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

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

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

 **APPEAL NO. 06/2019**

**Date of Registration : 24.01.2019**

**Date of Hearing : 11.04.2019 and 30.04.2019**

**Date of Order : 28.05.2019**

**Before:**

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

**In the Matter of :**

Tharaj Castings Pvt. Ltd.,

Village Kanganwal

P.O- Jugiana,

Ludhiana-141017

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Estate Division (Special) ,

 PSPCL , Ludhiana.

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Naveen Dhoopar,

 Petitioner’s Representative (PR).

 2. Sh.Rajan Gupta,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Amandeep Singh,

 Senior Executive Engineer,

 DS Estate Division (Special),

 PSPCL, Ludhiana.

 2. Sh. Krishan Singh,

Assistant Accounts Officer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 13.06.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-19 of 2018 deciding that :

*“* **1**. *Revised calculation sheet duly pre-audited by Audit Party specifying the amount of Rs.13,73,173/- (i.e. including the amount of Rs.5,34,972/- wrongly shown in Sundry Allowance) is recoverable from the Petitioner is justified.*

***2****. Refund added by the Audit Party amounting to Rs.5,34,972/- due to absence of record justifying the refund, shall be allowed to the Petitioner as confirmed above by Respondent after production of record by the Petitioner”.*

**2**. **Condonation of Delay** :

 At the outset, the issue for condonation of delay in filing the Appeal in this Court was taken up. The Petitioner’s Representative (PR) submitted that the present Appeal could not be preferred in this Court within the stipulated period of one month due to the reason that copy of the decision dated 13.06.2018 of the Forum, sent to it vide memo no.2046-47 dated 15.06.2018 by Registered Post was received by the Petitioner in the third week of June 2018 (probably on 20.06.2018). Petitioner’s Representative (PR) added that due to non production of record by the Respondent as decided by the Forum and also due to its personal problems, it could not prefer the Appeal well in time. That was why, delay of 188 days beyond the stipulated period of one month from the date of receipt of the Order ibid of the Forum had occurred and may be condoned in the interest of justice.

 The Respondent, in its reply to the Appeal, did not offer any comments on the submissions made by the Petitioner regarding condonation of delay and also did not raise any objection in this regard during course of hearing.

In this connection, 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 on 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 though the Petitioner has given reasons for not filing the Appeal within the stipulated period, the same are not much convincing. It ought to have ensured that the Appeal was preferred as expeditiously as possible. I also observe that non condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek appropriate remedy and would also not meet the ends of ultimate justice. Thus, with a view to deliver 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 Large Supply (LS) Category connection

in cluster with Manglam Recycling ( the lead member of cluster) with sanctioned load of 2500 kW and contract demand (CD) of 2670 kVA**.**

1. The Petitioner was served with a supplementary notice vide memo

no.4376 dated 05.12.2017 to deposit Rs.26,12,209/- on account of interest/late payment charges as per the report of Audit Party Memo no.822 dated 14.11.2017.

1. Not satisfied with the above notice, the Petitioner filed a Petition

dated 19.01.2018 in the Forum, who, after hearing, passed order dated 13.06.2018. (Reference Page-2, Para-1).

1. Aggrieved with the decision of the Forum, the Petitioner preferred an

Appeal in this Court and prayed to allow the same, set aside the order dated 13.06.2018 passed by the Forum and grant relief as claimed in the interest of justice.

**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 along with 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 having a Large Supply (LS) Category connection

in cluster with Manglam Recycling (the lead member of cluster) with sanctioned load of 2500 kW and contract demand (CD) of 2670 kVA**.**

1. There was 66 kV Cluster, comprising two members getting 11 kV supply having Account No.LS-218 in the name of the Petitioner and Account No.LS-350 in the name of Manglam Recycling.
2. Separate Energy Meters were installed at 66 kV Sub-station and 11 kV for both the consumers.
3. For the purpose of billing, the Respondent took data from 66 kV Sub Station and the amount so calculated was then distributed amongst the consumers of cluster in the ratio of data taken from respective 11 kV Energy Meters.
4. The Petitioner was regularly paying all the energy bills for the energy consumption raised and was diligently adhering to all the regulations framed by the Respondent PSPCL from time to time.
5. The Petitioner was served with a supplementary notice vide memo

no.4376 dated 05.12.2017, to deposit Rs.26,12,209/- on account of interest/late payment charges based on the report Audit Party vide Memo no.822 dated 14.11.2017.

