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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 16/2020**

**Date of Registration : 28.02.2020**

**Date of Hearing : 03.06.2020 and 24.06.2020**

**Date of Order : 03.07.2020**

**Before:**

 **Er. Gurinder Jit Singh,**

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

**In the Matter of :**

 Sportking Industries,

 Village-Jeeda, NH-15,

 Kotkapura Road,

Distt. Bhatinda.

**Contract Account Number: B 16-GA 01-00030**

 ...Appellant

 versus

Additional Superintending Engineer,

DS Division, PSPCL,

Bhatinda.

 ...Respondent

**Present For:**

Appellant : 1. Sh. Suneel Sharma

 Appellant’s Representative (AR).

 2. Sh. P.K Gupta

 Appellant’s Representative (AR).

 3. Sh. Sukhminder Singh

Appellant’s Representative (AR).

Respondent : Er. Hardeep Singh

 Additional Superintending Engineer,

 DS Division, PSPCL,

 Bhatinda.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 17.01.2020 of the Consumer Grievances Redressal Forum(Forum), Patiala in Case No. T- 417 of 2019, deciding that:

*“Now petitioner has approached CGRF, after lapse of almost 2 years for the claim of interest. Further, Forum has observed that petitioner had earlier claimed interest charges on the excess amount of service charges through petition No. 52/16 filed before Hon’ble PSERC. However, while deciding the petition in order dated 14.02.2017, Hon’ble PSERC directed Respondent PSPCL for payment of excess service connection charges to the petitioner, however, Hon’ble PSERC has not ordered any payment towards interest charges. The orders of Hon’ble PSERC are explicitly clear and CGRF has no jurisdiction to interfere in the orders of PSERC.*

*In view of the above, petition is disposed off accordingly.”*

**2*.* Registration of the Appeal**

A scrutiny of the Appeal and related documents received in this Court revealed that the same were submitted in this Court on 28.02.2020 i.e. within one month of receipt of order dated 17.01.2020, which was actually dispatched by the office of the CGRF, Patiala, vide Memo No. 344-45/T-417/2019 dated 31.01.2020. Since the dispute related to payment of interest on Service Connection Charges deposited in excess and subsequently refunded, the Appellant was not required to deposit any amount for preferring an Appeal in this Court. As such, the Appeal was registered in this Court on 28.02.2020 and copy of the same was sent to the Respondent for filing written reply/parawise comments and also to office of the CGRF, Patiala under intimation to the Appellant vide letter No. 193-95/OEP/A-16/2020 dated 02.03.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed for 03.06.2020 and intimation to this effect was sent vide Memo No.364-365/OEP/A-16/2020 dated 28.05.2020, whereafter, the Appellant’s Representative sent an e-mail dated 01.06.2020 requesting for adjournment of hearing by 2-3 weeks due to non availability of the Appellant’s Counsel in view of COVID-19 Pandemic. However, the hearing was held as scheduled on 03.06.2020 when the Addl.SE, DS Division, Bhatinda attended this Court. After hearing, copies of the proceedings were sent to the Appellant as well as the Respondent vide Memo No. 391-392/OEP/A-16/2020 dated 03.06.2020 wherein next date of hearing was fixed for 24.06.2020. Another intimation was sent vide this office letter no. 434-435/OEP/A-16/2020 dated 10.06.2020. The hearing was attended by the representatives of both sides on 24.06.2020 and proceedings of hearing were sent to the Appellant and the Respondent vide letter no. 486-487/OEP/A-16/2020 dated 24.06.2020.

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

With a view to adjudicate the dispute, it is necessary to go through written submissions made in the Appeal by the Appellant and reply of the Respondent as well as oral submissions made by their respective representatives along with material brought on record by both the sides.

1. **Submissions of the Appellant**
2. **Submissions made in the Appeal**

The Appellant made the following submissions in the Appeal, received on 28.02.2020, for consideration of this Court:

1. On 23.10.2008, the Appellant applied for a new electricity connection with load of 11500 kW/CD 8000 kVA. The feasibility clearance was granted by the Feasibility Clearance Committee (FCC) on 29.04.2010 to release the load to the Appellant by erecting 3.2 kilometers new 66 kV Single Circuit Independent Line on single circuit towers with 0.15 square inch (wolf) ACSR from existing 66 kV Sub-Station Jeeda to the Appellant’s (firm’s) premise. The existing 66 kV Sub-Station Jeeda was to be fed from 220 kV Baza Khana Sub-Station through the existing common/back-up 66 kV line from Jeeda Sub-Station to 220 kV Baza Khana Sub-Station by shifting/deloading of some load of 220 kV Baza Khana Sub-Station to some other Sub-Station.
2. As per the Demand Notice/Other correspondence, the Appellant deposited a sum ₹ 1,20,16,126/- towards the cost of ₹46,50,000/- for erection of 66 kV bay at Jeeda Sub-Station, ₹49,10,526/- being the estimated cost of erection of 66 kV service/transmission line from 66 kV Jeeda Sub-Station to factory premise and ₹24,55,600/- towards the cable charges. The Appellant also deposited the requisite amount of Advance Consumption Deposit/Security (Consumption).
3. The Appellant applied for additional load of 6500 kW/CD 6000 kVA on 08.02.2011. Thus, total applied load was 18,000 kW/CD 14,000 kVA and the same was allowed by the Feasibility Clearance Committee in its meeting dated 25.01.2012 and the additional load was to be released through the same 66 kV Jeeda-Sportking Transmission Line which was erected at the cost of the Appellant when it applied for original load and no further augmentation of the line etc, was required for releasing the additional load.

