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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 22/2020**

**Date of Registration : 22.05.2020**

**Date of Hearing : 24.06.2020 and 09.07.2020**

**Date of Order : 14.07.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of :**

BNK Investments Silver City,

Ambala-Chandigarh Highway,

Zirakpur.

**Contract Account Number: Z74 GC 7400602**

 ..Appellant

Versus

Senior Executive Engineer,

DS Division, PSPCL,

 Zirakpur.

 ...Respondent

**Present For:**

Appellant : 1. Sh. R.S Dhiman

 Appellant’s Representative (AR).

 2. Sh. Ramanpreet Singh

Appellant’s Representative (AR).

Respondent : 1. Er. Satwinder Singh

 S.E., DS Circle, PSPCL, Mohali.

 2. Er. Rajiv Kapur

 Additional Superintending Engineer,

O/o C.E., Commercial, PSPCL, Patiala.

 3. Er. Khushwinder Singh

 Senior Executive Engineer,

 DS Division, PSPCL, Zirakpur.

 4. Er. Nishant Bansal

 Assistant Engineer/Commercial,

DS Division, PSPCL, Zirakpur.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 27.01.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-289 of 2019, deciding that:

 *“Levy of voltage surcharge amounting to* ₹ *31,05,031/- charged in the bill of 03/2019 on account of supply being given at 11 kV against specified voltage of 66 kV is in order and is recoverable.*

*The Franchisee Rebate be given to the petitioner once the compliance of all the terms and conditions of the Distribution Franchisee Agreement is made by the petitioner.”*

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

With a view to register the Appeal received in this Court on 22.05.2020, the Addl. S.E., DS Division, PSPCL, Zirakpur was requested, vide this office letter no. 156/OEP/A-22/2020 dated 24.02.2020, to confirm as to whether the Appellant had deposited the requisite 40% of the disputed amount assessed by the Forum as required under Regulation 3.18 (iii) of PSERC (Forum and Ombudsman) Regulations-2016. In response, a Notice was issued by A.E./Commercial, Sub-Division, PSPCL, Zirakpur to the Appellant vide Memo No. 10061 dated 24.02.2020, intimating that a sum of ₹ 52,54,829/- (including surcharge and interest on ₹ 41,11,896/-) was the disputed amount for determination of requisite 40% amount for filing the Appeal in this Court. Whereas the Appellant had deposited ₹ 16,44,752/- as requisite 40% of ₹ 41,11,896/-. Accordingly, a reference was made to the Appellant, vide this office letter no. 158/OEP/A-22/2020 dated 25.02.2020 to deposit the difference of requisite 40% amount deposited and the amount as per Demand Notice dated 24.02.2020 issued by the Respondent. The Appellant, vide letter dated 06.03.2020, informed this Court that the amount of ₹ 16,44,752/- deposited by it was actually 40% of the disputed amount assessed by the Forum, as per its decision dated 27.01.2020. The Appellant emphasized that it was not bound to deposit 40% of ₹ 52,54,828/- (including surcharge and interest) since the said amount was not final before the decision of Appellate Authority viz Ombudsman in the present case. The Appellant prayed to register the Appeal in view of the submission made above. Thereafter, a pre hearing was fixed for 25.03.2020 in this Court to resolve the dispute relating to actual amount required to be deposited but pre hearing was adjourned sine-die till further orders due to COVID-19 pandemic lockdown. After opening of office in May, 2020; discussions were held with the representatives of both the sides and it was unanimously agreed that the amount of ₹ 16,44,752/- deposited by the Appellant, required for filing the Appeal in this Court, was correct. Accordingly, the Appeal was registered on 22.05.2020 and the Addl. S.E., DS Division, PSPCL, Zirakpur was requested vide e-mail dated 12.06.2020 to submit written reply/parawise comments to the Appeal preferred by the Appellant.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 24.06.2020 at 02.30 PM and intimation to this effect was sent to both the sides vide letter no. 470-71/A-22/2020 dated 19.06.2020. As scheduled, the hearing was held on 24.06.2020 in this Court and copies of the proceedings, mentioning that another hearing will be held on 08.07.2020, were sent to both the sides vide this office letter no. 484-85 /OEP/A-22/2020. Besides, the Chief Engineer/Commercial, PSPCL, Patiala and Dy. C.E., DS Circle, Mohali were also requested, vide letter no. 492-93 dated 26.06.2020, to attend the said hearing alongwith relevant records of this case. Thereafter hearing was adjourned to 09.07.2020 due to some administrative reasons and held accordingly on the said date. Copies of proceeding were sent vide letter no. 566-67/OEP/A-22/2020 dated 09.07.2020.

