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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 12/2018**

**Date of Registration : 02.02.2018**

**Date of Hearing : 19.07.2018**

**Date of Order : 30.07.2018**

**Before:**

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

**In the Matter of :**

Arora Foods (India),

Malerkotla Road,

Khanna,

...Petitioner

Versus

Additional Superintending Engineer,

DS Division, PSPCL,

Khanna.

...Respondent

**Present For:**

Petitioner : 1. Sh.R.S.Dhiman

Petitioner’s Representative (PR).

2. Sh.Narendra Singh Syal,

Petitioner.

3. Sh.Amardeep Singh,

Petitioner.

Respondent : Er.Arpinder Singh,

Assistant Engineer.

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Before me for consideration is an Appeal preferred by the Petitioner against the order dated 28.07.2017 of the CGRF in Case No. T-196 of 2017 deciding that:

“*On going through the reply submitted by the respondent, it is observed that necessary refund amounting of Rs. 3,20,294/- has already been afforded to the Petitioner in the bill for the month of 8/2015. Respondent also stated in the reply that from Dec.2014 onwards, correct MF is being applied after the checking of Enforcement dated 2.12.204.*

*Petitioner has also confirmed that refund amounting to Rs.3,20,294/- has already been afforded to the petitioner in the bill for the month of 8/2015 and correct MF is being levied/charged”.*

2. **Condonation of Delay**:

At the outset of the proceedings, the matter for condonation of delay in filing the Appeal by the Petitioner was taken up.

Petitioner’s Representative (PR) submitted that the Petitioner received a copy of the order dated 28.07.2017 of the Forum on the same day but could not prefer the Appeal in this Court within stipulated period of one month due to the reason that the wife of the Petitioner remained under treatment and was hospitalised due to eye and other ailments. Besides, the grandson of the Petitioner also remained ill due to dengue fever. That is why, the submission of the Appeal in this Court got delayed. As such, the Petitioner’s Representative (PR) prayed to condone the delay in filing the Appeal which was unavoidable.

I find that the Respondent, in its reply, did not offer any comments on the request of the Petitioner for condonation of delay in filing the Appeal and also did not raise any objection in this regard during hearing.

I have gone through Regulation 3.18(ii) of the PSERC (Forum and Ombudsman) Regulation-2016 which reads as under:

“ *No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.*

*Provided that the Ombudsman may entertain a representation beyond one month if a sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

I observe that the reasons given by the Petitioner are genuine and it has also submitted medical certificates in support of its contention alongwith the application for condonation of delay.

I also observe that non condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice.

Thus, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case.

**3**. **Facts of the Case:**

The relevant facts of the case are that:-

1. The Petitioner was having a Medium Supply Category connection with Sanctioned Load of 47.570 kW and Metering was being done by providing LTCT operated Static Energy Meter.
2. The connection was checked by the Senior Executive

Engineer, Enforcement, Khanna on dated 02.07.2011. Based on the checking, the LTCTs were replaced. The 200/5A LTCTs were replaced, vide Sundry Job Order (SJO) No. 108 / 44270 dated 04.07.2011, effected on 11.08.2011 with 100/5A.

1. The capacity of the new LTCTs was 100/5A due to which, overall Multiplication Factor (MF) became 0.5 but the Multiplication Factor (MF) continued to be 1 in the Sub Divisional records and bills continued to be prepared accordingly.
2. The connection was checked by the Sr.Xen /Enforcement, Khanna

vide ECR No.24/3709 dated 02.12.2014 and discrepancy of

application of incorrect Multiplication Factor (MF) was noticed.

1. The Respondent gave the refund vide Sundry Register.

No. R-184, Page No.72 for the period from August 2011 to November 2014, on dated 02.08.2015 for excess billing done due to application of wrong Multiplication Factor (MF) and further applied correct Multiplication Factor (MF) from December, 2014.

1. The Petitioner filed a Petition in the Forum and prayed for the

payment of interest on the excess amount deposited. The Forum, after hearing, passed order dated 28.07.2017 (Reference: Page 2, Para 1) without mentioning anything about interest.

1. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed that the Respondent may be directed to pay interest on the excess amount got deposited from the Petitioner on account of application of wrong Multiplication Factor (MF) from 08/2011 to the date of actual refund. The Petitioner also prayed that the surcharge, got paid from the Petitioner during this period, may also be set-aside.

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

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

1. **Submissions of the Petitioner**:

The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was running an Industrial Unit having a Medium

Supply Category electricity connection, bearing Account No. K-35MS350086P, with Sanctioned Load of 47.570kW .

1. The Energy Meter and LT CTs of its connection were of 200/5A rating. Thereafter, on 11.08.2011, the LT CTs were replaced to 100/5A capacity while the Energy Meter’s capacity remained the same i.e. 200/5A. It resulted in MF as 0.5 but the Respondent continued to issue bills with Multiplication Factor (MF) 1 upto November, 2014.
2. The Petitioner, being unaware of the Multiplication Factor (MF),

continued paying the bills, but was feeling something wrong with the Metering Equipment as the bills were double the normal bills.

1. The Petitioner came to know only on the checking of the connection by the Enforcement Staff on 02.12.2014 that it was

billed for double the actual energy consumption.

1. After coming to know about the mismatch of capacity of the Energy Meter and LT CTs, the Petitioner started visiting the office of the SDO (Assistant Engineer), Sub-Urban Sub-Division, Khanna for refund of the excess amount with interest, but to no avail.
2. Every time, the Petitioner was assured that necessary refund will be

given to it in its bills, but no details about the period and quantum of refund were provided.

1. In August 2016, the Petitioner was told that all the details about

the refund would be given if written request was submitted. Accordingly, the Petitioner submitted its written request to the SDO (Assistant Engineer), but failed to get any response.

1. Aggrieved, the Petitioner filed a Petition in the Forum on 27.06.2017. The Respondent, in its reply to the Forum, stated by giving details that a sum of Rs. 3,20,294/- was refunded on 02.08.2015 on account of application of wrong Multiplication Factor (MF). The Respondent also stated that the refund was given for the amount excess deposited through bills from 08/2011 to 11/2014 and from 12/2014 onwards, the Multiplication Factor (MF) applied was correct. Agreeing with the submissions of the Respondent, the Forum disposed off the petition without passing any order regarding interest and surcharge.
2. Having failed to get justice from the Forum, the Petitioner was left

with no option but to seek the indulgence of this Court and preferred the present Appeal in the hope of justice.

1. **Submissions of the Respondent**:

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

1. The Petitioner was having a Medium Supply Category

connection with Sanctioned Load of 47.570 kW and Metering was being done by providing LT CT operated Static Energy Meter.

1. The connection was checked by the Senior Executive

Engineer, Enforcement, Khanna on dated 02.07.2011. Based on the checking, the LT CTs were replaced. The 200/5A LT CTs were replaced, vide Sundry Job Order (SJO) No. 108 / 44270 dated 04.07.2011, effected on 11.08.2011 with 100/5A.

1. The capacity of the new LTCTs was 100/5A due to which, overall Multiplication Factor (MF) became 0.5 but the Multiplication Factor (MF) continued to be 1 in the Sub Divisional records and bills continued to be prepared accordingly.

**(iv)**  The connection was again checked by the Sr.Xen/ Enforcement, Khanna, vide ECR No.24/3709 dated 02.12.2014, when it was noticed that necessary updation about correct Multiplication Factor (MF) was omitted in Sub Divisional records after replacement of LT CTs on 11.08.2011. The Respondent gave the refund, vide Sundry Register No.R-184, Page No.72, for the period from August 2011 to November 2014, on dated 02.08.2015 for excess billing done due to application of wrong Multiplication Factor (MF).

**(v)** The bills from December 2014 onwards were issued by applying Multiplication Factor (MF) correctly.

**(vi)** In view of the above, the Appeal may be dismissed.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the claim of the Petitioner for allowing interest on the amount refunded and setting aside of surcharge for amount got deposited in excess due to erroneous billing done for the period from 08/2011 to 11/2014 on account of application of incorrect Multiplication Factor (MF).

