

**COURT OF THE LOK PAL (OMBUDSMAN),
ELECTRICITY, PUNJAB,
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,
S.A.S. NAGAR (MOHALI).**

**(Constituted under Sub Section (6) of Section 42 of
Electricity Act, 2003)**

APPEAL No. 08/2024

Date of Registration : 14.03.2024

Date of Hearing : 27.03.2024

Date of Order : 27.03.2024

Before:

**Er. Anjuli Chandra,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

Garrison Engineer (East),
Military Engineer Services,
Ferozepur Cantt-152001

Contract Account Number: 3002836867 (BS)
...Appellant

Versus

Addl. Superintending Engineer,
DS Suburban Division,
PSPCL, Ferozepur.

...Respondent

Present For:

Appellant: Sh. Sudhir Nar,
Appellant's Counsel.

Respondent : Er. Ashok Kumar,
AE/OT,
DS Sub Division Cantt-1,
PSPCL, Ferozepur.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 12.01.2024 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-171/2023, deciding that:

“The amounts of Rs. 59,92,848/- for the period from 09/2018 to 03/2021 vide notice no. 593 dated 04.05.2021, Rs.5,29,201/- for the period from 03/2021 to 07/2021 vide notice No. 1373 dated 06.09.2021 and Rs. 4,32,78,462/- for the period from 04/2011 to 08/2018 vide notice no. 245 dated 25.02.2022, charged on account of Electricity Duty/ IDF, subsequently added in the bills of the petitioner as sundry charges, are correct and recoverable.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 27.02.2024 i.e. beyond the period of thirty days of receipt of the decision dated 12.01.2024 in Case No. CF-171/2023 of the CCGRF, Ludhiana on 23.01.2024 by the Appellant. The Appellant did not deposit the requisite 40% of the disputed amount before filing Appeal in this Court. The Appellant was asked vide Memo No. 141/OEP/Garrison Engineer (East) dated 27.02.2024 and reminder vide Memo No. 172/OEP/Garrison Engineer (East) dated 12.03.2024 to submit an Application for Condonation of delay in filing the Appeal and the receipt regarding deposit of requisite 40% of the disputed amount.

The Appellant sent the same through email on 14.03.2024. Therefore, the Appeal was registered in this Court on 14.03.2024 and copy of the same was sent to the Senior Executive Engineer/ DS Suburban Divn., PSPCL, Ferozepur for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 173-175/OEP/A-08/2024 dated 14.03.2024.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 27.03.2024 and intimation to this effect was sent to both the parties vide letter nos. 182-83/OEP/A-08/2024 dated 21.03.2024. As scheduled, the hearing was held in this Court on 21.03.2024 and arguments of both the parties were heard.

4. Condonation of Delay

At the start of hearing on 21.03.2024, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant submitted that the CCGRF had sent decision in Case no. CF-171/2023 dated 12.01.2024 vide Memo No. 118/T-100/2023 dated 16.01.2024 to the Appellant. The same was received by the Appellant on 23.01.2024. The Appellant

further submitted that the case for deposit of requisite 20% of the disputed amount for registration of Case in this Court was forwarded to AO/ GE (East), Ferozpur Cantt vide his office letter No. 4021/PSEB/95/E4 dated 08.02.2024 for obtaining Sanction of PCDA (WC), Chandigarh. Sanction of PCDA (WC) Chandigarh was received vide their letter No. E/IV/H.Rt./AO GE (E) FZR dated 04.03.2024 and additional 20% of disputed amount was deposited with the Respondent vide Receipt No. 203714656 dated 11.03.2024.

In between the above period, due to non receipt of Sanction from PCDA (WC), Chandigarh the Appellant had submitted the Appeal alongwith connected document to Sh. Sudhir Nar, Advocate appointed for aforesaid Case on behalf of the Appellant and submitted the Appeal before this Court on 27.02.2024. Therefore, the Appellant's Counsel requested that the delay may kindly be condoned and the Appeal be adjudicated on merits in the interest of justice. The Respondent did not object to the condonation of delay in filing the Appeal in this Court.

In this connection, I have gone through Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

“No representation to the Ombudsman shall lie unless:

(ii) The representation is made within 30 days from the date of receipt of the order of the Forum.

Provided that the Ombudsman may entertain a representation beyond 30 days on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of 30 days.”

It is observed that refusal to condone the delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant's Counsel was allowed to present the case.

