**COURT OF THE LOKPAL (OMBUDSMAN), ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 65/2019**

**Date of Registration : 25.11.2019**

**Date of Hearing : 09.01.2020**

**Date of Order : 13.01.2020**

**Before:**

**Er. Gurinder Jit Singh,**

 **Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of :**

Vardhman Polytex Limited,

D-295/1, Phase-VIII,

Focal Point,

Ludhiana

 ...Appellant

 versus

Senior Executive Engineer,

DS Focal Point Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Appellant : 1. Sh.Surinder Goyal

 Appellant’s Representative (AR)

 2. Sh.Gaurav Girdhar

 Appellant’s Representative (AR)

Respondent : Er.Bharat Bhushan

 Senior Executive Engineer,

DS Focal Point Division (Special), PSPCL, Ludhiana

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 29.10.2019 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-199 of 2019, deciding that :

*“ As the change of name has been affected within the last two financial year and new Account number has been allotted, and in the absence of clear cut instructions in this regard for allowing Threshold rebate in the case of change of name, the benefit of Threshold units can not be granted to the Appellant in this case”.*

**2. Facts of the Case:**

 The relevant facts of the case are that:-

1. A Large Supply Category connection was sanctioned in the

name of Vardhman Polytex Ltd(Unit: Vinayak Textile Mills) in May, 2012(Account No. E-32-FP 51-00844/3002809444) with load of 8775 kW and contract demand (CD) as 6550 kVA. However, contract demand (CD) was enhanced to 8000 kVA in July, 2013.

1. Subsequently, the Appellant submitted Application and

Agreement dated 06.10.2016 and got change in the title/name of the said connection effected on 08.12.2016 in favour of Vardhman Polytex Ltd. with the same sanctioned load as 8775 kW and CD as 8000 kVA and new Account Number 3015027199 was allotted to it. However, contract demand (CD) was got reduced from 8000 kVA to 5500 kVA in October, 2017.

1. As per Commercial Circular (CC) No**.** 26/2018 dated

24.04.2018, energy charges for the year 2018-19 (under Two Part Tariff Structure) were reduced to ₹4.28 per kVAh for energy consumption exceeding the Threshold limits. Clause No.1 of the said Commercial Circular No.26/2018 provided that:

***“*** *The maximum annual consumption in any of the last two financial year shall be taken as Threshold. In case, the period is less than two financial year i.e. if connection has been released after 31****.****03.2016, reduced Energy Charge shall not be permissible”.*

1. The Respondent did not allow, despite requests by the

Appellants, the rebate for Threshold units, as per above provisions in Clause-1 of CC No. 26/2018 on the plea that the change in name of the Appellant’s Company (consumer) was effected during 12/2016 when new Account Number was allotted and it became a new legal and commercial entity in the records of PSPCL.

1. The Appellant felt aggrieved and filed a Petition dated

06.08.2019 in the office of CGRF, Ludhiana who, after hearing, decided vide order dated 29.10.2019 that sincechange of name had been affected within the last two financial Year and new Account No. had been allotted, and in the absence of clear cut instructions in this regard for allowing Threshold Rebate in the case of change of name, the benefit of Threshold units could not be granted to the Petitioner in this case.

1. Not satisfied with the said decision of the CGRF, the

Appellant filed an Appeal in this Court and prayed to allow the Appeal on merits in the interest of justice.

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

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

1. **Submissions of the Appellant**:

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

1. The Respondent - PSPCL, in order to encourage the

industry in promoting the productive use of surplus power, reduced the energy charges for the Financial Year 2018-19 (under Two Part Tariff Structure) @ ₹4.28/- per kVAh for consumption of power exceeding the threshold limit vide Commercial Circular (CC) No. 26/2018.

1. As per the said Circular, maximum annual consumption in

any of the last two financial year should be considered as Threshold limit. However, if the connection had been released after 31.03.2016, then, the reduced energy charges would not be permissible as per above circular.

1. The Appellant, after the issuance of the said Circular, took up

the matter in writing with the Respondent-PSPCL for claiming the benefit of reduced energy charges.

1. The matter was followed up but no fruitful response was

received.

1. Aggrieved with non acceptance of the request by the

PSPCL authorities, the Appellant filed a Petition on 06.08.2019 in the office of CGRF, Ludhiana who, after hearing both the parties, did not allow the benefit of Threshold units vide order dated 29.10.2019.

1. A perusal of the said order of the Forum revealed that it came

to the conclusion that it was not clear as to whether rebate of Threshold units was to be allowed to the consumer where change of name took place during the previous two years. Further, the Forum observed that there were no clear cut instructions in the relevant Tariff Order, so, the benefit of Threshold units could not be granted in such cases.

1. The Forum, in its order, observed that there was no change in

the ownership, address, GST no., PAN etc. but did not allow the benefits claimed by the Appellant.

1. The Petition of the Appellant was dismissed solely on

technical grounds that there was no clarity in the said Circular as to whether the benefit/rebate of Threshold Units could be allowed in cases where there was change of name or not.