1. The Petitioner did not agree with the above notice and filed a Petition

dated 19.01.2018 in the Forum, who, after hearing, held that the amount mentioned in the revised calculations sheet, duly pre-audited by the Audit Party specifying the amount of Rs.13,73,173/- (i.e. including the amount of Rs.5,34,972/- wrongly shown in Sundry Allowance) as recoverable from the Petitioner was justified. The Forum also held that the refund added by the Audit Party amounting to Rs.5,34,972/- ,due to absence of record justifying the refund, should be allowed to the Petitioner, as confirmed above by the Respondent after production of record by the Petitioner.

1. The order dated 13.06.2018 of the Forum was totally non speaking and it failed to give reasons for the rejection of the claim of the Petitioner and as such, the order was liable to be set-aside.
2. As per Regulation 30.3 of the Supply Code-2014, the licensee was required to issue monthly bills to Large Supply Category consumers. The Respondent, instead of issuing monthly bill, issued bill dated 10.05.2016 for two months for Rs.2,57,17030/-. As the demand raised was so huge, the Petitioner could not pay the same in one go and requested the Respondent to allow payment in installments. The Respondent agreed for payment of the said amount in three equal installments and mentioned the same on the energy bill itself. Accordingly, the Petitioner deposited the said amount in three equal installments.
3. Subsequently, the Respondent now started charging interest and late payment surcharge on that amount. The Respondent defaulted in issuing monthly energy bill and instead , issued energy bills after two months.
4. At the time of allowing payment in installments, the Petitioner was never informed that it would be liable to pay late payment surcharge, in such an event.
5. The Petitioner was regularly making payment of monthly bills issued by the Respondent and it was only due to the fault/deficiency on the part of the Respondent, in issuing the energy bill for such a huge amount for two months billing period, that the payment could not be made. Therefore, the Respondent could not take benefit of its own omissions. The Petitioner was paying interest on the installments made by the Respondent. As such, the Petitioner was entitled to get benefit of this amount and was not liable to pay late payment surcharge.
6. The Petitioner was given benefit of Rs.5,34,972/- in the energy bill regarding threshold limit. However, the Respondent raised demand for recover of the same on the basis of Audit Objection. The Forum had held in its order that the refund added by the Audit Party amounting to Rs.5,34,972/- due to non-availability of record justifying the refund should be allowed to the Petitioner as confirmed by the Respondent after production of record by the Petitioner.
7. The Petitioner was pursuing its claim with Centralized Billing Cell, Ludhiana, but the availability of the record with the Respondent itself was a must. The Respondent had given benefit of Threshold limit in SAP billing System to various consumers, but did not demand the said amount from any other consumer. This fact clearly showed that the fault was on the part of the Respondent for which the Petitioner could not be penalized.
8. Keeping in view the submissions made, the Appeal may be allowed in

in the interest 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 Large Supply Category connection

in cluster with Manglam Recycling ( the lead member of cluster) with sanctioned load of 2500 kW and contract demand (CD) of 2670 kVA**.**

1. Initially an amount of Rs.26,12,209/- was charged to the Petitioner from

August, 2015 to October, 2017 as interest and surcharge and balance unpaid amount. The Account of the Petitioner was rechecked as per directions of the Forum and the revised calculation sheet was prepared and audited by the Accounts Officer (Field) Ludhiana and the amount chargeable worked out to Rs.13,33,188/-. The amount decided by the Forum as Rs.13,33,188/- was found correct and recoverable.

1. The amount of surcharge Rs.1,85,306/- and interest as Rs.5,757/- for

three days on the balance amount had been correctly charged as per Instruction No 21.1 and 21.4 of ESIM for the month of 05/2016.

1. In compliance to the decision dated 16.08.2016 of Court of Lok Pal in

Appeal No.23/2016, an amount of Rs.7,09,460/- ( 40% paid amount) was refunded vide Sundry No.175/78/161 to the Petitioner (Manglam Recycling Ltd, Account No.3003018025) with interest Rs.1,67,392/- making total refund to the tune of Rs.8,76,852/- in 10/2017. Appeal No.23 of 2016 was filed by Manglam Recycling Ltd, bearing Account no.LS-350 and the amount was deposited by the said Firm and the same was refunded and credited to its Account. Thus, the said amount could not be refunded twice. Therefore, the plea of the Petitioner to refund Rs.5,41,655/- was not maintainable.

