COURT OF THE LOKPAL (OMBUDSMAN),

 ELECTRICITY, PUNJAB,

PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,

 S.A.S NAGAR (MOHALI)

Appeal No. 63/2017

Date of Registration: 04.10.2017

Date of Hearing : 22.02.2018 Date of Order: 06.03.2018

 &27.02.2018

 **In the matter of**

Jindal Agro Mills Pvt. Ltd,

 13KM Stone Chandigarh Road,

Ludhiana-141 112.

…….Petitioner

Versus

Additional Superintending Engineer,

DS Division,

 PSPCL, Samrala.

 .….Respondent

**Present For**

Petitioner 1. Shri Sukhminder Singh,

 Petitioner’s Representative

Respondent 1. Er.Sukhjit Singh,

 Additional Superintending Engineer 2. Er. Mulkh Raj, Assistant Engineer

 The Petitioner preferred an Appeal in this Court against the order dated 04.08.2017 in Case No. CG-148 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

*“The amount charged to the Petitioner vide memo no. 1447 dated 22.06.2016 on account of difference in tariff rate and MMC for PIU and General category is correct and recoverable.*

*Forum further decides that the balance amount recoverable/refundable, if any, be recovered/refunded from/to the consumer alongwith interest/surcharge as per instructions of PSPCL.”*

Though the hearing of this case was fixed for 22.02.2018, but the Addl. S.E, DS Division, PSPCL, Samrala, vide memo no. Spl./1 dated 22.02.2018 followed by e-mail of the same date, requested to postpone the hearing as he had to attend a meeting with the Chief Engineer/South, PSPCL, Patiala on the said date. However, he deputed Er. Mulkh Raj, AE, DS Sub Division, PSPCL, Kohara to deliver the request for postponement of hearing by this Court. In view of the position explained above, the case was deferred for consideration on 27.02.2018.

2. **Condonation of Delay**

At the outset of the proceedings on 27.02.2018, the issue of condonation of the delay in filing the Appeal in this Court by the Petitioner was taken up.

 PR submitted that on the basis of the order dated 04.08.2017 of the Forum, the AEE/Kohara, vide memo. no. 995 dated 24.08.2017, asked the Petitioner to deposit the balance amount left out of total disputed amount of the case i.e. Rs. 5,30,172/-. The consumer had deposited Rs.1,06,035/- on 22.06.2017 as 20% of the disputed amount, before registration of the case in the Forum. Subsequently, additional sum of Rs. 1,06,035/- was deposited on 28.08.2017, vide receipt no. 03/47808. Thereafter the Petitioner was out of the State for sudden and unavoidable engagement due to which, filing of Appeal in this Court got delayed and the same was filed on 04.10.2017. PR requested to condone the delay in filing the Appeal and entertain the same for consideration on merits.

 As per material available on record, the Respondent, in its written reply to the Appeal, did not offer any comments on the prayer of the Petitioner for condonation of delay in filing the Appeal in this Court. Even, during the course of oral discussions in the Court on 27.02.2018, the Respondent did not object to the request of the PR for condonation of delay.

 *I observe that order dated 04.08.2017 was sent to the Petitioner by the Forum, by Registered Post, vide memo no. 2144-45 dated 04.08.2017 and the same might have been delivered to the Petitioner by 11.08.2017. Accordingly, the Appeal was required to be filed within one month of the date of receipt of order of the Forum, i.e. by 11.09.2017 in terms of provisions contained in Regulation3.18 (ii) of PSERC (Forum and Ombudsman) Regulations-2016. Actually, the Appeal was filed in this Court by the Petitioner on 04.10.2017 i.e. 23 days after the expiry of the stipulated period. Though, the reasons given by the Petitioner for the delay are not very convincing yet I am of the view that non-condonation of the delay would not meet the ends of ultimate justice and deprive the Petitioner of the opportunity, required to be afforded to present its case on merits. Accordingly, the delay of 23 days in filing the Appeal in this Court by the Petitioner is condoned and the Petitioner is allowed to present his case.*