5. Submissions made by the Appellant and the Respondent

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

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

The Appellant made the following submissions in its Appeal for consideration of this Court:-

- (i) The Appellant was having a BS Category Connection bearing Account No. 3002836867 at 66 kV Sub Station, Ferozpur Cantt with Sanctioned Load/ CD of 13500 kW/ 10000 kVA in the name of M/s. Garrison Engineer under DS Suburban Division, Ferozpur. The Appellant's electricity billing was amounting to ₹ 20 Crore annually approximately.
- (ii) The brief facts regarding the present controversy is that the Respondent had raised electricity bill against electricity duty (ED) and infrastructure development fund (IDF) arrear of 25% of total consumption and Fixed Charges of ED/ IDF w.e.f. 30.09.2018 to 16.09.2021 amounting to ₹ 71,69,169/- received vide SDO/ DS Cantt Sub Division No. 1, PSPCL, Ferozpur Cantt vide Memo No. 593 dated 04.05.2021. Subsequently another arrear w.e.f. 03.04.2011 to 31.08.2018 amounting to ₹ 4,32,78,462/- was received vide Memo No. 245 dated 25.02.2022 for making payment to PSPCL/ Respondent. Total arrear of ₹ 5,04,47,631/- was received vide their Memo No. 326 dated 14.03.2022. It was totally irregular, not justified and

was not agreed/ accepted by the Appellant i.e Garrison Engineer (East), Ferozpur Cantt.

- (iii) After receiving demand of ED/ IDF arrears, the Appellant had approached SDO/ DS Cantt Sub Division No. 1, Ferozpur Cantt vide their office letter No. 4021/PSEB/122/E4 dated 16.02.2022, 4021/PSEB/125/E4 dated 02.03.2022, 4021/PSEB/130/E4 dated 06.04.2022 and 4021/PSEB/137/E4 dated 09.07.2022 and had requested not to include the ED/ IDF arrears in regular Electric tariff bill and reconcile the applicability of ED/ IDF to Govt. of India consumers.
- (iv) The SDO/ DS Cantt Sub Division No. 1, Ferozpur Cantt vide its Memo No. 2006 dated 24.11.2022 stated that arrear of ED/ IDF from 04/2011 to 09/2021 was charged through various Half Margins vide Commercial Circular No. 38/2020 dated 02.09.2020 and Commercial Circular 39/2020 dated 30.09.2020 as calculated by the Internal Audit of PSPCL. It was further intimated to the Appellant to pay the pending ED/ IDF arrears alongwith late payment surcharge and late payment interest charges and vide Memo No. 128 dated 08.02.2023 for payment of outstanding amount as soon as possible alongwith interest to avoid any type of inconvenience.

- (v) Additional Superintending Engineer/ DS Suburban Division, Ferozepur vide its Memo No. 760 dated 23.02.2023 brought attention towards SDO/ DS Cantt Sub Division No. 1, Ferozepur Cantt Memo No. 128 dated 08.02.2023 regarding payment of only current bill amount shown in the bill not ED/ IDF arrear charged resulting increase of ED/ IDF amount with interest and approach with higher authorities for disconnection of electricity as per the instructions of the Respondent for which all the responsibility held with the Appellant.
- (vi) The Appellant had approached the Corporate Consumer Grievances Redressal Forum, Ludhiana vide its letter No. 4021/PSEB/53/E4 dated 17.06.2023 and the Appellant vide its letter No. 4021/PSEB/91/E4 dated 15.12.2023 intimated to Corporate Forum that ₹ 1,00,89,526/- was deposited with PSPCL on account of 20% of the disputed amount.
- (vii) The Corporate Forum had not considered the contentions of the Appellant submitted vide Appellant's letter No. 4021/PSEB/53/E4 dated 17.06.2023 specifically pointing out the following:-
- (a) *“The Punjab Electricity (Duty) Act, 2005, Para 5 exemptions to Govt. of India that, electricity consumed by the Govt. of India or sold to the Govt. of India is totally exempted from Sale Tax/ Electricity Duty.*

(b) Electricity Act, 2003-wherein, it was provided under Section 56 (2) of the Electricity Act, 2003, “Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under this section shall be recoverable after the period of two years from the date when sum became first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

(viii) In view of Commercial Circular No. 38/2020 dated 02.09.2020 and Commercial Circular No. 39/2020 dated 30.09.2020 the amount was not shown regularly and continuously recoverable as arrears of charges in any of the previous electricity bills. However, despite of that justified request for waiving off the ED and IDF charges amounting to ₹ 5,04,47,631/- was not considered by the Corporate Forum and was decided arbitrarily and illegally in favor of the Respondent.