1. There had been only a change in the name of the unit due

to branding exercise undertaken by the Appellant whose Management, GST, VAT, PAN and other relevant licenses as issued under various Laws/Statutes remained the same. The Forum overlooked this fact while passing the order dated 29.10.2019.

1. The Respondent - PSPCL, vide its Commercial Circular

No. 26/2018 came up with a beneficial policy to facilitate the usage of surplus power, but due to strict interpretation of the said Circular, the benefit to the Industry had not been allowed in the right and just spirit of the said Circular.

1. In view of the submissions made above, the Appeal be allowed on merits of the case in the interest of justice.
2. **Submissions of the Respondent:**

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

1. The Appellant was presently having a Large Supply

category connection, bearing Account No.3015027199, with sanctioned load of 8775 kW and contract demand (CD) of 5500 kVA in the name of Vardhman Polytex Ltd. Earlier, this connection was running in the name of Vardhman Polytex Limited (Unit: Vinayak Textiles Mills). The Appellant applied for change of name from Vardhman Polytex Ltd ( Unit: Vinayak Textiles Mills) to Vardhman Polytex Ltd. on 06.10.2016 and change of name/title was affected on 08.12.2016. But the communication address, work place, nature of work, Board of Director, GST No, VAT No. etc. remained the same. During this process of change of name, the Account Number of the Appellant was changed from 3002809444 to 3015027199. As the change in name of the consumer was affected during 12/2016 and new Account Number was allotted, so, it became a new legal and commercial entity and rebate was not given automatically by the SAP System.

1. The Appellant felt aggrieved with non grant of rebate of

Threshold units as per Commercial Circular No. 26/2018 and approached the Forum with the plea that the Appellant’s Company was the same after change of name but the Forum decided against the grant of rebate of Threshold Units in the absence of clear cut instructions in this regard in the Tariff Order of Financial Year 2018-19.

1. In the CC No. 26/2018 ( and even in the earlier Tariff Order),

it was not clear as to whether, rebate of Threshold Units was to be allowed to the consumer where change of name took place during the previous two year without having any change in work place, GST, VAT Nos. etc.

1. In view of the submissions made above, the Appeal

may be dismissed.

**4.** **Analysis:**

The issue requiring adjudication is the legitimacy of the claim of the Appellant for grant of rebate of Threshold units as per Tariff Order FY 2018-19 circulated vide PSPCL Commercial Circular No. 26/2018.

*The points emerging in the dispute are deliberated and analysed as under:-*

1. A hearing to adjudicate the present dispute was held on

09.01.2020 when the Representatives of both the sides reiterated the written submissions made in the Appeal/written reply thereto. The Representatives of the Appellant contended that a bare perusal of the order dated 29.10.2019 of the Forum revealed that it came to the conclusion that it was not clear as to whether rebate of Threshold units claimed was to be allowed to the consumer where change of name took place during the previous two years. The Forum further observed that there were no clear cut instructions in the Tariff Order FY 2018-19 due to which the benefit of Threshold units could not be granted in such cases. The Representatives of the Appellant also submitted that the Forum, in its order, observed that there was no change in the ownership, address, GST, PAN etc. but did not allow the benefits claimed by the Appellant vide order dated 29.10.2019 on technical grounds. They prayed to the Court to allow the Appeal on merits in the interest of justice.

The Respondent in its defence, submitted that the rebate for Threshold Units claimed by the Appellant was not admissible as per Clause 1 of Commercial Circular No. 26/2018 which read as under:

***“*** *The maximum annual consumption in any of the last two financial year shall be taken as Threshold. In case, the period is less than two financial year i.e. if connection has been released after 31****.****03.2016, reduced Energy Charge shall not be permissible”.*

The Respondent also stated that due to change of name of the consumer, new Account Number was allotted to the Appellant, so, being a new legal and commercial entity, rebate of Threshold Units was not given by the SAP System automatically. The Respondent prayed to dismiss the Appeal which was without merit.

I find that Commercial Circular No. 26/2018 dated 24.04.2018 by the PSPCL is in line with Clause 4.1.2 of Tariff Order for the FY 2018-19 issued by the Hon’ble PSERC which is reproduced below:

*“ Now, in the ARR for FY 2018-19, PSPCL has projected surplus power of 20417 MU for FY 2018-19. PSPCL has not submitted any proposal to utilize/sell the surplus power, which has been proposed to be surrendered as per the merit order of power purchase from the thermal plants. Various consumer/stakeholder in their objections /suggestions on the ARR have suggested continuing the system of reduced base rate for energy consumption above the threshold limit.*

***Accordingly, the Commission decides to continue with its policy of encouraging the industry in promoting the productive use of surplus power. The reduced Energy Charge for FY 2018-19 (under Two Part Tariff Structure) shall be ₹4.28 per kVAh for Large Supply/Medium Supply/Small Power industrial consumer and ₹4.50 per kWh for Small Power Industrial consumer under kWh based Tariff, for consumption of power exceeding the threshold limit as under:***

***i) The maximum annual consumption in any of the last two financial year shall be taken as threshold. In case, the period is less than two financial year i.e. if connection has been released after 31.03.2016, reduced Energy Charge shall not be permissible.***