**3. Facts of the Case**

 **The relevant facts of the case are that:**

1. The Petitioner was having a Large Supply category connection (General Industry) with Sanctioned Load initially of 494.026kW and Contract Demand (CD) of 495kVA.
2. The Petitioner applied for reduction in CD from 495kVA to 389kVA and change of category from General Industry to Induction Furnace vide Application & Agreement No. 40889 dated 04.09.2014 which was sanctioned by Sr. Executive Engineer, DS Division, PSPCL, Samrala on 07.10.2014.
3. The reduction in load was effected on 08.01.2015 against Sundry Job Order No. 93/44714 dated 11.12.2014. Accordingly, the Petitioner installed the Induction Furnace and started the work in the factory.
4. The Master File of the case was sent by DS office to Centralized Billing Cell, PSPCL, Ludhiana, in the month of 02/2015. However, the bills for the Billing Cycle 01/2015 to 03/2016 continued to be raised as per existing load and category of conenction.
5. In the month of 04/2016, it came to the notice of the Sub Division, PSPCL, Kohara that the bills, for the period from 01/2015 to 03/2016, were raised on the basis of old load and change in nature of industry was not shown as such in the said bills.
6. The Respondent again sent Master File to the CBC, PSPCL, Ludhiana who prepared Revised Bill Statement (RBS) No. 22/2016 dated 19.05.2016 for Rs. 5,30,172/- for the Billing Cycle - Jan 2015 to March 2016 due to difference in Tariff rates of General Industrial Load and PIU in accordance with the Tariff Order issued by the PSPCL vide CC No. 25/2016.
7. The Petitioner was directed by the Respondent to deposit the above amount on June 22, 2016 followed by reminders dated 05.08.2016 and 26.09.2016. Finally, a notice was issued on 10.04.2017 to deposit the amount alongwith Surcharge and Interest.
8. The Petitioner did not agree with the RBS and filed an Appeal in the Forum which after hearing, upheld vide order dated 04.08.2017 Para 1, referred at Page-1, that the demand raised against the Petitioner is correct and recoverable.
9. Aggrieved with the decision of the Forum, the Petitioner filed an Appeal in this Court to set set-aside the decision of the Forum, allow the Appeal and pass order to quash the demand of Rs. 5,30,172/- (amount charged due to difference of Tariff and MMC) for the period from 01/2015 to 03/2016 in the interest of natural justice and fairness.

 **4. Analysis and Findings**

 I have gone through the written submissions made in the Appeal by the Petitioner and written reply of the Respondent as well as oral submissions made by the Representatives of both the Petitioner and the Respondent alongwith material brought on record by both the sides.

 The issue requiring adjudication is the legitimacy of the amount charged, vide memo no. 1447 dated 22.06.2016, on account of difference in Tariff rate and MMC for PIU and General Category.

 *The analysis and my findings based on the same are deliberated as under:*

1. PR argued that the supply from the connection was being used for Induction Furnace (PIU) for the last about two years, after the approval of reduction of load and change of category by PSPCL. It was not hidden that there was slump in the industry and every Induction Furnace consumer adjusted its production/work, after doing cost benefit analysis and keeping in mind the liability of MMC payable to the PSPCL. Needless to mention that the cost of Power Supply was the key element of cost of production in Furnace industry. Sometimes, the management of Furnace industry consumers had to reduce the rate of job works from the rates as prevailing in the market, to increase the production/work just to cover the MMC payable to the PSPCL. The Petitioner added that the production could have been increased/decreased suitably, considering MMC payable, only if PSPCL had charged applicable MMC from the month of reduction of load and change of category by the PSPCL, instead of charging the difference of MMC for a period of 15 months. Thus, demand raised (especially difference of MMC) for a period of 15 months was unjustified and liable to be withdrawn. The matter was placed before the Forum but the Forum did not mention in its order, anything about rejecting the very fair submissions of the Petitioner. Thus, the decision of the Forum was wrong, biased and non-speaking and the same was liable to be set-aside.

The Respondent, in its defence, contended that the Petitioner applied for reduction in Load from 495kVA to 389kVA and change in nature of industry from General to PIU vide Application & Agreement No. 40889 dated 04.09.2014. In response, the SJO No. 93/44714 dated 11.12.2014 was approved and compliance was done on 08.01.2015. The Master File of the case was sent to the Senior Executive Engineer, Centralized Billing Cell (CBC), PSPCL, Ludhiana during 02/2015 for incorporating necessary changes about reduced Load in their system/record. However, during 04/2016, it came to the notice of the Sub Divisional Office, PSPCL, Kohara that bills for the month of 01/2015 to 03/2016 were raised on the basis of old (pre-reduced) Load and nature of industry was not changed in the bills raised. The Respondent then sent the Maser File again to CBC, PSPCL, Ludhiana which, in turn, issued RBS No. 22/2016 dated 19.05.2016 for Rs. 5,30,172/-. On the basis of this RBS, the AEE/DS, Kohara issued a notice to the consumer vide memo no.1447 dated 22.06.2016 followed by reminders vide memo no. 1680 dated 05.08.2016 and 2006 dated 26.09.2016. The consumer intimated to the Sub Divisional office that it wanted to deposit the amount under protest in 12 installments and had applied for the same to the office of Dy. Chief Engineer/DS Circle, Ropar. The Petitioner, however, failed to produce any letter of approval from the said office. Therefore, a notice was finally issued to the consumer vide memo no. 369-70 dated 16.04.2017 to deposit the amount alongwith interest and surcharge. The Petitioner, instead of depositing the amount charged, approached the Forum and after rejection of its Petition, filed an Appeal in this Court. The Respondent added that RBS had been issued as per instructions of the PSPCL. As per CC No. 25/2016, the MMC for PIU industry was Rs. 495/- per kVA and the consumer was falling under this category. The plea of the Petitioner about doing the cost benefit analysis, to increase/decrease the production, after considering the MMC payable to the PSPCL, was not relevant / valid.