(ix) The Corporate Forum passed the final speaking order dated 12.01.2024 against the Appellant arbitrarily, illegally and without considering the actual purport of the provisions and also without considering the facts and circumstances of the matter. The Corporate Forum while passing impugned order dated 12.01.2024 had relied heavily on the Hon’ble Supreme Court of India delivered in Civil Appeal No. 7235/209 titled M/s. Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam

Limited which was not applicable to the facts and circumstances of the present case.

- (x) The Central Government Organization under the Ministry of Defence and being a Public Authority was being compelled to pay the huge and arbitrary amount out of the public money which was to be spent on various Centrally sponsored multifarious activities which is not sustainable in the eyes of law. More so, when there was no fault on the part of the Appellant. The Appellant was paying the electricity bills as demanded by the Respondent.
- (xi) The impugned order dated 12.01.2024 was also liable to be set aside on the sole grounds that the same was passed by overlooking Article 287 of the Constitution of India which clearly provides that no law of the state shall impose or authorize the imposition of a tax on the consumption of sale of electricity which was consumed by the Govt. of India or sold to the Govt. of India for consumption by that Govt. and further, it was provided that any such law imposing or authorizing the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Govt. of India, shall be less by the amount of the tax than the price charged to the other consumers. A relevant Article 287 of the

Constitution of India was reproduced for the proper adjudication of the present Appeal, which was overlooked by the Corporate Forum while passing the impugned order dated 12.01.2024.

287. Exemption from taxes on electricity- *Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is-*

(a) *consumed by the Government of India, or sold to the Government of India for consumption by that Government; or*

(b) *consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,*

and any such law imposing or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

- (xii) In a case wherein, the Electricity Department/ erstwhile PSEB was levying octroi on Union of India and UOI aggrieved by the action of the erstwhile PSEB demanding octroi on electricity consumed by the Union of India, the same was challenged by way of filing CWP No. 2225 of 2001 in case titled Union of India Vs PSEB and Others reported as 2017 (1)

PLR 237 the Hon'ble Punjab and Haryana High Court, Chandigarh held that levy of octroi on Union of India was barred and the demand of the octroi was held to be illegal in view of the Article 287 of the constitution of India reproduced.

(xiii) The CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 on the basis of which the Punjab State Power Corporation was charging the ED and IDF was also liable to be set aside being ultravires to the Article 287 wherein, it does not classify between offices and the residential buildings, emphasis was further laid that residential buildings in the cantonment area were meant for the employees of the Central Govt. doing public functions comes under the ambit of the definition Govt. of India for the purpose of getting exemption from ED and IDF. The circulars of the PSPCL/ Respondent on the basis of which the tax in the shape of ED and IDF was being charged was totally contrary to the nexus achieved by Article 287 of the Constitution of India and impugned order dated 17.08.2022 which was passed without considering the same required to be set aside.

(xiv) In spite of the facts mentioned above, the Appellant had been continuously paying Electricity Duty and Infrastructure Development Fund charges since 10/2021 and arrears from

09/2020 to 09/2021 had been paid provisionally in view of the above stated circulars.

(xv) An opportunity of being heard may kindly be granted to the Appellant before passing the order in the present Appeal.

(xvi) The Appellant prayed that on the basis of the above mentioned facts and circumstances it was most respectfully prayed that the impugned order dated 12.01.2024 may kindly be set aside and further the Respondent may kindly be directed to waive off the Electricity Duty and Infrastructure Development Fund (ED & IDF) amounting to ₹ 5,04,47,631/- and adjust the 20% of disputed amount in the future bills.

(xvii) Furthermore, the Respondent may kindly be directed not to charge Electricity Duty (ED) and Infrastructure Development Fund (IDF) in the future bills till the final decision by this Court is taken on the present Appeal.

(b) Submission during hearing

During hearings on 27.03.2024, the Appellant's Counsel (AC) reiterated the submissions made in the Appeal and prayed to allow the same.