1. The electric connection of Manglam Recycling Ltd had been permanently

disconnected vide PDCO No.31/870 dated 21.06.2017 due to defaulting amount and recovery suit for Rs.4,17,90,080/- against the consumer had been filed in District Court, Ludhiana.

1. An amount of Rs.5,34,972/- was refunded in the energy bill of June 2017

in SAP billing System on account of energy consumed during 2017-18 above Threshold limit as per Tariff Order but the same amount was charged by the Revenue Audit Party in the revised calculation sheet as produced in the Forum. The said amount had been correctly charged as no detail of the said amount was available.

1. In compliance to decision dated 13.06.2018 of the Forum, notice bearing

No.9018 dated 20.06.2018 was issued to the Petitioner to deposit the outstanding amount of Rs.12,42,562/-. The Petitioner was also directed to produce record/facts available with it with regard to refund of Rs.5,34,972/- to review the said amount, but it did not submit/produce any record/evidence. Therefore, the amount had been correctly charged in the revised calculation sheet.

1. An amount of Rs.1,85,306/- as surcharge and Rs.5757/- as interest for

three days on the balance/outstanding amount had been correctly charged as per PCPCL instructions in the month of 05/2016.

1. In view of the submissions made, the Appeal may be dismissed.

4. **Analysis:**

The issue requiring adjudication is the legitimacy of the recovery of Surcharge on late deposit of the billed amount and refund as per threshold limit for the financial year 2017-18 as per applicable regulations.

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

1. The first hearing in this case was held on 11.04.2019 wherein the

Petitioner’s Representative reiterated mainly the written submissions made in the Appeal preferred by it. Petitioner’s Representative (PR) contended that the Petitioner was having a Large Supply (LS) Category connection in cluster with Manglam Recycling (the lead member of cluster) with sanctioned load of 2500 kW and contract demand (CD) of 2670 kVA**.** There was 66 kV Cluster, comprising two members getting 11 kV supply having Account No- LS-218 in the name of the Petitioner and Account No. LS-350 in the name of Manglam Recycling. Separate 11 kV Static Energy Meters were installed at 66 kV Sub-station for both the consumers. For the purpose of billing, the Respondent took data from 66 kV Energy Meter installed at Sub-station and the amount so calculated was, then, distributed amongst the consumers of the cluster in the ratio of consumption data taken from respective 11 kV Energy Meter. The Petitioner was regularly paying all the energy bills for the energy consumption raised and was diligently adhering to all the regulations framed by the Respondent PSPCL from time to time. The Petitioner was served with a supplementary notice, vide Memo No.4376 dated 05.12.2017, to deposit Rs.26,12,209/- on account of interest/late payment charges based on the report of the Audit Party vide Memo No.822 dated 14.11.2017. The Petitioner did not agree with the above notice and filed a Petition dated 19.01.2018 in the Forum, who, after hearing, held that the amount mentioned in the revised calculations sheet, duly pre-audited by the Audit Party specifying the amount of Rs.13,73,173/- i.e. including the amount of Rs.5,34,972/- wrongly shown in Sundry Allowance as recoverable from the Petitioner was justified. The Forum also held that the refund added by the Audit Party amounting to Rs.5,34,972/-, due to absence of record justifying the refund, should be allowed to the Petitioner, as confirmed above by the Respondent after production of record by the Petitioner. Petitioner’s Representative also contended that the order dated 13.06.2018 of the Forum was totally non speaking and it failed to give reasons for the rejection of the claim of the Petitioner and as such, the order was liable to be set-aside.

The Respondent, in its defence, contested the oral and written submissions made by the Petitioner / Petitioner’s Representative and stated that order dated 13.06.2018 was correct and justified. The Respondent added that in compliance to the order ibid, a Notice, bearing no.9018 dated 20.06.2018, was issued to the Petitioner to deposit the outstanding dues of Rs.12,42,562/-. The Petitioner was also asked to produce facts/record available with regard to refund of Rs.5,34,972/- to further decide about recovery of the said amount but it did not submit the relevant record/evidence in support of its contention. Therefore, the amount had been correctly charged. An amount of Rs.1,85,306/- as surcharge and Rs.5,757/- as interest for three days on the balance/outstanding amount had been correctly charged as per PCPCL instructions in the month of 05/2016.In view of the submissions made, the Appeal may be dismissed.