*The points emerged in the case are deliberated and analysed as under:*

The present dispute involves the issue of not allowing interest on refund given on excess billed amount by the Respondent to the Petitioner on 02.08.2015 and setting aside of levy of surcharge during 08/2011 to 11/2014 due to non-payment of monthly bills by due dates. The Petitioner’s Representative (PR) submitted that the Petitioner was having a Medium Supply Category connection and the Metering was being done by providing LT CT operated Static Energy Meter. The connection was checked by the Senior Executive Engineer, Enforcement, Khanna on 02.07.2011. Pursuant to the said checking, the LT CTs of 200/5A were replaced vide Sundry Job Order (SJO) dated 04.07.2011, effected on 11.08.2011. The capacity of the new LT CTs was 100/5A due to which, overall Multiplication Factor (MF) became 0.5, but the Multiplication Factor (MF) continued to be 1 in the Sub-Divisional office records and bills continued to be prepared accordingly. The above omission was noticed when the connection was checked by Sr. Xen/Enforcement, Khanna, vide ECR No.24/3709 dated 02.12.2014. As a result, correct Multiplication Factor (MF) was applied from December 2014 onwards while, for the excess billing done from 08/2011 to 11/2014, a sum of Rs.3,20,294/- was refunded to the Petitioner, on dated 02.08.2015 due to application of wrong Multiplication Factor (MF).

I find that the Respondent informed during hearing that the Petitioner had not made full payment of monthly bills raised in the disputed period, hence, surcharge was levied as per instructions of the PSPCL.

I also find that the Petitioner, in its Appeal, submitted that though the energy bills, after replacement of LT CT’s on 11.08.2011, were received for almost double the amount of previous bills and it was not aware of the application of incorrect Multiplication Factor (MF). However, the Petitioner did not raise any objection or challenge the Metering Equipment.

*I agree with the averment of the Petitioner’s Representative (PR) that the Respondent defaulted in updating CT Ratio of the Energy Meter and LT CT’s, after replacement of LT CTs, on 11.08.2011. I also find merit in the contention of the Petitioner’s Representative (PR) that though the Respondent made necessary correction in the bill for 12/2014, on being so pointed out by the Senior Executive Engineer/Enforcement, Khanna during checking dated 02.12.2014, it delayed the authorisation of refund of the excess amount deposited (through bills for 08/2011 to 11/2014) till 02.08.2015.*

*I am of the view that surcharge is leviable in respect of the bills, wherein the amounts actually paid by the Petitioner were less than 50% of the billed amount while surcharge is not recoverable in regard to the bills, wherein the amounts paid by the Petitioner were more than or equal to 50% of the billed amounts, as the Respondent was fully responsible for not updating the CT Ratio in the records and not submitted the correct advice to the Computer Cell.*

From the above analysis, it is concluded that the onus for the delay in making payment of the refund of excess billed amounts ( due to application of incorrect Multiplication Factor) deposited by the Petitioner, for the months of 08/2011 to 11/2014, rests on the Respondent for which, the Petitioner is entitled to be paid interest at RBI Bank Rate on excess monthly amounts paid by the Petitioner from 08/2011 to the actual date of payment i.e. 02.08.2015. In so far as levy of surcharge on the excess billed amounts during the period from 08/2011 to 11/2014 is concerned, the amounts paid by the Petitioner are required to be checked to ascertain the actual amount paid against the billed amounts. In respect of the bills, wherein 50% or more of the billed amount was paid, no surcharge is to be recovered, while in respect of the monthly bills wherein amount of monthly bills paid was less than 50% of the billed amount, surcharge, as applicable is to be recovered from the Petitioner.

**5. Decision:**

**As a sequel of above discussions, it is held that the Petitioner should be paid applicable interest at RBI Bank Rate, on monthly excess amounts from 08/2011 to 02.08.2015, (Date on which the refund was given), due to excess billed amounts got deposited from the Petitioner through bills for the period from 08/2011 to 11/2014 on account of application of incorrect Multiplication Factor (MF). It is also held that surcharge, as applicable, be recovered for the bills of the disputed period (08/2011 to 11/2014) as per conclusion arrived at/directions given in para 4 above. The Respondent is directed to re-calculate the demand and recover/refund the amount found short/excess, if any, after adjustment and subject to pre-audit.**

**6**. The Appeal is disposed off accordingly.

**7.** In case, the Petitioner or the Respondent (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.