(iv) As the Appellant paid the whole cost of line as demanded by the PSPCL alongwith bay charges amounting to ₹ 1,20,16,126/- at the time of release of original load even though the Service Connection Charges (SCC) on the original contract demand (CD) of 8000 kVA at the fixed rate basis of ₹ 900/- per kVA was ₹72,00,000- only. Further, as per FCC report, the existing line erected at the cost of the Appellant was able to take extended load without any augmentation. As such, the Appellant was not liable to pay any further cost as per proviso to Regulation 9.1.2 (c) of the Supply Code-2007. But the Respondent wrongly and illegally issued Demand Notice bearing No. 559 dated 13.03.2012 and asked the Appellant to deposit ₹ 54,00,000/- as Service Connection Charges.

1. Accordingly, the Appellant sent a request letter dated 23.04.2012 (diary No. 2109 dated 26.04.2012) to Dy. Chief Engineer, DS Circle, PSPCL, Bhatinda and specifically submitted that the PSPCL had already charged more at the time of release of original connection and further that PSPCL was not entitled to get any SCC at the time of release of additional load because there was no augmentation of line and the load could be released from existing line.
2. The Respondent forced the Appellant to deposit the above said Amount of ₹ 54,00,000/- as Service Connection Charges. To avoid further delay in release of load and also to avoid delay in the commissioning of its expansion project, the Appellant deposited the said ₹ 54,00,000/- as Service Connection Charges vide Receipt No. 266-E 4336 dated 20.07.2012 alongwith **“Under Protest”** letter dated 20.07.2012 and complied with the demand notice.
3. Since the Respondent PSPCL did not give any response after the

deposit of wrongly claimed Service Connection Charges of ₹ 54,00,000/- under Protest vide Letter dated 26.04.2012 and 20.07.2012 , the Appellant filed a Petition No. 52/2016 during the year 2016 before the Hon’ble PSERC for directing the Respondent to refund the amount of ₹ 54,00,000/- illegally charged by the Respondent in violation of the provisions of the Supply Code- 2007 and Electricity Act-2003 along with interest.

1. During the course of pleadings before the Hon’ble PSERC, PSPCL conceded in its submissions that the Service Connection Charges of ₹ 54,00,000/- were wrongly got deposited from the Appellant due to misinterpretation of the Regulations and the order dated 11.06.2012 of Hon’ble PSERC in *Petition No. 05/2012* in the matter of *Trident India Ltd., Barnala vs PSPCL*. But the proportionate cost of back-up/common line charges was payable by the Appellant as the feeding sub-station in the said case was 220 kV Baza Khana sub-station instead of 66 kV Jeeda sub -station as claimed by the Appellant.
2. After various pleadings/replies, rejoinders and oral arguments, Hon’ble PSERC decided Petition No. 52/2016 on 14.02.2017 in favour of the Petitioner. The operative part of the order reads as under:

 “*PSPCL is directed to calculate the charges payable by the Petitioner for release of extension in load in accordance with the interpretation/clarification rendered above as per the cost data approved by the Commission and applicable at that time.*

*PSPCL is directed to refund the excess amount to the Petitioner within one month of the issue of this Order.*

 *In case, the Petitioner is not satisfied with the amount calculated by PSPCL as per the interpretation of Supply Code rendered through this Order, the Petitioner shall be free to approach the grievances settlement mechanism of the licensee as per law.*

 *In view of the above interpretation and clarification, the petitioner and the Respondents are free to re-calculate the charges payable at the time of release of connection provided the same are admissible as per law of limitation and any other Law/Regulations applicable in this case.”*

1. Further, the Appellant applied for enhancement of load of 4,000

kW/2,000 kVA i.e. from 18,000 kW/14,000 kVA to 22,000 kW/16,000 kVA and the Feasibility Clearance Committee approved the release of said additional load on the existing 66 kV Line without any argumentation. As per the demand notice, the Appellant deposited Service Connection Charges of ₹ 44,00,000/- on 19.11.2014 with PSPCL.

1. The Appellant applied for enhancement of load of 11,000 kW/4,500 kVA i.e. from 22,000 kW/16,000 kVA to 33,000 kW/20,500 kVA and the Feasibility Clearance Committee approved the release of said additional load on the existing 66 kV line without any augmentation. As per the demand notice, the Appellant deposited Service Connection Charges of ₹ 29,70,000/- in the year 2019 with PSPCL.
2. In view of the interpretation of the Back-up line/Common line charges as per the aforesaid judgment and Regulation 9.1.2 (1) (C) as existed at that time, the Appellant was entitled for refund of Excess Service Connection Charges of ₹ 14,32,216/- (out of Service Connection Charges of ₹ 44,00,000/- charged/got deposited by PSPCL on 19.11.2014). So, the Appellant applied for the refund of Excess Service Connection Charges of ₹ 14,32,216/- alongwith interest to PSPCL vide letter dated 22.03.2017.
3. In view of the interpretation of Regulations as per the aforesaid judgment, the Appellant approached the PSPCL for refund of the Excess Service Connection Charges of ₹ 33,84,000/- (out of ₹ 54,00,000/- got wrongly/illegally deposited by the Respondent from the Appellant on 20.07.2012) alongwith interest as per the instructions in force as per the aforesaid interpretation of back-up/common line and order in Petition No. 52/2016 as per Electricity Supply Instruction Manual/Supply Code Regulation vide letter dated 18.02.2017.
4. PSPCL granted the refund of Excess Service Connection Charges of ₹ 19,02,109/- by way of adjustment in the electricity bill issued on 08.12.2017 payable on 18.12.2017, and also of ₹ 33,84,000/- on 21.04.2017 (due date of electricity bill dated 11.04.2017) out of which the short recovery of service line charges of ₹ 2,37,555/- and of proportionate cost of back-up/common line charges of ₹ 2,32,400/- against the initial load of 8000 kVA released in the year 2011 as claimed by PSPCL was also adjusted by PSPCL by way of adjustment of ₹ 29,14,107/- in the electricity bill issued on 11.04.2017 and payable on 21.04.2017.
5. But the amount of the interest due on the refund of excess Service Connection Charges of ₹ 19,02,109/- (out of ₹ 44,00,000/- deposited on 19.11.2014) from 19.11.2014 to 18.12.2017 and ₹ 33,84,000/- (out of ₹ 54,00,000/-) got illegally/wrongly deposited from the Appellant under protest on 20.07.2012 to 21.04.2017 had not been paid despite the fact that Service Connection Charges were paid under protest by the Appellant conceded by PSPCL for wrong taking of Service Connection Charges from the Appellant in proceedings before Hon’ble PSERC/refund claims lodged with request for payment of interest of the intervening period in the Petition/Letters as per the provisions contained in the Electricity Supply Instruction Manuals/Supply Code as the matter remained under adjudication.