After deliberations, it is observed that the disputed claims relating to the recovery or otherwise of the amounts of Rs1,85,306/- ( late payment surcharge), Rs.5,41,655/- ( wrongly credited to Lead partner, as per decision of LokPal in Case No.23 of 2016), and Rs.5,34,972/- (energy consumed during 2017-18 over and above threshold limits) needed to be reconciled and complete details were required to be given explaining the reasons for difference in regard to version of either side. Accordingly, the Respondent was directed to sort out the differences in the light of the submissions of the Petitioner for deliberating the matter further.

1. In compliance to the said directions, the Respondent held discussions in its office with the Petitioner’s Representative on 25.04.2019 with a view to sort out the factual details. On the date fixed for hearing in this Court i.e. 30.04.2019, the Petitioner vide letter dated 30.04.2019, submitted the following for consideration of the Court:
2. As per Instruction No. 93.4 of ESIM, the Respondent was

supposed to raise two separate energy bills ( this condition was applicable if bills were to be raised for more than one cycle, which was similar to the case of the Petitioner). Had these instructions been followed, the Petitioner would not have been charged any surcharge on payment of this energy bill. The Petitioner was ready to bear interest on the same and requested to waive off the surcharge which was wrongly charged to the tune of Rs.1,85,306/-. However, the Petitioner agreed to pay surcharge of Rs.44,641/- as demanded by the Respondent.

1. An amount of Rs.5,41,655 i.e. Rs.4,38,260/- plus interest of

Rs.1,03,395/- was credited to the account of the Petitioner as per the order of this Court as was evident from the receipts for the amount deposited with the Respondent as well as the Petitioner’s Bank Account Statements. Petitioners’ cluster partner i.e. Manglam Recycling Limited had also got its share credited at that time. But after 8 months, the then Revenue Accountant (RA) had wrongly credited the whole amount to the account of Manglam Recycling Ltd. and requested to credit their share into their account along with upto date interest. The said energy bill was kept pending by the Respondent for more than 8 days with a view to decide about allowing the Petitioner, the adjustment against the above said order of this Court. By that time, due date had passed and the Petitioner was charged with the surcharge. The said surcharge may not be charged to the Petitioner who was not at fault in this regard. The Petitioner was ready to pay surcharge amounting to Rs.78,700/-.

1. The Petitioner was wrongly informed that the threshold amount of Rs.5,34,972/- was credited to its account. Now the Respondent had clarified that the same had wrongly appeared in the energy bill. On the request of the Petitioner,

the official of the Respondent calculated and found that the Petitioner was eligible for threshold amount for the year 2017-18 keeping in view the increased units consumption as compared to the same in 2015-16 and 2016-17. Approximate figure for this would be between Rs. 8-10 Lac. Accordingly, the credit of the amount be given to the Petitioner immediately along with applicable interest, if any.

1. The Respondent, in compliance to the directions given during

proceedings issued vide letter dated 11.04.2019 , submitted the factual details of the disputed amounts of Rs.1,85,306/-, 5,41,655/- and 5,34,972/-, as under:-

1. The amount of Rs.1,85,306/- had been charged on account of

surcharge of the bill issued as on dated 10.05.2016. The bill for the period from 19.02.2016 to 19.04.2016 was prepared in SAP billing System for current amount of Rs.61,56,124/-. The Bill was revised to Rs.62,22,488/- by the Revenue Accountant (RA) because an arrear of Rs.86,364/- was included in this energy bill. The Petitioner was allowed, on its request, to deposit the billed amount in three installments and deposited same as under:

Dated 19.05.2016 Rs.24,50,000/-

Dated 07.06.2016 Rs.10,00,000/-

Dated 13.06.2016 Rs.23,60,751/-

Total Rs.58,10,751/-

The Petitioner was directed to explain the reason of making less payment, in response to which, it stated that an amount of Rs.3,45,373/- was given as refund of ToD and the said amount was shown in audited calculation sheet / bill issued on dated 20.06.2016 and the total payment of instalments of Rs.58,10,751/- and Rs.3,45,373/- was worked out as Rs.61,56,124/-. The Petitioner also stated that the current amount of the said bill was Rs.61,56,124/- but it was wrongly revised to Rs.62,22,488/- by the Revenue Accountant as it was wrongly added in this bill for Rs.66,363/-. The Respondent examined the case and found that the current bill was for Rs.61,56,124/- and the said amount was reconciled with the part payments made and ToD refund i.e. Rs.58,10,751/- + Rs.3,45,373/- =61,56,124/-.