***ii) Only PSPCL consumption shall be considered for calculating maximum annual consumption in any of the last two financial year which is to be taken as threshold limit and also for calculating consumption eligible for reduced Energy Charge.***

***iii) Any change in load/contract demand either during the last two financial year or during the current financial year i.e. FY 2018-19, shall not be considered while calculating the threshold limit or calculating consumption eligible for reduced Energy Charge. Any consumption above the threshold consumption will be eligible for the reduced Energy Charge.***

***iv) The billing at the reduced Energy Charge shall be done once the consumer crosses the threshold consumption e.g. if a consumer has maximum annual consumption in any of two preceding financial year as 10000 kVAh, the reduced Energy Charge shall be allowed to the consumer as and when his consumption during the current year exceeds 10000 kVAh.***

***v) All other surcharges and rebates as approved by the Commission and Govt. levies as notified by the State Government shall be charged extra. ”***

I observe that no evidence has been brought on record of this Court to show that any Objection/Review Petition praying for incorporation of the change of title/name of consumer was filed before the Hon’ble PSERC.

1. During the course of hearing, Sr.XEN, DS Focal Point Division (Special), PSPCL, Ludhiana was asked to intimate as to whether the Test Report and details of load of the Appellant’s company, were checked at the time of processing the request for change of title/name. But the aforesaid Sr.XEN (Respondent) did not have any such record/evidence at that time and was directed to send the same by e-mail by 10.01.2020. In response, an e-mail was received on 10.01.2020 from Sr.XEN, DS Focal Point Division (Special), Ludhiana that Test Report was not mandatory as per Instruction No.30.5 of ESIM.

I have gone through Instruction No.30.5 of ESIM which reads as under:

*“ As soon as such a requisition is received, the JE should be directed to visit the premises of the consumer for re-rating the installation so that the new consumer is not held responsible for any alteration in the connected load which may have been effected by existing consumer without the sanction of the PSPCL. In addition to this the JE should check up that all the material and equipment of the PSPCL installed at the premises of the consumer is intact and has not been tampered with.”*

As per above Instruction, the Junior Engineer concerned was required to visit the premises of the consumer and check the installation. But no evidence about the J.E having visited the premises of the Appellant was available with the Respondent and thus not brought on record of this Court.

(iii) With a view to adjudicate the present dispute, it is relevant to peruse the provisions contained in Regulation 11.6 of PSERC Electricity Supply Code and Related Matter Regulations, 2014 (relating to procedure for change of Title or Transfer of Agreement), which read as under **:**

**“11.6.1** *A consumer shall not, without the consent in writing of the distribution licensee, assign, transfer or part with the benefit of the agreement for obtaining a connection. The consumer shall also not in any manner part with or create any partial or separate interest except in the event of:*

 *a. Change in partnership,*

*(after supplying a certified copy of the new partnership deed and execution of a new agreement).*

 *b. Change in the name of a company,*

*(after supplying a certified copy of the new Memorandum of Association/Articles of Association along with supporting documents and execution of a new agreement).*

**11.6.2** *A consumer may transfer the connection and its liabilities to any other person with the consent of the distribution licensee. After obtaining such consent the transferee shall execute a new agreement on the A& A form and shall deposit the security (consumption and Security( meter) at the prevalent rates after accounting for the Security (consumption) and Security(meter) already deposited by the previous consumer with his consent.* ***The new consumer*** *shall also undertake to pay/bear the current and past outstanding liabilities of the old consumer or those detected in the future****”.***

A perusal of the above provisions reveals that the Applicant, after change of title/name of the industry/firm, became a **new consumer** of the distribution licensee(Respondent-PSPCL) because the Appellant had signed new A & A Form with PSPCL and was allotted a new A/c No. 3015027199 by closing old A/c No. 3002809444. As a result, the energy consumption of old entity/consumer could not be considered for determining the admissibility of grant of benefit of rebate to new A/c No. 3015027199.

**5. Conclusion**:

From the above analysis, it proves beyond doubt that the Appellant is not legitimately entitled to the rebate claimed on the basis of energy consumption for the period 01.04.2016 to 07.12.2016 of its old unit bearing A/c No. 3002809444 towards its new A/c No. 3015027199 (after change of name of the unit/entity) as the Appellant had signed a new A & A with the PSPCL and was sanctioned the load and CD afresh by the Chief Engineer, DS, Central Zone, PSPCL, Ludhiana. As a result, the Appellant became a new consumer of PSPCL w.e.f. 08.12.2016 for all intents & purposes and is not fulfilling the conditions laid down in Clause No.1 of CC No. 26/2018 dated 24.04.2018 for claiming the rebate in energy charges.

**6.** **Decision:**

**As a sequel of the above discussions, the order dated 29.10.2019 of the CGRF, Ludhiana, dismissing the Petition No. CGL-199 of 2019, is upheld in terms of conclusion arrived at in Para 5 above.**

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

**8.** In case, the Appellant 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.

(GURINDER JIT SINGH)

January 13, 2020 Lokpal (Ombudsman)

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