**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 24.02.2020, for consideration of this Court:

1. The Appellant was running a Shopping Mall at Zirakpur under the name and Style of Cosmo Plaza. An electricity connection for the business, bearing Account No. Z74-GC74-00602, was sanctioned for 900 kW load with Contract Demand (CD) as 1000 kVA under NRS category. The connection was fed at 11 kV.
2. All electricity bills were being paid regularly by the Appellant.
3. Initially, the Appellant applied for NOC of the electrification for proposed Mall Complex as per the Instruction No. 36.2 of ESIM. The projected/estimated load of proposed Mall Complex was 4449 kW& CD as 4944 kVA, as per the calculation procedure laid by PSPCL under Instruction No. 36.8 of ESIM. NOC was granted by the Chief Engineer/Commercial, PSPCL vide Memo No. 228 dated 28.04.2017. In NOC, it was clearly mentioned by the Competent Authority that there was no space for erecting 66 kV sub-station in the premise of the Mall. Accordingly, the projected load would be released on 11 kV.
4. After completion of the construction work of the Mall, the Appellant applied for feasibility of 900kW load/1000 kVA CD as per its immediate requirement. The same was granted by the Competent Authority (DY.CE, DS Circle, Mohali) vide Memo No. 6004dated 19.05.2017. In this feasibility letter, it was clearly mentioned that the load of the Appellant’s Mall will be released on 11 kV, and voltage surcharge would be charged if its availed CD exceeded 4000 kVA. An undertaking regarding this had been submitted to the Respondent in compliance of the terms of feasibility. Accordingly, 900 kW load/1000 kVA CD was released at 11 kV & the same was running till date. It was also brought to the notice of the Respondent that the Appellant had no space for construction of 66 kV sub-station in the premise of its Mall. Accordingly, the permission was granted by the Competent Authority of PSPCL in NOC letter as well as in Feasibility Clearance letter for catering to the load at 11 kV.
5. Thereafter, vide bill for 3/2019, a demand of ₹ 31,05,031/- on account of arrears of voltage surcharge from the date of connection and ₹ 10,06,865/- on account of recovery of Franchisee rebate already given, was raised as Sundry Charges. After that, voltage surcharge was regularly being charged and Franchisee Rebate was stopped in further billing also. The demand raised by the Respondent on both the counts was totally wrong and unjustified. As such, a petition was filed by the Appellant before CGRF, Patiala. However, the Forum upheld the charges without due application of mind and on totally imaginary and untenable grounds. The Appellant entirely disagrees with the findings of the Forum and is therefore, constrained to file the present Appeal.
6. As per norms approved by PSERC, 11 kV was the specified voltage at which, the Appellant’s present load 900 kW/1000 kVA CD was required to be supplied power. Imposition of voltage surcharge by the Respondent was, therefore, totally wrong and misplaced in this case.
7. The Forum wrongly assumed that the Appellant had availed partial load from total sanctioned load of 4449 kW/4944 kVA CD. In fact, 4449 kW/4944 kVA was the projected/estimated load for proposed Shopping Mall of the Appellant as per prevailing Instruction No. 36.8 of ESIM. After completion of the construction work, the Appellant had applied for feasibility of 900 kW load/1000 kVA CD as per its immediate and revised requirement. The same load was released by Respondents on 11 kV after completing all the formalities. Hence the question of voltage surcharge did not arise. Otherwise also, the projected load of 4449 kW was not the actual load as per Note under Instruction No. 36.8 of ESIM. This was to be used only for planning purposes. The feasibility was granted on the clear understanding given by the Appellant that they had no space in its premise for construction of a 66 kV sub-station. An undertaking was obtained in writing from the Appellant that it would pay voltage surcharge in case, at any stage, it availed CD exceeding 4000 kVA. The load 900 kW/1000 kVA CD was released on the unambiguous terms that supply would be given at 11 kV and no voltage surcharge would be levied till the load/demand exceeded 4000 kVA. In view of this, imposition of Voltage Surcharge was wholly illegal and uncalled for. All the observations of the Forum, made in its decision, were thus based on imaginary and speculative grounds.
8. As per provisions relating to Tariff, voltage surcharge was leviable only if a consumer getting supply at 11 kV was availing CD exceeding 4000 kVA. It could not be imposed on the basis of estimated or projected load calculated as per Instruction No. 36.8 of ESIM. In the present case, the Appellant was availing load much less than 4000 kVA. It had clearly mentioned at the time of issuing the feasibility for 900 kW itself that it had no space for setting up 66 kV sub-station. The same was also mentioned in Feasibility Clearance letter that load would be released on 11 kV and voltage surcharge would be payable only if it availed more than 4000 kVA. This obliterated all relevance of the NOC issued for 4449 kW or the projected load. All apprehensions made by the Forum in its decision were therefore, imaginary and speculative.
9. Regarding stoppage and recovery of the Franchisee rebate, it was submitted that this rebate was allowed to the Franchisees for services rendered by them on behalf of the licensee like recording of meter readings, preparation/distribution of bills, collection of payment from the Residents etc. in addition to up keep of equipment as per instruction issued vide CC No. 58/2016. This rebate could not be stopped at the drop of hat. The Appellant had made full compliance of all points raised by the Respondent regarding terms and conditions of Franchisee Agreement. Copies of letters written by the Appellant to Respondent intimating compliance with regard to A & A forms, Bank Guarantee, testing of meter etc. had been attached. Thus, the stoppage and recovery of rebate already given was wholly wrong and illegal.
10. In view of the submissions made, it was prayed that the voltage surcharge amounting to ₹ 31,05,031/- levied from the date of connection may be set aside and further levy be stopped, being untenable.
11. Besides, Franchisee rebate may be allowed from the date of connection without any hiatus. Recovery of the rebate of ₹ 10,06,865/- already given may also be set aside.
12. **Submissions during Hearing**
13. During hearing on 24.06.2020, the Appellant’s Representative reiterated the submissions already made in the Appeal. The Appellant’s Representative handed over a copy of letter no. 1806/BNK/Cosmo Plaza dated 17.11.2014 issued by the Engineer-in-Chief, Commercial, PSPCL, Patiala giving NOC to the Appellant. This letter was also taken on record.
14. In next hearing on 09.07.2020, the Appellant’s Representatives reiterated the submissions made in previous hearing on 24.06.2020. On being requested, the Appellant’s Representative submitted that license obtained from Municipal Council, Zirakpur for construction of Shopping Mall would be sent to this office by e-mail by 10.07.2020.
15. **Submissions of the Respondent**
16. **Submissions made in the Written Reply**

The Respondent, in its defence, submitted the following, vide letter no. 3174 dated 15.06.2020, for consideration of this Court:

1. The Voltage Surcharge of ₹ 31,05,031/- was levied on the Appellant (Developer) by the Office of Assistant Executive Engineer/Commercial, Zirakpur vide letter no. 34151 dated 20.08.2019. The amount charged on account of voltage surcharge was justified based on the fact that it was depicted in the revised NOC issued by the office of CE/Commercial, PSPCL, Patiala vide Memo No. 228/BNK, Cosmo Plaza, Zirkapur/RID 16224 dated 28.04.2017, clause 4 of which stated that as the estimated load of the Shopping Mall was 4944 kVA, this necessitated supply to the project at 66 kV voltage level.
2. As per the request of the Appellant (Developer) that their shopping Mall was already constructed and there was no space left for construction of 66 kV sub-station, connection to the Shopping Mall was decided to be released at 11 kV supply voltage against specified voltage of 66 kV upto 5000 kVA in deviation to the provisions of Regulation 4.2 (iv) of Supply Code -2014 subject to the levy of Voltage Surcharge as per Condition 13.1 (iii) of General Conditions of Tariff. An undertaking was to be taken by Deputy CE/DS Circle, Mohali from the Appellant (Developer) for bearing the voltage surcharge before the release of connection.
3. As per Instruction 13.1 of General Conditions of Tariff, all consumers catered at 11 kV against specified voltage of 33/66 kV are to be levied voltage surcharge at the rate of 10%.
4. Moreover, Clause 13.1.1 of General Conditions of Tariff provided that in case there was any constraint in releasing a new connection or additional load/demand to an existing consumer at specified voltage, the distribution licensee may allow supply at lower voltage subject to technical feasibility and on payment of voltage surcharge as specified above with the permission of Whole Time Directors of PSPCL.
5. Due to non-compliance of Franchisee agreement, the Appellant was charged ₹ 10,06,865/- by the office of AEE/Commercial, PSPCL, Zirakpur vide Memo No. 34150 dated 20.08.2019. The amount charged was justified as the Developer/Appellant had not submitted data in respect of individual consumers, their connected load, monthly consumption, SOP charged to consumers on the basis of which, rebate was to be given to the Developer inspite of repeated notices having been issued to the Developer. Thus, the Developer had not fulfilled all the conditions of Franchisee Agreement.
6. **Submissions during Hearing**
7. During the hearing on 24.06.2020 in this Court, the Respondent reiterated the submissions made in the written reply and submitted a copy of Memo No. 53/RID-16224 dated 07.02.2017 issued by the Chief Engineer/Commercial, PSPCL, Patiala and addressed to the Deputy Chief Engineer, DS Circle, Mohali regarding resolution passed by the Board of Directors as per which, approval was accorded to allow Single Point Supply to the Appellant at 11 kV Supply Voltage against specified Voltage of 66 kV upto 5000 kVA in deviation from provisions of Regulation 4.2 (iv) of Supply Code-2014 subject to levy of Voltage Surcharge as per Condition 13.1 (iii) of General Conditions of Tariff.

(ii) In the hearing held on 09.07.2020, the representatives of the Respondent (PSPCL) justified the levy of voltage surcharge of ₹ 31,05,031/- charged in the bill for 3/2019 and grant of Franchisee Rebate subject to compliance of terms and conditions of Franchisee Agreement by the Appellant.

Senior Executive Engineer, DS Division, PSPCL, Zirakpur stated that LD system work completion certificate of the Appellant’s connection will be sent, after due verification, to this Court by e-mail by 10.07.2020. Besides, the period for which, sundry charges were levied in the present dispute would also be intimated vide the said e-mail.

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

The issue requiring adjudication is the legitimacy of the prayer of the Appellant for

1. Setting aside the levy of Voltage Surcharge amounting to ₹ 31,05,031/- from the date of release of the connection and stoppage of levy of Voltage Surcharge further.
2. Allowing Franchisee Rebate from the date of release of the connection and setting aside the recovery of rebate of ₹ 10,06,865/- already given.

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

1. The relevant facts of the case are that the Appellant (Distribution Franchisee) was having NRS Category Connection under Single Point Supply with sanctioned load of 900 kW and Contract Demand of 1000 kVA. The Appellant was allotted 2.81 acre for Shopping Mall namely COSMO Plaza at Zirakpur for which, No Objection Certificate (NOC) for electrification purpose was issued by PSPCL vide memo no.1806-08 dated 17.11.2014. Revised NOC was issued by CE/Commercial, PSPCL, Patiala, vide memo no. 228 dated 28.04.2017, as per request made by the Appellant online on 24.05.2016 against RID No. 16224. As per load sheet and electrical layout drawing approved by the PSPCL, the total load of the project was to be 4449 kW/CD 4944 kVA and was to be fed through 3 No., 2000 kVA and 1 No., 300 kVA distribution transformers. The NOC was issued for Single Point Supply under Regulation 6.6.2 of Supply Code-2014 and this was allowed by appointing the Appellant as Distribution Franchisee for making electricity available within the area under the project and the agreement in this regard was to be signed before release of connection. The Feasibility Clearance was issued by Dy. CE/DS Circle, PSPCL, Mohali for partial load of 900 kW/1000 kVA Contract Demand(CD) out of total load of 4449 kW/4944 kVA CD vide memo no. 6004/MCD-530 dated 19.05.2017. Distribution Franchisee Agreement was signed on 06.09.2018 between the Distribution Licensee and the Appellant. The connection for Partial Load of 900 kW/1000 kVA CD was released at 11 kV supply voltage on 14.06.2017 vide Service Connection Order No. 025/6540 dated 14.06.2017. The Respondent issued the energy bill for the month of 03/2019 for ₹ 91,86,510/- which included ₹ 31,05,031/- as Sundry Charges on account of charging of Voltage Surcharge and ₹ 10,06,865/- on account of charging of Franchisee Rebate already given from 02/2019 and stopped the rebate for future consumption also. Aggrieved, the Appellant filed a Petition in the office of the CGRF, Patiala which passed order dated 27.01.2020 upholding the said action of the Respondent. The Appellant was not satisfied with the said decision of the Forum and preferred the present Appeal in this Court.
2. The material and evidence brought on record by both the sides have been gone through. The Appellant was granted Completion Certificate for development of 2.81 Acre Shopping Mall namely Cosmo Plaza at Zirakpur by office of the Nagar Council, Zirakpur vide letter no. 574 dated 21.05.2014 addressed to the Appellant and read as under:

“It is written to you in regard to above subject that the Completion Certificate to your project, is issued subject to condition that before any addition/change in your project you shall take approval from Nagar Council, and you shall comply with the directions issued by Government/Nagar Council from time to time. It shall be your responsibility to keep in running condition the Fire Safety etc. arrangements and to comply with all the conditions of all the concerned NOC’s of the Project. It shall be your personal responsibility to deposit Certificates concerning Fire Safety and Environment after getting it renewed annually. It shall be your personal responsibility to comply with “The Persons with disability equal opportunities protection of right & full participation act 1995” and keep in running-condition-ever Rain Water Harvesting, S.T.P. arrangements and Solar Water System and it shall be your responsibility to follow the instructions issued by Govt. Letter vide Memo No. D.T.P. (SS)-2014-54 dated 13.01.2014. In case of failure to comply with above conditions, your completion certificate shall be cancelled and further suitable action shall be initiated.”

1. Initially, NOC dated 17.11.2014 was issued to the Appellant by PSPCL for electrical installation purposes. Subsequently, the Appellant submitted online request dated 24.05.2016 for issue of Revised NOC against RID No. 16224. Subsequently, the Appellant, vide its application dated 01.12.2016, requested the Chief Engineer, Commercial, PSPCL, Patiala (Diary No. 1459 dated 05.12.2016) as under:

“With regard to our visit to your office at Patiala, we hereby clarify that we had applied for the renewal of NOC for our connection to cosmo plaza (11 kV supply) but eventually there is revision of loading norms during the period in between. Accordingly we have now attached the load sheet as per the new norm which guides to have 66 kV sub-station in the premises. Our submission is that the Mall is already constructed and there is no space left for new 66 kV substation and it is now constraint for cosmo plaza. We ensure that in the immediate future our contract demand would not be more than 4000 kVA and if there is an increase in the contract demand then surcharge would be paid to the department with respect to department norms.

Hence, you are requested to grant us the NOC on 11 kV supply. So we once again request you to consider our load on 11 kV supply system and grant us the NOC.”

Accordingly, the Chief Engineer/Commercial, PSPCL submitted an Agenda bearing no. 79/BNK Investment dated 16.12.2016, to the Board of Directors which, in its 52nd meeting held on 21.12.2016, decided as under:

“Resolved that approval be and is hereby accorded to allow Single Point Supply to M/s BNK Investments for 2.81 Acres Multiplex-cum-Shopping Mall namely ‘Cosmo Plaza’ at Zirakpur at 11 kV supply voltage against specified voltage of 66 kV upto 5000 kVA, in deviation to the provisions of regulation 4.2 (iv) of Supply Code-2014 subject to the levy of voltage surcharge as per Condition 13.1 (iii) of General Conditions of Tariff. Further Resolved that petition in respect of above mentioned ceiling of 5000 kVA be filed with PSERC.”

1. The Feasibility Clearance/ Revised NOC for 4449 kW load and 4944 kVA CD was issued to the Appellant vide Memo No. 228/ BNK /16224 dated 28.04.2017 by the CE/Commercial. The following clauses were incorporated as conditions as per the said Feasibility Clearance for release of load:-

*Clause 1 " As per load sheet and electrical lay out drawing approved by PSPCL, the total load of the project shall be 4449 KW / 4944 KVA which will be fed through 3 no. 2000 KVA and one no. 300 KVA distribution transformers ( total 6300 KVA)".*

*Clause 2 " As per online application filed by you, requiring single point supply under Regulation 6.6.2 of Supply Code- 2014, the same shall be allowed by appointing you as Distribution Franchisee for making electricity available within the area under the project. For this purpose, Distribution Franchisee Agreement, as per CC No. 58/2016, dated 14.12.2016 shall have to be signed by you before release of connection ".*

*Clause 3 " Electric supply to the Shopping Mall namely Cosmo Plaza against RID-16224 will be given by erecting a new 11KV feeder with ACSR 100 mm2 conductor of 2800 meter length, emanating from new proposed 66 KV sub-station Ramgarh Bhuda. Total cost to be deposited by the developer for electrical connectivity to the proposed project is Rs.22,80,479/- . In case there is a change in proposal regarding connectivity from proposed 66KV sub-station Ramgarh Bhuda, field office will send a revised proposal for approval of this office. The above cost of estimate is purely on tentative basis which shall be subject to actual sanction of estimate at the time of execution of work as per Clause 9.3.6 of Supply code 2014 and as per policy /regulations of PSPCL at the time of release of load".*

*Clause 4 " As the estimated load of the shopping mall is 4944 KVA, this necessitates supply to the project at 66 KV voltage level. As per request of the developer that their Shopping Mall is already constructed and there is no space left for construction of new 66 KV Sub-Station, connection to the Shopping Mall shall be released at 11 KV supply voltage against specified voltage of 66KV upto 5000 KVA in deviation to the provisions of Regulation 4.2(iv) of Supply Code-2014 subject to the levy of Voltage Surcharge as per Condition 13.1(iii) of General Conditions of Tariff. An undertaking shall be taken by Dy. CE/DS Mohali from the developer for bearing the voltage surcharge before release of connection".*