*I observe that the Petitioner, being a Large Supply category consumer must have been aware about the financial implications including the charges leviable when it sought approval of the Distribution Licensee for reduction in Load and change in category from General to PIU industry. Besides, it also owed responsibility to pinpoint and bring to the notice of the Respondent about receipt of electricity bills continuously for 15 months mentioning therein the old (pre-reduced) Load and also incorrect category i.e. General industry. The Petitioner must have noticed that even after reduction in Load effected in January 2015, the bills received subsequently for 15 months were more or less of the same magnitude as received prior to reduction in Load in 01/2015. The PR has incorrectly pleaded that the dues claimed by the Respondent for the less billed amount during the disputed period, are unjustified and needed to be withdrawn.*

*I also observe that the officers/officials of the Respondent also showed laxity by not monitoring the events relating to incorporation of the changes made after reduction in load and conversion of category from General to PIU, in the billing system/record as evidenced by the fact that the bills received from CBC, were issued after affixing signatures thereon without bothering to verify the Sub Divisional record. Had this been done on receipt of bill from CBC for January 2015, the dispute would not have arisen.*

**ii)** PR next contended that every supplier/manufacturer especially Furnace industry, fixed the prices of product/rates of job work after considering the cost of production. In the case of Furnace Industry, the cost of Power was the major element of input cost, as such, the Petitioner had charged/fixed the prices of product/job works, during the period 01/2015 to 03/2016, keeping in view the cost of Power, as per electricity bills issued by the PSPCL during this period. Now, after a period of more than 15 months, the Petitioner could not recover the huge difference of Rs. 5,30,172/- (as per demand raised by the PSPCL) from his customers. Thus, huge liability of Rs. 5,30,172/- imposed by the PSPCL on the Petitioner was unwarranted and liable to be withdrawn. PR added that Hon’ble Punjab State Electricity Regulatory Commission (PSERC) had given clear directions for discussing all the pleadings of the Petitioner and passing speaking orders. As such, the Forum was supposed to discuss each and every pleading of the Petitioner and all the commercial/legal aspects before arriving at any conclusion. But the Forum did not mention anything for rejecting the very fair submission of the Petitioner. Thus, the decision of the Forum was wrong, biased and non-speaking and he same was liable to be set aside.

The Respondent contested the contention of the PR and stated that the consumer was informed of the difference of MMC applicable to both the categories i.e. General Industry and PIU at the time of the submission of A&A Form. Moreover, all the Large Supply consumers were aware of General Conditions of Tariff and the relevant schedule of Tariff ( as per Tariff Order) approved by the Hon’ble PSERC, the Respondent added that the Forum had considered all the facts and decided the case as per rules and regulations of the PSPCL and orders issued by the Hon’ble PSERC.

*I am of the view that at the time of submission of Application and Agreement for reduction in Load and change of category from General to PIU on 04.09.2014, the Petitioner was supposed to know the impact of the cost of power in the changed situation. I find that reduction in Load/change in category came into effect from 08.01.2015. Thus, the plea of the Petitioner that it fixed the cost of its products after considering the cost of power as per bills received, is not convincing and correct since every prudent businessmen plans its activities sufficiently in advance keeping in view all the pros and cons.*

 *From the above analysis, it is concluded that the Petitioner has been charged correctly, albeit late, by the Respondent, on account of difference in Tariff rates/MMC applicable to its reduced Load/changed category (PIU instead of earlier General Industry) during the period from 01/2015 to 03/2016. It also proves beyond doubt that onus for the present dispute lies both with the Petitioner and the Respondent. Had both the sides been sincere, vigilant and prudent, the litigation could have been avoided.*

5. **Decision**

 **As a sequel of above discussions, it is held that the Petitioner should be charged for difference in Tariff rates and MMC applicable to the PIU, instead of General Industry for the period from 01/2015 to 03/2016. However, no interest /surcharge should be recovered from the Petitioner on this account. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, after adjustment, if any.**

**6.** The Petition is disposed of accordingly.

**7.** The Appeal is disposed of accordingly.

**8.** In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

March 06, 2018 LokPal (Ombudsman)

Place: S.A.S. Nagar (Mohali) Electricity, Punjab.