through franchise route or individual connection. After considering the relevant statutory provisions, it held that consumer receives electricity only for his own use and excludes a situation where consumer can sell part of that energy or entire energy to different people for their respective consumption. It held that concept of consumer does not extend to situation where number of end users each living separately in a building and connected to consumer or owner of a building are conjoined together. A consumer cannot be permitted to maintain a distribution system of his own for distribution to end users which is not authorised by law. When through a single point supply, power is traded, it cannot be said that such a transaction would be legal.



12. Though Mr. Sinha would read the decision as laying down a proposition that even where the entire premises is leased to a third party, there is unauthorised sale of electricity, I am unable to subscribe to the reading by Mr. Sinha of the said decision. The decision does not deal with a factual situation where the entire premises is leased/licensed to third party and contemplates an eventuality where there are number of independent end users to whom power is sold through a single-point supply. It is not the submission of Mr. Sinha that Primetals Technology Pvt. Ltd. who had taken the entire premises on lease in the year 2011, was not using the electricity for the sanctioned purpose of industrial activity. The decision of Appellate Tribunal when applied to the present case, the discontinuation of single point supply by installation of sub-meters would constitute unauthorised sale of electricity. It is the parting of electricity, which constituted unauthorised sale of electricity which parting occurred upon installation of sub meters, and, unauthorised consumption of electricity by the beneficiary i.e. SBI Global who was being supplied power through unauthorised means and was carrying out commercial activities on industrial power connection which would be liable for imposition of penalty.

13. The Hon'ble Apex Court in the case of **Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO) &**



Anr. vs. Sri Seetaram Rice Mill (supra), has considered the distinction between Sections 126 and 135 of the Electricity Act to hold that Section 126 applies where the electricity is being consumed in violation of the terms and conditions of supply, leading to malpractices, even in the absence of intention. It held that *mens rea* is not essential for considering the unauthorised use of electricity which would be material in case of theft of electricity under Section 135 of the Electricity Act.

14. The Assessing Authority has considered the units consumed by the Respondent, M/s. Primetals Technologies Pvt. Ltd. and SBI Global for the period from July, 2011 to November, 2017 and has billed all three entities at double the commercial rate including non tariff components. The assessment is clearly flawed as (I) the entire premises was being used by M/s. Primetals Technologies Pvt. Ltd. since the year 2011 for industrial purpose. There is no finding that the electricity usage was for commercial purpose. (II) it is only in the year 2017 that SBI Global took possession of part of the premises and used the electricity for commercial purpose and (III) the unauthorised use of electricity commenced upon discontinuation of single point supply which took place on installation of sub meters. It cannot be disputed that excess load consumed would amount to unauthorised use, however, the Assessing Authority has not assessed the penalty on the



basis of excess load but has treated the entire period as unauthorised which is contrary to the language of Section 126 of Electricity Act, 2003. Section 126 provides for imposition of penalty only for unauthorised usage of electricity and the entire use could not be termed as unauthorised. The inspection reports are silent about the units consumed by the entities, which could be termed as unauthorised and there is no basis for terming the entire usage as unauthorised.

15. The Learned Appellate Authority has considered that in the inspection report of 3rd November, 2018 there is no mention about the unauthorised units and there is no basis for billing the entities for the period from July, 2011 to November, 2017. It noted that despite the inspection on 16th November, 2017 there was no action taken under Section 126 of Electricity Act. The Learned Appellate Authority has rightly noted that there is no examination by the Assessing Authority as to the units which are consumed through the unauthorised sub meters and no assessment of unauthorised usage of electricity. As the use by SBI Global led to multi party connection, the Learned Appellate Authority has rightly considered the units consumed by SBI Global and held the same to be unauthorised for which penalty can be imposed.

16. The provisions of Section 126 provides for the computation of the penalty for the unauthorised use of electricity at a rate equal to twice the tariff applicable. The non-tariff components were rightly



deducted as the levy of the penalty could not include the non-tariff components in view of the clear language of Section 126(6). The non-tariff components had been levied while billing the consumer and the present case was a case of imposition of penalty under Section 126(6).

17. In light of the above, there is no reason to interfere with the impugned order dated 31st October, 2022 passed by the Learned Appellate Authority under Article 227 of Constitution of India. Resultantly, the Petition fails and stands dismissed.

[SHARMILA U. DESHMUKH, J.]