 Since then the Appellant followed up with the concerned office of the PSPCL for payment of the interest due as per the Regulations /Manual on the Excess Service Connection Charges already refunded by them and a letter to this effect was also sent to Goniana Sub-Division, Bhatinda Division/Zone on 06.12.2019/13.12.2019 but the same was still not paid by them and the Respondent never gave reply to the Appellant on the above said matters.

1. In view of the observation of the Hon’ble PSERC in the Preamble of operative part of the judgment in Petition No. 52/2016 that:

*“Before proceeding further, we would like to clarify that it is not the function and jurisdiction of the Commission to go into the calculations of various charges demanded by the distribution licensee from the consumer. In case of any dispute on such matters between the distribution licensee and the consumer, the appropriate body to resolve such issues is the Dispute Settlement Committees or the Consumer Forum established under section 42(5) of the Electricity Act, 2003. All monetary disputes arising due to wrong billing or dues of Service Connection Charges/General Charges etc. are required to be disposed of by the Dispute Settlement Committee or the Forum for Redressal of Grievances in accordance with PSERC (Forum and Ombudsman) Regulations.”*

1. The Appellant filed a Complaint No T-417 of 2019 on 30.12.2019 before the CGRF, Patiala praying for issue of necessary directions to PSPCL for grant of interest on the Service Connection Charges wrongly taken for the period from the date of deposit to the date of refund with further interest as per the ESIM/Supply Code/Forum Guidelines/Electricity Act.
2. The Forum had passed order dated 31.01.2020 (received on 05.02.2020) which was not just and fair.
3. Since these service connection charges were paid out of various interest bearing credit facilities availed by the Appellant from banks, the Appellant had already suffered/paid the interest to banks against these Excess Service Connection Charges during the intervening period and the payment of interest by PSPCL on the refund of Excess Service Connection Charges will compensate the interest cost already suffered by the Appellant. Further, PSPCL had enjoyed the excess service connection charges/funds (without any legitimate right) for a long time and if not taken by them, it would have paid interest to their banks against equivalent funds borrowed from banks by them.
4. The provisions of Electricity Supply Instruction Manual/Supply Code, in view of the provisions of Section 47 of Electricity Act 2003, provided that:
	1. **Instruction 114 of Electricity Supply Instructions Manual**

 **provides as under:**

*“Interest shall be recoverable at the short-term PLR of the SBI prevalent on 1st of April of the relevant year on the amount decided finally as recoverable by the DSC/Forum /Ombudsman/Appellate Authority/Designate Authority. In case disputed amount is finally upheld, then the interest shall be recoverable on the amount not deposited in the first instance i.e. the pending amount. In case the disputed amount is decided to be not recoverable or partly recoverable, then PSPCL will pay interest at the short term PLR of the SBI prevalent on 1st of April of the relevant year on the refund amount for the period the amount remained under adjudication.CAO/Revenue shall issue instructions every year regarding the short term PLR in the month of April, which shall be made applicable during the entire financial year.”*

* 1. **Further Regulation 7(8) of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2005 provided as under:**

*“The Forum may, subject to Electricity Supply Code and related matters Regulations made by the commission in this regard, award such compensation to the complainants as it considers just and appropriate in the circumstances of the cases.*

*Provided that the Interest payable on recoverable/refundable amount if any, by either party shall be as under:*

1. *Cases covered under 5(2) (ii) (a)*

***Disputed Current electricity bill amount (covered under Reg. 35 of Supply Code):***

*as per Regulation 35.4 & 35.5 of Supply Code Regulations, as amended from time to time, as the case may be.*

1. *Cases covered under 5(2)( (ii) (b)*

***Cases other than that disputed current electricity bill amount (covered under Reg. 35of Supply Code):***

*at SBI Base Rate prevalent on 1st of April of the relevant year plus 2%”*

* 1. **Regulation 19.4 of Supply code-2014 provides as under.**

 *“The refund of Service Connection Charges/Security (works) shall be affected within thirty (30) days of receipt of request from the applicant. In case a distribution licensee fails to refund SCC/Security (works), as the case may be, within the stipulated period, he shall for the period of default starting from the 31st day of the date of withdrawal of application till the date SCC/Security (works) is refunded, be liable to pay interest at twice the SBI’s Base Rate prevalent on first of April of the relevant year plus 2%.”*