(B) Submissions of the Respondent

(a) Submissions in written reply

The Respondent submitted the following written reply for consideration of this Court:-

- (i) The Respondent submitted that Garrison Engineer (East), Ferozpur is a BS Category Consumer of the PSPCL bearing Account No. 3002836887 of 66 kV Sub Station Cantt.
- (ii) The Respondent's office issued Memo No. 245 dated 25.02.2022 for depositing arrear bill of ₹ 4,32,78,462/- which pertained to ED/ IDF on 25% of total consumption from 03.04.2011 to 31.08.2018 as per ESIM 2018 Clause SVII Schedule of Tariff for Bulk Supply (BS) and Tariff Order 2021-22 Sub clause No. SVII 1.2. Similarly vide Memo No. 593 dated 04.05.2021 the Respondent's office raised demand of ₹ 59,92,848/- as per CC No. 38/2020 and 39/2020 as consumption used for domestic colonies under the connection. Similarly vide Memo No. 1837 dated 29.11.2021 the Respondent's office raised demand of ₹ 71,69,169/- which pertained to Fixed Charges on 25% of total consumption and ED/ IDF on Fixed Charges. Similarly vide Memo No. 326 dated 14.03.2022 the Respondent's office raised demand of ₹ 5,04,47,631/- in which previous demand was mentioned. So

the Respondent raised above demands as per Rules and Regulations of the PSPCL.

- (iii) As per CC 38/2020 and 39/2020, ED/IDF was applicable to Central Government Agencies.
- (iv) As per CC No. 39/2020, it was clarified that ED shall be levied on the residential colonies of the Central Government Organisation and that ED cannot be exempted on the Power consumed by the residents residing in the residential colonies owned by the Government of India (ARMY, RAILWAY, BSF etc.)
- (v) The Respondent submitted that they did not agree with Para 5 & 6 of the Appeal.
- (vi) This office raised demand as stated above as pointed out by Audit Wing. So, why notice issued to deposit the less charged amount. The Respondent did not agree with Para 7 of the Appeal.
- (vii) The Respondent does not agree with it as matter does not relate to this office.
- (viii) The Demand raised by the PSPCL was as per Rules and Regulations, it cannot be withdrawn. So the CCGRF, Ludhiana passed the final speaking order dated 12.01.2024 against the Appellant.

- (ix) The Respondent's office raised demand as per Rules and Regulations of the PSPCL as pointed out by the Audit Wing of the PSPCL, so the demand cannot be withdrawn.
- (x) The order passed by the CCGRF, Ludhiana was as per Rules and Regulations of the PSPCL. So, demand cannot be withdrawn.
- (xi) The Respondent submitted that they did not agree with Para 13 of the Appeal.
- (xii) The Respondent's office had rightly charged the amount as per the PSPCL CC no. 38/2020 and 39/2020.
- (xiii) As per policy of the PSPCL, ED and IDF charges are to be levied from date when connection is released.
- (xiv) The Court of Lokpal (Ombudsman) may kindly be prayed not to give any opportunity of hearing as the Corporate Forum had already passed the final speaking order dated 12.01.2024 against the Appellant.

(b) Submissions in additional reply

The Respondent submitted the following additional reply for consideration of this Court:-

- (i) The office record before 2011 was not found due to shifting of office from old building to new building in 2016.

- (ii) The Appellant is paying ED & IDF from 03/2022. An amount of ₹ 19,27,636/- as ED & IDF from 09/2021 to 20/2022 is yet to be charged & recovered.

(c) **Submission during hearing**

During hearing on 27.03.2024, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

6. Analysis and Findings

The issue requiring adjudication is the legitimacy of the amount of ₹ 4,32,78,462/- for the period from 04/2011 to 08/2018 and ₹ 71,69,169/- for the period from 09/2018 to 09/2021 charged to Account No. 3002836867 of the Appellant and subsequently added in the bills as Sundry Charges on account of Electricity Duty & IDF in accordance with Commercial Circular Nos. 38/2020 & 39/2020.