*Clause 6 " The estimated expenditure for layout for electrical LD system of the project shall be Rs. 5,89,98,293/- and is subject to change as per rates prevailing at the time of execution of work. In case of request for energization for incomplete LD system, the same shall be allowed provided you furnish a bank guarantee (BG valid for 5 years) equivalent to 150% of the estimated cost of the balance works. This amount of Bank Guarantee shall keep on reducing with the completion of remaining works of LD system".*

Clause-4 of the said Feasibility Clearance reads as "As per request of the developer that their Shopping Mall is already constructed and there is no space left for construction of new 66 KV Sub-Station, connection to the Shopping Mall shall be released at 11 KV supply voltage against a specified voltage of 66KV upto 5000 KVA in deviation to the provisions of Regulation 4.2(iv) of Supply Code 2014 subject to the levy of Voltage Surcharge as per Condition 13.1(iii) of General Conditions of Tariff". I have gone through the request of the Developer/Appellant and observed that Developer had stated that" We had applied for the renewal of NOC for our connection to Cosmo Plaza but eventually there is a revision of loading norms during the period in between. Accordingly we have now attached the load sheet as per new norms which guides to have 66 KV sub station in our premises. Our submission is that the shopping mall is already constructed and there is no space left for new 66 KV Sub Station and it is now a constraint for Cosmo Plaza. We ensure that in the immediate future our contract demand would not be more than 4000KVA and if there is an increase in contract demand then surcharge would be paid to the department with respect to department norms. Hence you are requested to grant us NOC on 11 KV Supply. So we once again request you to consider our load on 11 KV supply system and grant us NOC."

1. It is observed that in case of Single Point Supply under Distribution Franchisee Agreement, the entire expected load to be availed is finalized at the first stage itself based on the Load Sheet/Electrical Layout Drawing of the Developer for the whole project and is approved accordingly by PSPCL leading to the fixing of Voltage Level at which the load is to be released. Feasibility Clearance was granted in this case under special circumstances as per request of the Developer that their Shopping Mall is already constructed and there was no space left for construction of new 66 kV Sub-Station. It was decided that connection to the Shopping Mall be released at 11 kV supply voltage against a specified voltage of 66 kV upto 5000 kVA Contract Demand in deviation to the provisions of Regulation 4.2(iv) of Supply Code-2014 subject to the levy of Voltage Surcharge as per Condition 13.1(iii) of General Conditions of Tariff. The special circumstances covered under Clause 13.2 as per CC No. 13/2015 applicable at the time of release of Feasibility Clearance states that

*"In case there is any constraint in releasing a new connection or load/demand to an existing consumer at specified voltage, the Distribution licensee may allow supply at a lower voltage on payment of voltage surcharge as specified above with the permission of Whole Time Directors"*

I find that in the present case, the constraints were on the part of the Appellant as it had shown inability to construct new 66 kV Sub Station and had stated that Shopping Mall was already constructed and there was no space left for the same. Request was made for releasing of connection to the Shopping Mall at 11 kV supply voltage against a specified voltage of 66 kV. It is also observed that the Appellant, was given Single Point Supply under Distribution Franchisee Agreement. The load to be availed was finalized at the first stage itself while issuing NOC by CE/Commercial on 28.04.2017 and was approved accordingly leading to the fixing of Voltage Level at which the load was to be released which is 11 kV against a specified voltage of 66 kV under special provisions. In case there is any constraint in releasing a new connection or load/demand to an existing consumer at specified voltage, the DS licensee can allow supply at a lower voltage on payment of voltage surcharge with the permission of Whole Time Directors.

1. I also find that instead of availing the total load in the first instance, a request was uploaded by the Appellant on the Single Window vide RID No. 17658 dated 04.05.2017 for release of partial load of 900 kW/CD 1000 kVA. Feasibility clearance for this partial load of 900 kW/CD 1000 kVA was granted by Dy. CE/DS Circle, Mohali vide Memo No. 6004/MCD-530 dated 19.05.2017. As per the said Feasibility Clearance,
2. An undertaking was to be taken by ASE/Op. Division Zirakpur, AEE/S/D Zirakpur from the developer for bearing the voltage surcharge before release of connection as and when load of the consumer increases more than 4000 kVA.
3. In case of request for energization for incomplete LD system, the same was to be allowed provided a Bank Guarantee (BG valid for 5 years) equivalent to 150% of the estimated cost of the balance works was submitted. This amount of Bank Guarantee was to reduce with the completion of remaining works of LD system".
4. The Appellant had earlier applied for NOC for load of 4449 kW/CD 4944 kVA. However, a partial load of 900 kW/CD 1000 kVA only was availed by the Appellant merely to meet his adhoc/current demand which is in operation till date. Feasibility Clearance/NOC was issued directly to the Appellant by CE/Commercial, PSPCL, Patiala on 28.04.2017 and it was well aware of the provisions regulating the Supply Voltage w.r.t. final expected load/demand. Feasibility Clearance was issued in first instance, keeping in view the total load/demand of the project which, in this case, worked out as 4449 kW/4944 kVA and applicable supply voltage was 66 kV.