* 1. **Section 47 of the Electricity Act- 2003 provides as follows:**

*“(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-(a) in respect of the electricity supplied to person; or(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.*

*(2) Where any person has not given such security as is mentioned in sub- section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.*

*(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.*

*(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.*

*(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a prepayment meter.”*

1. The Forum did not consider the judgment of Petition No. 52/2016 properly. The Appellant’s prayer did not cover the refund out of Service Connection Charges of ₹ 44,00,000/- deposited on 19.11.2014 which was directly applied by the Appellant to the PSPCL (not a part of prayer made in Petition No. 52/2016). The PSPCL/ZDSC/CGRF wrongly applied the Judgment of Hon’ble PSERC in Petition No. 52/2016 against the interest on this refund amount.
2. As per internal guidelines of PSPCL, the concerned DS Division, Bhatinda presented the case for refund of Excess Service Connection Charges along with interest to ZDSC, Bhatinda and had wrongly applied the Judgment in the said refund case and also wrongly relied on the letter no. 16580 dated 31.03.2017 of the PSPCL, Legal Section, Patiala issued in regard to payment of interest against the refund due to the Appellant against Service Connection Charges of ₹ 54,00,000/- as per the Judgment in Petition No. 52/2016. So, the Judgment in the Case No. 52/2016 was not applicable to the refund of ₹19,02,109/-against Service Connection Charges of ₹ 44,00,000/- and PSPCL took a period of 9 month for refund of Excess Service Connection Charges, that too without payment of interest even though delay was at their end and interest was payable as per the instructions of the PSPCL to the Appellant.
3. Inspite of regular followup letters on 06.12.2019/13.12.2019,not a single reply had been given by PSPCL. The minutes of ZDSC, Bhatinda dated 06.11.2017 and the letter dated 31.03.2017 of the PSPCL Legal Section relied upon by PSPCL/ZDSC were never shared by them nor intimated to the Appellant (now submitted during the course of proceeding before CGRF in January, 2020). Had this been done, the Appellant could have taken up the matter with the Appropriate Authority at that time itself.
4. A copy of the reply submitted by the PSPCL before the CGRF, Patiala on 17.01.2020 was not given to the representative of the Appellant even though it had been indicated in the order that copy of the reply had been handed over to the Appellant’s Representative. Only after the receipt of the order of the CGRF, Patiala on 05.02.2020, the Appellant came to know about the said reply and approached PSPCL Sub Division, Goniana Mandi when the Copy of Reply was given to the Appellant’s Representative. So, the Chairman CGRF, Patiala did not give any opportunity to the Appellant for filing its rejoinder to reply of PSPCL for the consideration of the Forum which was against the principle of the equity & justice and the guidelines issued by PSERC that before decision of the Complaint by the Forum, an opportunity to the Complainant for filing the rejoinder be granted which was not given.

(xiv) The Court of the Ombudsman, Electricity had allowed the interest on the refundable amount to the consumer in Appeal No. 36/2019 decided on 06.09.2019 in the case of SEL. Mfg. Co. Ltd. This Court had also allowed the Interest on the excess line charges got deposited by PSPCL from the consumer.

Hon’ble PSERC, in the case of Nabha Power, decided on 24.12.2019, had not only considered the interest payable on arrears but also carrying interest cost on the arrears till its recovery while imposing surcharge vide Petition No. 25/2019.

Similarly in Appeal No. 250/2016 decided by the Hon’ble APTEL in the case of Adani Transmission, it was decided that the delayed payment charges were to be treated as non-tariff income and the interest cost towards required additional working capital ought to be allowed in tariff by the Hon’ble PSERC as late payment interest was necessarily compensatory in character.

1. The payment of interest on Excess Service Connection Charges

from the date of deposit till the date of refund will only compensate the interest cost already incurred by the Appellant and unnecessary illegitimate advantage taken by the PSPCL by withholding the funds thus saving its own interest cost on the normal working capital limits/borrowings.

1. **Submission in Rejoinder**

The Appellant’s Representative made the following submissions, in its rejoinder dated 23.06.2020 to the reply of the Respondent:

1. The reply of the Respondent was incomplete and not convincing at all. The Respondent had evaded submitting reply to various paras of the Appeal wherein admissibility of interest on the refundable amount of Service Connection Charges was mentioned with reference to instructions of PSPCL and Regulations of Supply Code- 2014. The Respondent, in its reply, had repeatedly stated that issue of interest had already been decided by Hon’ble PSERC and refund of excess SCC had been adjusted in compliance to orders of the Commission.
2. Further, the Respondent had also mentioned that Zonal Dispute Settlement Committee (ZDSC) and CGRF had already dismissed the claim of interest, after considering all the aspects, facts and law points involved in the case. From the reply, it appeared that the Respondent had not properly studied the decision of Hon’ble PSERC. The ZDSC and CGRF, in their respective decisions, had denied the claim of interest on the wrong perception that Hon’ble PSERC, in its decision dated 14.02.2017 (in Petition No. 52 of 2016) had allowed refund of only SCC and had not allowed any interest on the refundable amount. Had the ZDSC and CGRF properly gone through the decision of Hon’ble PSERC and relevant rules and regulations especially Regulation 19.4 of Supply Code-2014 and Instruction No.114 of ESIM, then, there was no question of denying legitimate claim of interest to the Appellant.
3. There was no doubt about the fact that matter of applicable interest on the refund of excess SCC was not deliberated and decided by the Hon’ble PSERC and observations of the Hon’ble PSERC as per order dated 14.02.2017 were very clear that monetary disputes were to be taken up with Dispute Settlement Committees or the Forum for Redressal of Grievances in accordance with PSERC (Forum and Ombudsman) Regulations. Accordingly, the case of due interest on excess service connection charges of ₹ 33,84,000/- out of ₹ 54,00,000/- deposited on 20.07.2012 and ₹ 19,02,109/- out of ₹ 44,00,000/- deposited on 19.11.2014 (the case of deposit of ₹ 44,00000/- was not even part of Petition No. 52/2016) was filed by PSPCL in ZDSC first and complaint was filed by Appellant (Sportking) in CGRF.
4. It was not understood as to how the CGRF, Patiala had come to the conclusion that Hon’ble PSERC had not ordered any payment towards interest, especially when the issue of interest was not taken up, not deliberated and accordingly was not a part of its order/ decision. If the CGRF had seen any discussion and decision on the issue of interest on refundable amount of SCC, then, reference to Page No./Para of the order dated 14.02.2017 of Hon’ble PSERC was required to be given in the judgments of CGRF, instead of vague order that **“Hon’ble PSERC had not ordered any payment towards interest charges. The orders of Hon’ble PSERC were explicitly clear and CGRF had no jurisdiction to interfere in the orders of Hon’ble PSERC”.**
5. It was once again reiterated that issue of interest and excess payment of SCC of ₹ 19,02,109/- out of ₹ 44,00,000/- deposited on 19.11.2014 was not even taken up/discussed in the order dated 14.02.2017 of Hon’ble PSERC rather, as per observations at **Page No.33** of the order, it was made clear by Hon’ble PSERC that *“all monetary disputes arising due to wrong billing or dues of Service Connection Charges etc. were required to be disposed of by the Dispute Settlement Committees or the Forum for Redressal of Grievances in accordance with PSERC (Forum and Ombudsman) Regulations. However, as per regulation 44.3 of the Supply Code 2014, in case any dispute arises in respect of interpretation of any Supply Code Regulations, the same shall be referred to the Commission”.* Thus there was no question of interference in the decision of Hon’ble PSERC while deciding the monetary dispute(relating to due interest on excess deposited amount of SCC) and Forum was fully competent and authorized to allow the applicable/admissible interest as per Regulation 19.4 of Supply Code-2014 and Instruction No.114 of ESIM. The order of Hon’ble PSERC did not debar CGRF or any other authority as per CCHP to decide the issue of interest (monetary dispute) and there was no ambiguity in the order of Hon’ble PSERC. In this regard, if still, there was any doubt, then, matter may be discussed/clarified from Hon’ble PSERC (at appropriate level) instead of denying legitimate claim to the Appellant.
6. Needless to mention here that in various cases, the Court of Ombudsman had allowed applicable interest on refundable amount of SCC as per Instruction No.114 of ESIM. In the case of M/s Bansal Ispat Udyog (Appeal No.24/2013), this Court, vide order dated 26.9.2013, decided that “*the amount charged as additional SCC is held not recoverable from the petitioner and excess/short deposits, if any, after adjustment, shall be refunded/recovered with interest under the relevant provisions of ESR”.* Some other cases, where interest had been allowed on refundable amount had also been mentioned in the Appeal.

 This Court was allowing the interest on the refundable amount to the consumers and in recent Appeal No. 36/2019 decided on 06.09.2019, in Appeal No.14/2020 and Appeal No. 15/2020 in the case of SEL. Mfg. Co. Ltd., the Court had also allowed the interest on the excess line charges got deposited by PSPCL from the consumer.

 Hon’ble Commission (PSERC), in the case of Nabha Power decided on 24.12.2019, had not only considered the interest payable on arrears but also carrying interest cost on the arrears till its recovery while imposing surcharge vide Petition No. 25/2019.

 Similarly, in Appeal No. 250/2016 decided by the Hon’ble APTEL in the case of Adani Transmission, it was decided that the delayed payment charges was to be treated as non-tariff income and the interest cost towards requirement of additional working capital ought to be allowed in tariff by the commission as late payment interest is necessarily compensatory in character.

1. The said order was silent about the payment of interest and monetary disputes regarding Service Connection Charges were to be dealt under Grievance Settlement Mechanism of PSPCL and the claim for the refund of excess Service Connection Charges of ₹ 33,84,000/- out of ₹ 54 Lacs deposited on 20.07.2012 under protest was also filed before the PSPCL on 18.02.2017 which was not granted by PSPCL, due to misinterpretation of order passed by Hon’ble PSERC. The complaint in this regard was also covered in complaint No. T/417 before CGRF, Patiala who did not offer any comments about the interest on refund on the excess Service Connection Charges out of ₹ 54 Lacs.
2. The various Regulations/Instructions of Supply Code/ ESIM had provided for charging of interest on short charges/payments (@ 18% p.a. charged in the various notices issued to the Appellant’s company by DS Sub-Division, PSPCL, Sahnewal (Ludhiana) as decided by CGRF Ludhiana Complaint No. 242/2019 and Court of Ombudsman in Appeal No. A-70 of 2019 as well as grant of interest on the excess charges/receipts as decided by the this Court in Appeal No. 14 & 15/2020 decided in June, 2020 to meet ends of Justice and to compensate for the interest paid by the consumers to their banks on their Working Capital Borrowings for delayed refunds.

In view of the above position and as per submissions made in the Appeal (in detail), it was again prayed to set aside the decision of the Forum, allow the appeal, and order the payment of

interest due on the refund of service connection charges (SCC) already made by PSPCL office i.e. on ₹ 19,02,109/- from 19.11.2014 to 18.12.2017 and on ₹ 33,84,000/- from 20.07.2012 to 21.04.2017, on the principle of natural justice and fairness along with further interest and to compensate the interest already paid by the consumer to their bank as PSPCL had wrongly enjoyed the excess funds thereby saving their own interest cost.