 Surcharge amounting to Rs.1,85,306/- was charged on the unpaid balance amount because as per part payment Register, the instalments were allowed by the AEE/Commercial as under:-

I st installment of Rs. 24,50,000/- dated 13.05.2016

 2nd installment of Rs.18,86,244/- dated 20.05.2016

3rd installment of Rs.18,86,244/- dated 31.05.2016

 **Total: Rs. 62,22,488/-**

The Petitioner did not pay these instalments within due date and deposited the same after these dates i.e. on the following dates:

 Ist on dated 19.05.2016 Rs.24,50,000/-

 2nd on dated 07.06.2016 Rs.10,00,000/-

 3rd on dated 13.06.2016 Rs. 23,60,751/-

 **Total Rs.58,10,751/-**

. **(b)** A sum of Rs. 5,41,655/- was charged by Audit in the calculation

sheet in the month of 11/2016 because the total amount of Rs.7,09, 460/- paid by the consumer i.e. Manglam Recycling Ltd in Appeal No.23/2016 decided by this Court, was refunded in 10/2017 Manglam Recycling Ltd and in this case , the Petitioner was Manglam Recycling Ltd. Therefore, this amount could not be refunded twice and the amount of Rs.5,41,655/- was included in the calculation sheet. The Petitioner produced photo copies of BA-16/47230 dated 17.06.2014 for Rs.4,38,260/-, BA-16 No. 311/48169 dated 12.04.2016 for Rs1,03,395/- which were in the name of Manglam Recycling Ltd. The Petitioner stated that these amounts were paid by it through cheques and these amounts existed in the Statement of its BankAccount.

**(c)** The Centralized Billing Centre (CBC) was directed to give the

details of refund amount of Rs.5,34,972/- in the bill issued on 14.07.2017. In response, the Centralized Billing Centre (CBC) intimated, vide e-mail dated 24.04.2019, that. the refund of Rs.5,34,972/- was due to effect of Transfer Entries, but no special refund on account of threshold or other reason was made by SAP Billing System. In this way, this amount was not to be deducted in the energy bill by the Revenue Accountant and this amount was chargeable. The Petitioner was convinced, on being so apprised on its visit to the office of the Respondent on 25.04.2019.

6. **Conclusion:**

From the above analysis, it is concluded that:

1. The Petitioner is liable to pay Surcharge of Rs.1,85,306/- on the unpaid outstanding balance amount from out of the payable billed amount for the bill pertaining to the period from 19.02.2016 to 19.04.2016 because the Petitioner defaulted in making the payment of the same on due dates despite the fact that it was allowed (on its request) to pay the billed amount in three instalments payable on the prescribed dates.
2. A sum of Rs.5,41,655/- has been incorrectly charged to the Petitioner who had actually deposited this amount through cheques with the Respondent, as evidenced from its Bank Account Statement, and the same was included in the amount of Rs.7,09,460/- (40% amount) deposited in Appeal Case No.23/2016 filed in this Court by Manglam Recycling Ltd. (Lead Cluster Member) and refunded to it (Manglam Recycling Ltd. who was the Petitioner) by credit to its account in 10/2017. The amount ibid has been charged to the Petitioner on the ground that this amount can not be refunded twice since the same already stands refunded to Manglam Recycling Ltd. and is included in the total refund of Rs.8,76,852/- in 10/2017. It proves beyond doubt that the amount of Rs.5,41,655/- is required to be refunded to the Petitioner, without interest, by debit to the account of Manglam Recycling Ltd. and after its recovery from Manglam Recycling.
3. Surcharge of Rs.1,44,029/- is recoverable only after the Petitioner provides evidence to the Respondent that it has got received the cheque for payment of the bill dated 11.11.2016 (payable by 21.11.2016) on or before the due date i.e. 21.11.2016 in the office of the Respondent. This evidence is necessarily required since credit for the said payment actually appeared in the Petitioner’s account on 29.11.2016 i.e. 8 days after the due date of payment i.e. 21.11.2016.
4. The Petitioner is eligible and entitled to refund on account of threshold limit based on increased units of consumption during the financial year 2017-18 as compared to the same in 2015-16 and 2016-17, in terms of provisions of Tariff Order for Financial Year 2017-18 issued by the Hon’ble PSERC. The amount of refund so worked out is required to be paid to the Petitioner, without interest, by way of adjustment in future energy bill(s).

7. **Decision:**

**As a sequel of above discussions, the order dated 13.06.2018 of the Forum in Case No. CG- 19 of 2018, is modified in terms of conclusion arrived at in para 6 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment.**

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

**9.** In case, the Petitioner or the Respondent 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)

May 28, 2019 Lok Pal (Ombudsman)

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