 I observe that as per Clause 4 of the Feasibility Clearance, for full load of 4449 kW/4944 kVA, approval was granted for release of connection to the Shopping Mall at 11 kV supply voltage against a specified voltage of 66 kV upto 5000 kVA under the provisions of Regulation 4.2.1 of Supply Code-2014 subject to the levy of Voltage Surcharge as per Condition 13.1(iii) of General Conditions of Tariff. This relaxation was accepted by the Licensee (Respondent) purely on the request of the Appellant indicating its inability to construct and operate 66 kV Sub Station in Shopping Mall. An undertaking was to be submitted by the Appellant/Developer for bearing the voltage surcharge before release of connection.

1. Regulation 4.2(iv) of Supply Code-2014 relates to the Supply Voltage at which, the load was to be released and reads as under:

“Three Phase 33/66 kV (between phases) as per availability of voltage at the nearest feeding S/Stn. for DS/NRS/BS loads including single point supply to residential/housing/ employer’s colonies/commercial complexes under Regulations 6.6.1 & 6.6.2 with contract demand exceeding 4000 kVA but not exceeding 20 MVA.”

As per above Regulation, the load of the Appellant/ Developer would have been sanctioned and released at 66 kV supply voltage. However, relaxation under Regulation 4.2.1 of Supply Code-2014 was given and load was allowed to be released at 11 kV supply voltage against the stipulated 66 kV supply voltage subject to the provisions of clause 13.1 (iii) of General Conditions of Tariff. It relates to Voltage Surcharge to be levied in case of relaxation from Regulation 4.2(iv) of Supply Code 2014 and reads as under:-

“13.1 Voltage Surcharge:

The levy of voltage surcharge shall be as under:-

1. All consumers catered at 400 volts against specified voltage of 11 kV shall be levied surcharge at the rate of 15%.
2. All consumers catered at 11 kV against specified voltage of 33/66 kV shall be levied surcharge at the rate of 10%.
3. All consumers catered at 33/66 kV against specified voltage of 132/220 kV shall be levied surcharge at the rate of 5%.”

Clause 13.1.1 of General Conditions of Tariff under which the feasibility was granted reads as below:

“In case there is any constraint in releasing a new connection or additional load/demand to an existing consumer at specified voltage, the distribution licensee may allow supply at a lower voltage subject to technical feasibility and on payment of voltage surcharge as specified above with the permission of Whole Time Directors.”

 It is not only dealing with the competency regarding the relaxation in the conditions but also is clearly specifying that such relaxation will be granted only on payment of voltage surcharge as specified above. This clearly means that since Feasibility Clearance was granted under special provisions solely at the request of the Appellant, voltage surcharge will be levied irrespective of the Load to be availed by the Developer/Appellant right from the day one notwithstanding the NOC granted by Dy. CE/DS Circle, Mohali and the request submitted by the Appellant.

1. While granting the said NOC under special provisions at the request of the Appellant stating that they would ensure that in the immediate future, their contract demand would not be more than 4000 kVA and if there is an increase in contract demand then surcharge would be paid to the department with respect to department norms, the request was allowed under special conditions namely in relaxation to the provisions of Regulation 4.2(iv) of Supply Code-2014 subject to the levy of Voltage Surcharge as per Condition 13.1(iii) of General Conditions of Tariff " which states that all consumers catered at 11 kV against specified voltage of 33/66 kV shall be levied surcharge at the rate of 10%.

 Feasibility Clearance was granted under special provisions solely at the request of the Appellant. Voltage Surcharge will be leviable irrespective of the Load to be availed by the Developer/Appellant.

1. Further in case of Single Point Supply under Distribution Franchisee Agreement, the ultimate load to be availed is finalized at the first stage itself based on load sheet & electrical layout submitted by the developer for whole project and is approved accordingly leading to the fixing of Voltage level at which, the load was to be released. Feasibility Clearance was granted under special circumstances as per request of the Developer that their Shopping Mall was already constructed and there was no space left for construction of new 66 kV Sub- Station. Connection to the Shopping Mall was decided to be released at 11 kV supply voltage against a specified voltage of 66 kV upto 5000 kVA in relaxation to the provisions of Regulation 4.2(iv) of Supply Code-2014 subject to the levy of Voltage Surcharge as per Condition 13.1(iii) of General Conditions of Tariff.

I find that in this case the constraints were on the part of the Appellant as it had shown its inability to construct 66 kV Sub-station and have stated that their Shopping Mall was already constructed and there was no space left for construction of new 66 kV Sub Station, connection to the Shopping Mall be released at 11 kV supply voltage against a specified voltage of 66 kV.

The load was to be released at 11 kV against a specified voltage of 66 kV under special provisions as per Feasibility Clearance granted to the Appellant who was, thus, liable to pay voltage surcharge right from the day one of the release of the connection.

1. SE/ DS Circle, Mohali clarified during hearing on 09.07.2020 that the following condition imposed in Feasibility clearance granted vide letter no. 6004 dated 19.05.2017 is incorrect and not as per Supply Code-2014:-

“An undertaking shall be taken by Addl. SE, Zirakpur/ AEE, S/D, Zirakpur from the developer for bearing the voltage surcharge before release of connection as and when load of the consumer will increase more than 4000 KVA.”

SE/ DS Circle, Mohali informed the Court during hearing on 09.07.2020 that regulations of Supply Code-2014 will prevail and the Appellant is bound to pay voltage surcharge as per Tariff Orders/Supply Code because it is unable to erect 66 kV sub-station at its premise due to shortage of space and supply at 11 kV has been allowed only with voltage surcharge as per decision of Board of Directors of PSPCL taken in its 52nd meeting held on 21.12.2016. Decision of Board of Directors cannot be diluted by the field officers. The modification done in Feasibility Clearance by SE/ DS Circle, Mohali is meaningless. The condition no. 4 imposed by CE/Commercial in revised NOC issued vide memo. No. 228 dated 28.04.2017 shall prevail which is as per Supply Code-2014.