1. **Submissions during Hearing**

During hearing, the Appellant’ Representative reiterated the submissions already made in the Appeal and rejoinder to the written reply of the Respondent. In addition, the Appellant’s Representative referred to provisions contained in Regulation 19.4 of Supply Code-2014 in support of its contention of admissibility of interest on the amount of Service Connection Charges deposited under protest. The Appellant’s Representative also stated that the said SCC were deposited by the Appellant by arranging loan from the bank and PSPCL kept this amount in its account and earned interest thereon.

1. **Submissions of the Respondent**
2. **Submissions made in the Written Reply**

The Respondent, in its reply, made the following submissions for consideration of the Court:

1. The present Appeal was not maintainable. Since the matter had

already been decided by Hon’ble Punjab State Electricity Regulatory Commission and in compliance to its orders, the Respondent had refunded the amount of ₹ 19,02,109/- to the Appellant.

1. No order was passed by Hon’ble PSERC with regard to payment of any interest whatsoever and as such, the Respondent was not liable to pay the same. Had there been any claim for the interest, the Appellant/complainant would have approached the Hon’ble PSERC itself.
2. The Appellant/complainant had also approached the Zonal Disputes Settlement Committee where the Appellant was afforded full opportunity to present its case and the said Committee, after hearing the case on merit, had already dismissed the claim of the Appellant/complainant clearly holding that no interest was payable.
3. Even otherwise, since the Complainant/Appellant had already submitted to the jurisdiction of the Zonal Committee with regard to payment of interest. As such, the Appellant did not have any right to rechallenge the same before this Court. Hence, the present complaint deserved dismissal.
4. The case had not been filed through an authorized signatory. The Appellant be put to strict proof of the averments made in this Appeal.
5. With regard to paras of the Appeal which related to the Description of Matter, a detailed reply had already been filed by the Respondent regarding the same before the Hon’ble PSERC as well as before the Zonal Disputes Settlement Committee. The copies of same were being annexed herewith and the contents of the same may be read as a part of reply to the Appeal.
6. Even otherwise, the facts of the case had been fully discussed by Hon’ble Punjab State Electricity Regulatory Commission while deciding the matter on merits with regard to payment of interest. As already submitted, since the Hon’ble Commission had not granted any interest to the Complainant/Appellant, no such interest was payable by the Respondent.
7. There was no ambiguity with regard to the order dated 17.01.2020 by the Forum, passed in Case No. T-417 of 2019. The said order was passed after considering all the aspects, facts and law points involved in the case.
8. Nothing had been wrongly decided by the Forum. The detailed reply and submissions placed on record by the PSPCL may be read as part of reply to all the Grounds of Appeal. The amount had been rightly calculated. Full opportunity had been given to the complainant for presenting its case and nothing was done against the principles of equality and justice.

In view of submissions made, the aforesaid Appeal be dismissed with costs being without any merit.

1. **Submission during Hearing**

During hearing, the Respondent reiterated the submissions already made in its written reply. On being inquired by the Appellant’s Representative, the Respondent confirmed that the disputed SCC deposited by the Appellant under protest were refunded to the Appellant in view of the order dated 14.02.2017 of Hon’ble PSERC in Petition No. 52/2016.

**5.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the claim for payment of interest on excess Service Connection Charges deposited by the Appellant from the date of deposit to the date of refund.

*My findings on the points emerged, deliberated and analysed are as under:-*

1. The Appellant was having Large Supply Category Connection for spinning mill with sanctioned load of 11,500 kW and contract demand (CD) of 8,000 kVA. The Appellant applied for additional load and contract demand of 6,500 kW and 6,000 kVA respectively on 08.02.2011, thus, making total load of 18,000kW and CD as 14,000 kVA. The Appellant’s Representative stated that as the Appellant paid the whole cost of line as demanded by the PSPCL alongwith bay charges amounting to ₹ 1,20,16,126/- at the time of release of original load even though the Service Connection Charges on the original contract demand (CD) of 8000 kVA at the fixed rate basis of ₹ 900/- per kVA was ₹ 72,00,000- only. Further, as per FCC report, the existing line erected at the cost of the Appellant was able to take extended load without any augmentation. As such, the Appellant was not liable to pay any further cost as per proviso to Regulation 9.1.2 (c) of the Supply Code-2007. But the Respondent wrongly and illegally issued Demand Notice, bearing No. 559 dated 13.03.2012 and asked the Appellant to deposit ₹ 54,00,000/- as Service Connection Charges (SCC). Accordingly, the Appellant sent a request letter dated 23.04.2012 (diary No. 2109 dated 26.04.2012) to Dy. Chief Engineer, DS Circle, PSPCL, Bhatinda and specifically submitted that the PSPCL had already charged more at the time of release of original connection and further that PSPCL could not demand SCC at the time of release of additional load because there was no augmentation of line and the load could be released from existing line. The Respondent forced the Appellant to deposit the above said amount of

₹ 54,00,000/- as Service Connection Charges so as to avoid further delay in release of load and also to avoid delay in the commissioning of its expansion project. The Appellant deposited the said amount of ₹ 54,00,000/- as Service Connection Charges vide Receipt No. 266-E 4336 dated 20.07.2012 alongwith **“Under Protest”** letter dated 20.07.2012 and complied with the demand notice.

