**COURT OF THE LOK PAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

**S.A.S.NAGAR (MOHALI).**

**APPEAL NO. 11/2018**

**Date of Registration : 01.02.2018**

**Date of Hearing : 19.07.2018**

**Date of Order : 30.07.2018**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman) Electricity**

**In the Matter of :**

 Sanjay Iron & Steel Works,

(Prop. Sanjay Agro Industries Limited),

G.T. Road, Village – Alour,

Khanna.

 ...Petitioner

 Versus

 Additional Superintending Engineer,

DS Division , PSPCL,

Khanna.

 ...Respondent

**Present For:**

Petitioner : Sh. Ashwani Gupta,

 Petitioner’s Representative (PR).

Respondent : Er. Jatinder Singh,

Asstt. Executive Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 27.07.2017 of the Consumer Grievances Redressal Forum (Forum) in Case No. T-217 of 2017 conveyed to the Petitioner, vide Memo. No. 2008 dated 27.07.2017, observing that :

 *“You have filed the case on 12.07.2017 i.e. after a period of more than two years from the date of cause of action. As per proviso to Regulation 5 (2) (i) of PSERC (Forum and Ombudsman) (5th Amendment) Regulations, 2013 dated 20.11.2013, the Forum shall entertain only those complaints where the representation is made within 2 years from the date of cause of action, in case, the complainant approaches the Forum directly or within 2 months from the date of receipt of the orders of respective DSC under CCHP or where complaint is not resolved by the licensee within the time frame prescribed by the Commission.”*

**2. Condonation of Delay:**

 In this Appeal, the points need to be considered and decided are whether:

1. The delay in filing a Petition in the Forum more than two years after the cause of action, may be condoned .
2. In case, the delay ibid is condoned, the Appeal be heard in this court or remitted to the Forum for consideration and decision.

Petitioner’s Representative (PR) stated that a Petition was filed on 12.07.2017 in the Forum against the denial by the Respondent of the refund of requisition fee (earnest money), of Rs. 3,75,000/- deposited on 08.03.2011, for obtaining new Large Supply Category connection. The Petitioner annexed, with its above Petition, copies of its representations dated 09.03.2015 and 01.02.2017 addressed to the Dy. Chief Engineer, DS Circle, PSPCL, Khanna and C.M.D, PSPCL, Patiala, requesting for the requisite refund. The Forum, after examining the case filed by the Petitioner bearing No. T-217 of 2017, observed on 27.07.2017 that the case was filed by the Petitioner more than two years after the cause of action and thus, being time barred, the Appeal could not be registered. PR added that the copy of the order ibid of the Forum was not received by it by post and was obtained by the Petitioner in person after meeting the Chairman, CGRF, Patiala on 15.01.2018 whereafter, the Petitioner preferred the present Appeal in this Court on 01.02.2018. PR submitted that the Petitioner had regularly been pursuing the matter for refund with the PSPCL and there was no delay on its part in seeking appropriate remedy. PR prayed this Court to set-aside the order of the Forum, hear the present Appeal and decide it on merits.

I find that the Respondent, in its reply to the Appeal, has not offered any comments on the submissions made by the Petitioner regarding condonation of delay in filing the Petition in the Forum and hearing of the present Appeal by this Court.

 *I have gone through the submissions made by the Petitioner and also the order dated 27.07.2017 of the Forum not to register the complaint of the consumer as being time-barred and also not in accordance with the provisions of Regulation 5.2 (i) of the PSERC (Forum and Ombudsman) Regulations, 2013. There is no denying the fact that a time limit of two years has been prescribed for filing a complaint by any consumer as per provisions ibid and also in the Consumer Complaint Handling Procedure (CCHP). But I am of the view that denial of the opportunity to the consumer to present and defend its case on merits would not meet the ends of ultimate justice. Therefore, the delay in filing the Appeal by the Petitioner in the Forum and also in this Court is condoned and the Petitioner is allowed to present the case in the interest of justice.*

**3.** **Facts of the case:**

 The relevant facts of the case are that:

1. The Petitioner applied for a new Large Supply Category connection for a sanctioned load of 2250kW and contract demand (CD) of 2500kVA and deposited Rs. 3,75,000/- (10% of Initial Security) as Earnest Money with the Respondent on 08.03.2011.
2. The Respondent, after taking legal advice, made a reference, vide Memo No. 1068 dated 16.03.2012, to the Petitioner to submit some documents within 10 days , but the Petitioner did not submit the same within the said period.
3. The Petitioner’s case was placed before the Feasibility Clearance Committee (FCC) which deliberated the matter in its meeting dated 26.03.2012 and directed the CE/DS (Central) Zone, PSPCL, Ludhiana as under:

*“......w[Zy fJziL$tzv (e/Adoh), b[fXnkDk B{z jdkfJs ehsh fe cow B{z ;wKpZX B'fN; d/ e/ bhrb Gkr dh okJ/ w[skfpe d;skt/I$gq/yDK dh gkbDk eotkT[Dh :ehBh pDkfJnk ikt/ ns/ i/eo cow fco th gkbDk BjhA eodh sK jdkfJsK w[skfpe b'VhAdh eotkJh eoB dh jdkfJs ehsh rJh ;h .”*

1. A final notice was issued to the Petitioner by the Respondent vide Memo No. 4720 dated 27.03.2012, to submit the requisite documents within 10 days but he Petitioner failed to do so, whereafter, the FCC, in its meeting dated 03.05.2012, rejected the requisition of the Petitioner and its decision was conveyed to the Petitioner by the S.D.O. (A.E.) City-1, PSPCL, Khanna, vide Memo No. 1210 dated 03.05.2012.
2. The Petitioner requested the Respondent, vide letter dated 06.03.2015 (without signatures), 09.03.2015 and 01.02.2017 for the refund of requisition fee (earnest money deposited by it, but, the Respondent did not refund the said requisition fee (earnest money).
3. Aggrieved, the Petitioner filed a Petition in the Forum on 12.07.2017. In response, the Petitioner was informed by the Forum vide Memo No. 2008 dated 27.07.2017, that it had filed the case after a period of more than two years from the date of cause of action, hence, the same was time-barred as per extant regulations.
4. Not satisfied with the response of the Forum, the Petitioner preferred an Appeal in this Court and prayed that the order ibid of the Forum be set-aside and the Respondent be directed to refund the amount of Rs. 3,75,000/- with interest after making deduction of genuine expenses, if any, according to the condition laid down by the Regulatory Commission.

**4. Submissions made by the Petitioner and the Respondent:**

Before undertaking analysis of the case, it is necessary to go through the written submissions made by the Petitioner in the Appeal and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner as well as the Respondent alongwith the material brought on record by both the sides.

1. **Submissions of the Petitioner:**

The Petitioner submitted the following for consideration of this Court:

1. The Petitioner had applied, for electric connection with a sanctioned load of 2250kW and contract demand of 2500kVA to the Respondent on 08.03.2011 and deposited Rs. 3,75,000/- as the requisition fee (earnest money) {10% of Initial Security, 2500kVA x Rs. 1500/- per kVA = Rs. 37,50,000/-) }.
2. On 03.05.2012, the requisition / application was finally cancelled by the Respondent without any valid reason.
3. The Respondent was requested from time to time to refund the amount of Rs. 3,75,000/- deposited as requisition fee (earnest money) and the Respondent had been assuring to the Petitioner that refund with interest will be given but no action was taken by the Respondent.
4. The Petitioner represented to the higher authorities of the PSPCL to get refunded the requisition fee (earnest money), with interest, after making genuine deductions as per rules of the PSPCL/Regulatory Commission but the Respondent did not act fairly. The Petitioner requested the Dy. Chief Engineer, DS Circle vide letter dated 06.03.2015 and the S.D.O, City-1, PSPCL, Khanna, vide letter dated 19.03.2015 and also to the Chairman-cum-Managing Director (CMD) , PSPCL, Patiala, vide letter dated 01.02.2017, for the refund of the requisition fee (earnest money) but the Respondent intentionally did not do so and retained the money of the Petitioner without any reason.
5. A Petition was submitted to the Forum who rejected the same as time barred vide its Memo. No. 2008 dated 27.07.2017, copy of which was not received by post but was obtained by the Petitioner on 15.01.2018 after it personally visited the office of the Forum.
6. The order dated 27.07.2017 of the Forum may be set-aside and the Respondent may be directed to refund the amount of Rs. 3,75,000/-, with interest, after deducting genuine expenses, if any, as per rules of the PSPCL.
7. **Submissions of the Respondent:**

The Respondent, in its defence, submitted the following for consideration of this Court:

1. The Petitioner applied for a new Large Supply Category connection with sanctioned load of 2250kW and contract demand of 2500kVA by depositing a sum of Rs. 3,75,000/- on account of requisition fee (earnest money) (10% of Initial Security), on 08.03.2011.
2. After processing the case and taking legal advice, a reference was made to the Petitioner by the Dy. Chief Engineer/DS, PSPCL, Khanna, vide Memo dated 16.03.2012 to submit more documents within ten days. Thereafter, a notice was issued by the DS Circle, PSPCL, Khanna, vide Memo dated 23.03.2012, asking it to submit the same. Still, the Petitioner’s firm did not furnish the requisite documents within the prescribed period.
3. The case of the Petitioner was then sent for clearance to the Feasibility Clearance committee (FCC) which held deliberations on 26.03.2012 in the matter and issued directions to the Chief Engineer/DS (Central), PSPCL, Ludhiana to ensure submission of necessary documents from the Petitioner’s Firm within stipulated time and in the event of non-compliance, appropriate action may be taken.
4. The Petitioner was given a final notice by the DS Circle, Khanna, vide Memo No. 4720 dated 27.03.2012, to submit the relevant documents within ten days. The Petitioner submitted an application dated 04.04.2012 stating that it will submit the documents by 30.04.2012. But the Petitioner did not do so.
5. Thereafter, the FCC in its meeting dated 03.05.2012, rejected the requisition of the Petitioner who, in turn, was informed accordingly by the S.D.O, City City-1, PSPCL, Khanna vide Memo No. 1210 dated 03.05.2012.
6. As per Instruction No. 4 of ESIM 2011, the requisition fee (earnest money) deposited by the Petitioner for taking a new connection was liable to be forfeited in the event of non-submission of the requisite documents within the prescribed time. As such, in terms of these provisions, the requisition fee (earnest money) deposited by the Petitioner, stood forfeited.

**5. Analysis:**

 The issue requiring adjudication is the legitimacy of the rejection of the requisition/forfeiture, by the Respondent of the requisition fee (earnest money) (10% of Initial Security) deposited by the Petitioner on 08.03.2011 at the time of applying for a new Large Supply Category connection which was not sanctioned/released for want of submission of the requisite documents.

 *The points emerged are deliberated and analysed as under:*

 The Petitioner’s Representative submitted that the Petitioner applied for electric connection with a sanctioned load of 2250kW and contract demand of 2500kVA to the Respondent on 08.03.2011 and deposited Rs. 3,75,000/- as the requisite fee (earnest money) {10% of Initial Security, 2500kVA x Rs. 1500/- per kVA = Rs. 37,50,000/-}. On 03.05.2012, the requisition / application was finally cancelled by the Respondent without any valid reason. The Petitioner’s Representative added that the Respondent was requested from time to time to refund the amount of Rs. 3,75,000/- deposited as requisition fee (earnest money) and the Respondent had been assuring to the Petitioner that refund with interest will be given but the assurance was not fulfilled and refund was not actually given to the Petitioner by the Respondent. The Petitioner, vide letter dated 06.03.2015, represented to the Dy. Chief Engineer, DS Circle, PSPCL, Khanna and on 19.03.2015, to the S.D.O. City-1, PSPCL, Khanna, and also to the Chairman-cum-Managing Director (CMD), PSPCL, on 01.02.2017, to refund the requisition fee (earnest money), but, the Respondent intentionally did not do so and retained the money of the Petitioner without any reason.

 The Respondent, in its defence, submitted that after processing/taking legal advice on the requisition dated 08.03.2011 of the Petitioner for release of a new Large Supply Category connection, the Petitioner was requested vide Memo dated 16.03.2012 to submit more documents within a period of ten days. Thereafter, notice was issued, vide Memo dated 23.03.2012, asking it to submit the same. Still, the Petitioner’s firm did not furnish the requisite documents within the said period. The case of the Petitioner was, then, sent for clearance to the Feasibility Clearance committee (FCC) which held deliberations on 26.03.2012 in the matter and issued directions to the Chief Engineer/DS (Central), PSPCL, Ludhiana to ensure submission of necessary documents from the Petitioner’s Firm within stipulated time and in the event of non-compliance, appropriate action may be taken. Accordingly, a final notice was sent, vide Memo No. 4720 dated 27.03.2012 by the DS Circle, PSPCL, Khanna asking the Petitioner to submit the relevant documents within ten days. In response, the Petitioner submitted an application dated 04.04.2012 stating that it would submit the requisite documents by 30.04.2012, but failed to submit the documents. As a result, the FCC, in its meeting dated 03.05.2012, rejected the requisition of the Petitioner who, in turn, was informed accordingly by the Sub Divisional Officer, City-1, PSPCL, Khanna , vide Memo No. 1210 dated 03.05.2012.