Release of Partial Load is admissible to this Shopping Mall as per Regulation 8.4.3 of Supply Code-2014. The load has been released at 11 kV which is a specified voltage for complete project as permitted by PSPCL due to space constraints for laying 66kV system but the Appellant has to pay voltage surcharge for this relaxation as per General Conditions of Tariff.

The Appellant had raised an issue that it had applied for a load of 900 kW/1000kVA CD as a new connection for Shopping Mall under Distribution Franchisee Agreement and it is not a case of release of Partial Load. However, the perusal of Feasibility Clearance granted vide Dy. CE/DS Circle, Mohali letter no. 6004 /MCD-530 dated 19.05.2017 reveals that the Appellant applied for Partial Load vide RID no. 17658 dated 04.05.2017 under Single Window Scheme. As such, Feasibility Clearance was also for Partial Load of 900kW/ 1000kVA as CD.

1. As per Regulation 8.4.3 of Supply Code-2014, in case of residential colonies/commercial complexes/industrial estates covered under Regulation 6.6.1 & 6.6.2, the phase wise development of the load/demand as per requirement may be permitted by the licensee. However, in case, an HT/EHT consumer requests for release of partial load/demand at voltage lower than the specified voltage, such request may be accepted by the licensee subject to deposit of cost of works for supply at the lower voltage and furnishing Bank Guarantee (BG) equivalent to 150% of the cost of HT/EHT sub-station [HT/EHT line along with associated equipment] including the cost of incomplete LD system. The amount of Bank Guarantee shall keep/go on reducing with the completion of remaining works of the sub-station & LD system. After the consumer shifts to the specified voltage at a later stage, no credit of the works carried out for supply at lower voltage shall be given to the consumer. Further this Bank Guarantee can be en-cashed in case of default on the part of the Developer/Appellant and works were carried out at the cost of the Developer/ Appellant.

 I find that no such Bank Guarantee (BG) equivalent to 150% of the cost of HT/EHT substation [HT/EHT line along with associated equipment] including the cost of incomplete LD system was furnished by the Appellant at the time of release of partial load as required as per Regulation 8.4.3 of Supply Code-2014.

1. All provisions of Supply Code-2014, Standards of Performance and other regulations framed by the PSERC including the Tariff Orders issued by the PSERC from time to time shall be applicable to the Distribution Franchisee (Appellant) except section 126,135 and 138 of the Act as per Clause 7 of Distribution Franchisee Agreement dated 06.09.2018. As such, the Appellant is liable to pay Voltage Surcharge as per provisions of Supply Code-2014/Tariff Orders of the PSERC issued from time to time.

 I observe that the connection to the Appellant was to be released only after signing of Distribution Franchisee Agreement as per Feasibility Clearance granted vide letter no. 6004/MCD-530 dated 19.05.2017 of SE/ DS Circle, Mohali. The connection was released on 14.06.2017 without signing of Distribution Franchisee Agreement. This is clear violation of the Electricity Act-2003 because Single Point Supply connection cannot be given to a private person/entity. Distribution Franchisee Agreement was signed on 06.09.2018 after about 15 months of release of connection to unauthorized applicant.

1. Issuance of NOC for release of expected demand (4449 kW load/ 4944 kVA CD) of this Shopping Mall at 11kV voltage with voltage surcharge instead of specified 66 kV voltage has contributed to the accrual of following major benefits to the Appellant :-
2. Saving of Cost for establishing 66 kV sub-station in the Shopping Mall.
3. Saving of Cost of 66 kV feeding line from the nearest grid sub-station to the site of Shopping Mall.
4. Saving of running expenditure for operation & maintenance of 66 kV sub-station.
5. Saving of salary of staff required to operate 66kV sub-station round the clock.
6. Saving due to use of land required for 66 kV sub-station for other Commercial purposes. Minimum 1000 sq. yard land is required for 66kV sub-station.
7. Capital Cost of the project decreased because provision of 66 kV sub-station and its feeding 66 kV transmission line have been avoided.
8. Saving due to non-furnishing of Bank Guarantee required for incomplete HT/EHT works which is mandatory for release of Partial Load as per Regulations of Supply Code-2014.

 On the other hand, the Respondent have to bear additional cost unnecessarily in respect of the following by agreeing to the request of the Appellant for release of connection at 11kV supply voltage :-

1. Cost for keeping reserve demand of about 4944 kVA at 11kV at its own Sub-Stations for catering to the needs of consumers of the Appellant (Distribution Franchisee). This will necessitate additional 66/11kV transformation capacity at PSPCL sub-stations and the cost of the same will be transferred to all consumers of the State through Annual Revenue Requirement.
2. Additional re-curring burden of increased T & D losses as the same are square of the current drawn which is six times more in case of 11kV voltage as compared to 66kV voltage for the same load.
3. Cost for ensuring reliable power supply at 11kV.
4. I observe that this is a win situation for the Appellant as it had not constructed 66 kV S/Stn. inside its premise leading to saving of crores of rupees and is now also contesting the charging of Voltage Surcharge which is mandatory as per provisions of Supply Code-2014. The Appellant stakes undue and unreasonable claims without fulfilling its obligations/ commitments.

It is also observed that the Completion Certificate of this Shopping Mall was issued by Municipal Council, Zirakpur vide letter no. 574 dated 21.05.2014. As per this letter, it is the responsibility of the Appellant to comply with all the conditions of all the concerned NOCs of the project. Since PSPCL issued the NOC for electrical installations for this project vide CE/Commercial letter no. 228 dated 28.04.2017, the Appellant has to abide by provisions of Clause 4 of this NOC and thus is liable to pay Voltage Surcharge for obtaining electricity at 11kV supply voltage by avoiding cost of 66kV system.