1. The Appellant’s Representative also contended that the Respondent (PSPCL) did not give any response after the deposit of wrongly claimed Service Connection Charges of ₹ 54,00,000/- inspite of Appellant’s Letter dated 26.04.2012 and 20.07.2012. Therefore, the Appellant filed a Petition No. 52/2016 in the year 2016 before the Hon’ble PSERC for directing the Respondent to refund the amount of ₹ 54,00,000/- illegally charged by the Respondent in violation of the provisions of the Supply Code- 2007 and Electricity Act-2003 along with interest. During the course of pleadings before the Hon’ble PSERC, PSPCL conceded in its submissions that the Service Connection Charges of ₹ 54,00,000/- were wrongly got deposited from the Appellant due to misinterpretation of the Regulations and the order dated 11.06.2012 of Hon’ble PSERC in Petition No. 05/2012 in the matter of Trident India Ltd., Barnala vs PSPCL. But the proportionate cost of back-up/common line charges was payable by the Appellant as the feeding sub-station in the said case was 220 kV Baza Khana sub-station instead of 66 kV Jeeda sub-station as claimed by the Appellant. After hearing both sides, Hon’ble PSERC decided Petition No. 52/2016 on 14.02.2017 as under:

 “*PSPCL is directed to calculate the charges payable by the Petitioner for release of extension in load in accordance with the interpretation/clarification rendered above as per the cost data approved by the Commission and applicable at that time.*

*PSPCL is directed to refund the excess amount to the Petitioner within one month of the issue of this Order.*

 *In case, the Petitioner is not satisfied with the amount calculated by PSPCL as per the interpretation of Supply Code rendered through this Order, the Petitioner shall be free to approach the grievances settlement mechanism of the licensee as per law.*

 *In view of the above interpretation and clarification, the petitioner and the Respondents are free to re-calculate the charges payable at the time of release of connection provided the same are admissible as per law of limitation and any other Law/Regulations applicable in this case.”*

1. The Appellant’s Representative also submitted that the Appellant applied for enhancement of load/CD of 11,000 kW/4,500 kVA i.e. from 22,000 kW/16,000 kVA to 33,000 kW/20,500 kVA and the Feasibility Clearance Committee approved the release of the said additional load on the existing 66 kV Line without any augmentation. As per the demand notice, the Appellant deposited Service Connection Charges of ₹ 29,70,000/- in the year 2019 with PSPCL. In view of the interpretation of the Back-up line/Common line charges as per the aforesaid judgment and Regulation 9.1.2 (1) (c) as existed at that time, the Appellant was entitled for refund of Excess Service Connection Charges of ₹ 14,32,216/- (out of Service Connection Charges of ₹ 44,00,000/- charged/got deposited by PSPCL on 19.11.2014). So, the Appellant’s applied for the refund of Excess Service Connection Charges of ₹ 14,32,216/- alongwith interest to PSPCL vide letter dated 22.03.2017. In view of the interpretation of Regulations as per the aforesaid judgment, the Appellant approached the PSPCL for refund of the Excess Service Connection Charges of ₹ 33,84,000/- (out of ₹ 54,00,000/- got wrongly/illegally deposited by the PSPCL from the Appellant on 20.07.2012) alongwith interest as per the instructions in force as per the aforesaid interpretation of back-up/common line and order in Petition No. 52/2016 as per Electricity Supply Instruction Manual/Supply Code Regulation vide letter dated 18.02.2017. PSPCL granted the refund of Excess Service Connection Charges of ₹ 19,02,109/- by way of adjustment in the electricity bill issued on 08.12.2017 payable on 18.12.2017, and also of ₹ 33,84,000/- on 21.04.2017 (due date of electricity bill dated 11.04.2017) out of which, the short recovery of service line charges of ₹ 2,37,555/- and of proportionate cost of back-up/Common line charges of ₹ 2,32,400/- against the initial load of 8000 kVA released in the year 2011 as claimed by PSPCL was also adjusted by PSPCL by way of adjustment of ₹ 29,14,107/- in the electricity bill issued on 11.04.2017 and payable on 21.04.2017. But the amount of the interest due on the refund of Excess Service Connection Charges of ₹ 19,02,109/- (out of ₹ 44,00,000/- deposited on 19.11.2014) from 19.11.2014 to 18.12.2017 and ₹ 33,84,000/- (out of ₹ 54,00,000/-) got illegally/wrongly deposited from the Appellant under protest on 20.07.2012 to 21.04.2017 had not been paid despite the fact that Service Connection Charges were paid under protest. The Appellant mentioned that PSPCL conceded about incorrectly demanding Service Connection Charges from the Appellant in proceedings before PSERC. The Appellant followed up with the concerned office of the PSPCL for payment of the interest due as per the Regulations /Manuals on the Excess Service Connection Charges already refunded by them and a letter to this effect was also sent to Goniana Sub-Division, Bhatinda Division on 06.12.2019/13.12.2019 but the same was not paid and PSPCL never gave reply to the Appellant on this matter.
2. The Appellant’s Representative also submitted that the Forum did not consider the decision of PSERC in Petition No. 52/2016 properly. The Appellant’s prayer did not cover the refund out of Service Connection Charges of ₹ 44,00,000/- deposited on 19.11.2014 which was directly applied by the Appellant to the PSPCL (not a part of prayer made in Petition No. 52/2016). The PSPCL/ZDSC/CGRF wrongly applied the decision of Hon’ble PSERC in Petition No. 52/2016 against the interest on this refund amount.
3. During hearing on 24.06.2020, the Appellant’s Representative reiterated the submissions already made in the Appeal and rejoinder to the written reply of the Respondent. In addition, the Appellant’s Representative referred to provisions contained in Regulation 19.4 of Supply Code-2014 in support of its contention of admissibility of interest on the amount of Service Connection Charges deposited in excess under protest. The Appellant’s Representative also stated that the excess SCC demanded by the PSPCL were deposited by the Appellant by arranging loan from the bank and PSPCL kept this amount in its account and earned interest thereon.