 The Respondent, during the course of oral submissions, also referred to the Condition No. 7.1 of Conditions of Supply (COS) which was applicable at the time of requisition as well as on the date of rejection of the requisition. The regulation provides as under:

*“The owner or occupier of a premises requiring supply or additional supply of electricity will submit an application alongwith requisite Initial Security / Security (consumption) and Security (Meter) on the prescribed A&A form {CS-1, CS-1A or CS-1 (HT/EHT)} as per Annexures-3 to 5 available in the concerned distribution Sub Division of the Board on payment of fee or downloaded from the website (pseb.nic.com). In the latter eventuality, the requisite fee will be deposited alongwith the application. The A & A form duly filled-in will be signed by the applicant/consumer or his authorized representative. The Board will ensure that any assistance or information required in filling up the A & A form will be available to the applicant at the Sub-Divisional Office. The applicant/consumer may obtain a copy of Conditions of Supply on payment of fee not exceeding actual photo copying cost.*

*However, where requirement for supply of electricity exceeds 500kVA, the application will be submitted in requisition form CS-1 (R) (Annexure-6) alongwith earnest money in the Sub Divisional office of the Board for obtaining feasibility clearance before submission of application in the A & A form. The requisition form will be available free of cost in the Sub Divisional office and also on the website of the Board. The earnest money will not exceed 10% of the Initial Security as specified in the Schedule of General Charges. The feasibility clearance will be conveyed by the Board as per time schedule specified in Regulation 5.5 and 5.6 of the Supply Code. After receipt of feasibility clearance, the applicant/consumer will submit the application in the A & A form after adjusting earnest money against the Initial Security.*

*On receipt of an A & A form, the Sub Divisional office will allot a registration number and intimate the same to the applicant. The registration number will also be indicated on the A & A form.”*

The Respondent added that the above condition may be read with Instruction No. 4.7 (ii) of ESIM, which is reproduced as under:

*“After issue of feasibility clearance, the period for registration of A&A forms alongwith initial security and security meter shall be 30 days only which can be extended upto 60 days (including 30 days allowed in the first instance) by SE/Dy. CE(DS). No request for further extension beyond above period shall be entertained and feasibility clearance/permission shall stand cancelled and* ***earnest money will be forfeited****.”*

I observe that the Petitioner did not supply the documents necessarily required for clearance of the case by the Feasibility Clearance Committee (FCC) despite repeated references made to it by the Respondent. As per the material available on record, the Petitioner did not make any request to the Respondent for withdrawal of its earlier application for sanction of new connection till its rejection by the Feasibility Clearance Committee in the meeting held on dated 03.05.2012. As per its own submission, the Petitioner requested the Respondent for refund of requisition fee (earnest money), for the first time in writing, vide letter dated 06.03.2015 (without signatures) i.e. after about 2 years 10 months of rejection of its requisition and on dated 19.03.2015. The Petitioner also represented to the CMD, PSPCL on dated 01.02.2017 for refund of requisition fee (earnest money) which apparently was an afterthought.

 *I am, therefore, of the view that the Petitioner is not legitimately entitled to seek refund of requisition fee (earnest money), in terms of provisions contained in Condition No. 7.1 of Conditions of Supply (COS) read with Instruction No. 4.7(ii) of ESIM-2011.*

*I also observe that the Petitioner did not act sincerely and responsibly by not complying with the directions in various written communications made to it by the Respondent and did not formally apply for withdrawal/cancellation of its application for sanction of a new connection.*

From the above analysis, it is concluded that the claim for refund of the requisition fee (earnest money) of Rs. 3,75,000/-, deposited on 08.03.2011 by the Petitioner for taking new Large Supply Category connection, is not sustainable in terms of the provisions contained in Condition No. 7.1 of Conditions of Supply (COS) {which was applicable at the time of requisition as well as the date of rejection of the requisition} read with Instruction 4.7 (ii) of ESIM.

**6. Decision:**

 **As a sequel of above discussions, it is held that the requisition fee (earnest money) of Rs. 3,75,000/-, is not refundable as per conclusion arrived at in Para 5 above.**

**7.** The Appeal is dismissed.

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

 (VIRINDER SINGH)

 July 30, 2018 LokPal (Ombudsman)

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