1. The Forum observed that NOC under special provisions i.e. Regulation 4.2(iv) of Supply Code-2014 subject to the levy of Voltage Surcharge as per Condition 13.1(iii) of General Conditions of Tariff have been issued to the Developer/ Appellant which necessitates levy of Voltage Surcharge for whatever load is applied/availed by the Developer/Appellant right from day one. Besides, levy of voltage surcharge amounting to ₹ 31,05,031/- as sundry charges on account of supply being given at 11 kV against specified voltage of 66 kV is in order and is recoverable. This court is in agreement with the findings of the forum relating to recovery of Voltage Surcharge.
2. In compliance to the directions given orally during the proceedings dated 09.07.2020 and also, vide e-mail of the same date, the Respondent, vide e-mail dated 11.07.2020, sent information regarding completion of LD system and period of levy of voltage surcharge, inter-alia, as under:
	1. The Appellant did not submit and sign the A & A for feasibility clearance and also did not deposit the requisite ACD for the purpose.
	2. The internal LD system of the Appellant’s connection was complete as per letter no. 2007 dated 31.03.2020 of the Addl.S.E, DS Division, Zirakpur.
	3. No ACD amount was outstanding against the Appellant at the moment.
	4. The load applied for by the Appellant could not be taken over/accommodated by any nearby sub-station.
	5. The cost of feeding line will be recoverable as per Commercial Circular No. 23/2019.
	6. The Appellant was charged voltage surcharge from 08/2017 to 07/2019 (at the rate of 10 % of the energy charges chargeable from it) amounting to Rs. 31,05,031 as per notice vide letter no. 34151 dated 20.08.2019.

 The Respondent has incorrectly stated that the LD system of the Appellant’s connection was complete. It was clear from the observation of the Forum that the LD system was not complete at the time of release of Partial Load and that the Appellant had not deposited the requisite Bank Guarantee equivalent to the 150% cost of incomplete works, thus not fulfilling the terms and conditions of the Revised NOC for release of the connection.

1. The Appellant has, in the present Appeal prayed for allowing Franchisee Rebate from the date of release of the connection and setting aside the recovery of rebate of ₹ 10,06,865/- already given.

I find that the Forum, vide order dated 27.01.2020 decided that “the Franchisee Rebate be given to the petitioner once the compliance of all the terms and conditions of the Distribution Franchisee Agreement is made by the petitioner.”

 I observe that though it is correct that the Appellant (Franchisee) is to ensure compliance of the terms and conditions of Distribution Franchisee Agreement signed by it with the licensee (PSPCL), it will be worthwhile to peruse Clause 19 of Distribution Franchisee Agreement dated 06.09.2018 which reads as under:

“In case of any dispute between PSPCL and Distribution Franchisee, matter shall first attempted to be resolved by means of mutual negotiation and amicable resolution and upon failure of such amicable resolution within a period of 30 days, all such disputes and differences shall be adjudicated by means of Arbitration by a sole arbitrator to be mutually agreed to by the parties. The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996. The place of arbitration shall be Chandigarh/Patiala and the language of arbitration shall be English.”

In view of the above, the Respondent and the Appellant are required to take action as per above provision in the Distribution Franchisee Agreement dated 06.09.2018 to resolve the issue of rebate amounting to ₹ 10,06,865/-.

From the above, it is evident that the prayer of the Appellant in this regard does not come within the purview of this Court. Hence, it is not maintainable in this Court.

From the above analysis, it is concluded that:

a) The Appellant defaulted in complying with terms and conditions of the Revised NOC issued by CE/Commercial, PSPCL and also the provisions of Supply Code Regulations/Tariff Orders issued by the PSERC from time to time. The Appellant did not also deposit the Bank Guarantee equivalent to 150 % of the cost of incomplete works. In this process, the Appellant gained substantially at the cost of the Respondent (PSPCL). The Forum correctly decided that levy of voltage surcharge amounting to ₹ 31,05,031/- charged in the bill of 03/2019 on account of supply being given at 11 kV against specified voltage of 66 kV was in order and recoverable. Besides, surcharge/interest on the aforesaid amount is also required to be recovered from the Appellant as per instructions of the PSPCL. As a natural corollary, further levy of Voltage Surcharge will not be stopped and will continue as before.

b) An alternate remedy/mechanism to resolve the dispute relating to Franchisee Rebate is available in the Distribution Franchisee Agreement dated 06.09.2018 signed by the Appellant (Franchisee) with the PSPCL. Therefore, the adjudication of the dispute to allow the Franchisee Rebate or set aside the recovery of the same does not come under the purview of this Court.

6. **Decision**

 As a sequel of above discussions, it is held that:

* + - 1. Levy of Voltage Surcharge amounting to ₹ 31,05,031/- charged in the bill of 03/2019 on account of supply being given at 11 kV against specified voltage of 66 kV is in order and is recoverable as also decided by the Forum, vide order dated 27.01.2020 in Case No. CGP-289 of 2019. The surcharge/interest on the above said amount will be recoverable as per instructions of the PSPCL. As a natural corollary, further levy of Voltage Surcharge would not be stopped, as prayed for by the Appellant, and would continue as before.
			2. The adjudication of the dispute to allow the Franchisee Rebate or set aside the recovery of this rebate, as per terms and conditions of Distribution Franchisee Agreement dated 06.09.2018 signed between the Respondent (PSPCL) and the Appellant, does not come under the purview of this Court. This issue may be resolved by both parties as per Clause 19 of this agreement.

**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)

 July 14, 2020 Lokpal (Ombudsman)

 SAS Nagar (Mohali) Electricity, Punjab.