In this connection, I find it worthwhile to go through provisions contained in Regulation 19.4 of Supply Code-2014 which reads as under:-

*“The refund of Service Connection Charges/Security (works) shall be affected within thirty (30) days of receipt of request from the applicant. In case a distribution licensee fails to refund Service Connection Charges/Security (works), as the case may be, within the stipulated period, he shall for the period of default starting from the 31st day of the date of withdrawal of application till the date Service Connection Charges/Security (works) is refunded, be liable to pay interest at the SBI’s Base Rate prevalent on first of April of the relevant year plus 2%.”*

1. A perusal of the order dated 14.02.2017 of Hon’ble PSERC in Petition No. 52/2016 reveals that due to wrong interpretation of Regulation of Supply Code-2007, the Respondent charged Service Connection Charges more than those prescribed /applicable. These charges (charged to the Appellant) were decided to be not payable by the Appellant in view of interpretation given by the Hon’ble PSERC. Hence, the excess Service Connection Charges amounting to ₹ 29,14,045/- were refunded through bill issued on 11.04.2017 while refund of ₹ 19,02,109/- was given by adjustment in the bill issued on 08.12.2017.

I find that though the Appellant had claimed interest charges on the excess amount of SCC through Petition No. 52/2016 filed in PSERC but no order on payment of interest on refund of excess SCC was passed by Hon’ble PSERC.

I also find that the Appellant itself admitted in this Appeal that its prayer in Petition No. 52/2016 filed before the PSERC did not cover the refund out of Service Connection Charges of ₹ 44,00,000/- deposited on 19.11.2014 which was directly applied by the Appellant to the PSPCL.

The Appellant filed Petition no. 52 of 2016 before Hon’ble PSERC during 2016 but did not bring into the notice of the PSERC the case of refund of excess Service Connection Charges which were deposited on 19.11.2014. This fact should have been brought into the notice of PSERC while filing above mentioned Petition.

I observe that the PSPCL demanded the SCC at the time of extension of load/CD due to wrong interpretation of Regulations.

1. The Appellant had, in the present Appeal, referred to some decisions of this Court as per which, interest was allowed on delayed refund. In this connection, it is observed that facts and circumstances of the Appeal cases, referred to by the Appellant, differ from case to case and the Appellant has not specifically mentioned the nature of dispute and relief given in the cases cited by it for giving similar relief to the Appellant.
2. It is observed that no interest was allowed in a similar case to M/s Trident Ltd. V/s PSPCL in Petition No. 05/2012 decided by Hon’ble PSERC on 11.06.2012. Hence, the plea of the Appellant to get relief by way of interest on refund of excess SCC is not based on facts.
3. The case filed in the PSERC, vide Petition no. 52 of 2016, related to interpretation of Supply Code and refund of excess SCC alongwith interest. Hon’ble PSERC gave necessary interpretation/clarification vide its order dated 14.02.2017 and directed PSPCL to calculate the charges payable for release of extension in load as per interpretation/clarification rendered in this order. PSPCL was directed to refund excess amount to the Appellant within one month of issue of order. There was no order relating to the payment of interest even though the Appellant had prayed for the same. The issue remained under dispute/adjudication for long time. This Court is not inclined to award any interest till 14.03.2017 (date by which payment of excess SCC was required to be made as per orders dated 14.02.2017 of PSERC). However, the Appellant is entitled for interest as per Supply Code for delay in releasing/refunding the excess SCC beyond 14.03.2017. The Appellant’s Representative confirmed during hearing dated 24.06.2020 that it was satisfied with the calculations done by PSPCL regarding SCC refunded/adjusted in the bills dated 11.04.2017 and 08.12.2017.

I am of the considered view that with a view to meet the ends of justice, it will be just and fair to allow interest to the Appellant on excess Service Connection Charges refunded(by way of adjustment in the bills) to it from the date after one month of the date of decision of PSERC in Petition No. 52/2016 till the date of actual refund already given.

Accordingly, the Appellant shall be allowed interest on the refunded excess SCC of ₹ 29,14,045/- from 15.03.2017 (one month after the date of decision dated 14.02.2017 of PSERC ) to 11.04.2017 (date of issue of bill in which excess SCC was refunded/adjusted) and on the same analogy, interest on excess SCC of ₹ 19,02,109/- from 15.03.2017 (one month after the date of decision dated 14.02.2017 of PSERC) to 08.12.2017 (date of issue of bill in which excess SCC was refunded/adjusted) at the rates prescribed in Regulation 19.4 of Supply Code-2014 as applicable from time to time.

6. **Decision**

As a sequel of above discussions, the order dated 17.01.2020 of CGRF, Patiala in Case No. T-417 of 2019 is set aside. It is held that the Appellant shall be allowed interest on the refunded excess SCC of ₹ 29,14,045/- from 15.03.2017 (one month after the date of decision dated 14.02.2017 of PSERC) to 11.04.2017 (date of issue of bill in which excess SCC was refunded/adjusted) and on ₹ 19,02,109/- from 15.03.2017 (one month after the date of decision dated 14.02.2017 of PSERC) to 08.12.2017 (date of issue of bill in which excess SCC refunded/adjusted) at the rates prescribed in Regulation 19.4 of Supply Code-2014 as applicable from time to time.

**7.** The Appeal is disposed off 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)

 July 03, 2020 Lokpal (Ombudsman)

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