My findings on the points that emerged and my analysis is as under:

- (i) The Corporate Forum in its order dated 12.01.2024 observed as under:-

“Forum observed that, PSPCL vide CC Nos. 38 & 39/2020, issued instructions/clarification that levy of ED cannot be

exempted on the power consumed by residents residing in residential colonies owned by the Govt. of India (Army, Railways, BSF etc.) and from BS connections of Central Govt. institutions comprising of mixed load which are subject to a minimum of 25% domestic load. As ED was not being charged to this account, so as per these instructions, the Account of the petitioner was overhauled by Internal Audit vide Half Margin no. 86 dated 03/2021 and short assessment amounting to Rs. 5992848/- was pointed out. Accordingly, AE/DS, PSPCL, S/D Cantt no.-1, issued notice vide memo no. 593 dated 04.05.2021 to deposit amount of Rs. 5992848/-. Audit Party again overhauled the account of the petitioner vide Half Margin no. 115 dated 08/21 and pointed out short assessment amounting to Rs. 529201/- for the period from 16.02.2021 to 20.07.2021. Accordingly, AE/DS, PSPCL, S/D Cantt no.-1, issued notice vide memo no. 1373 dated 06.09.2021 to deposit amount of Rs. 529201/-. Petitioner did not deposit these amounts and same were charged in his bill issued during 01/2022. Again, as per clarification issued by Dy. CA/Revenue, PSPCL, Patiala vide memo no. 7080/84 dated 16.11.2021, audit Party overhauled the account of the petitioner vide Half Margin no. 141 dated 21.02.2022 and pointed out short assessment amounting to Rs. 43278462/- for the period from 04/2011 to 08/2018. Accordingly, AE/DS, PSPCL, S/D Cantt no.-1, issued notice vide memo no. 245 dated 25.02.2022 to deposit amount of Rs. 43278462/-. Petitioner did not deposit this amount and same was charged in his bill issued during 08/2022. Thereafter, AE/DS, PSPCL, S/D Cantt no.-1, issued consolidated notice vide memo no. 326 dated 14.03.2022 to deposit amount of Rs. 50447631/- (including the amount of Rs. 647120/- on a/c of reading from 15.08.2021 to 16.09.2021, which is not a part of the dispute). Petitioner did not agree to these amounts and filed his case in the Forum.

Petitioner in his petition contended that as per article 287 Constitution of India and Punjab Govt. Gaz. (Extra.), May 10 2005, Deptt. of Legal and Legislative Affairs (copy enclosed). The Punjab Electricity (Duty) Act, 2005. Para 5 Exemption to Govt. of India is totally exempted from Sale Tax/Electricity Duty. He further contended that in this levy of Arrears, Para 56 (2) of Electricity Act, 2003 (Reproduced for ready ref.). *Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity.* From above provision of Para 56 (d) of electricity Act, 2003, it is clearly established that levy of arrears w.e.f 2011 is irregular by PSPCL.

During proceedings petitioner was asked that the above article 287 of Constitution of India does not exempt the ED on the electricity consumed by the residents of the residential colonies, to which petitioner admitted that they are now paying the ED & IDF regularly as charged in the bills but pleaded that the sundry charges of previous period may be waived off being time-barred.

Respondent in his reply submitted that the Legal section of the PSPCL vide its U.O. no. 1248 dated 27.10.2021 addressed to Chief Engineer Commercial, Patiala has clarified about the period of limitation, as under:

“To conclude, Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply. For recovery of the additional demand. As per Section 17(1)(c) of the Limitation Act, 1963. In case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.”

Forum observed that vide CC no. 38 & 39/2020 only clarification has been issued regarding levy of ED & IDF, which was discontinued or not being applied to such consumers due to one reason or other. This mistake was noticed and instructions were issued vide above circulars on dated 02.09.2020 & 30.09.2020.

Further the Legal Adviser PSPCL, Patiala vide memo no. 12/76 dated 24.01.2022 has mentioned the decision dated 5.10.2021 of Hon'ble Supreme Court of India, delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd., as under:

Hon'ble Supreme Court in para 24 & 25 of this judgement observed as follows:

*"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.***

*25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistakes detected is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer **under this Section**", appearing in Subsection (2)."*

From the above, Forum observed that as per CC no. 38/2020, the levy of ED cannot be exempted on the power

consumed by the residents of the residential colonies owned by Govt of India (Army, Railway, BSF etc.), therefore the amount has been rightly charged. Further the same cannot be considered as time barred in the light of the decision of Hon'ble Supreme Court of India delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd. Therefore, Forum is of the opinion that amount charged to the petitioner on a/c of ED & IDF on the power consumed by residents of the residential colonies, is not time barred and is justified and recoverable.

Forum have gone through the written submissions made by the Petitioner in the petition, written reply of the Respondent, oral discussions made by Petitioner along with material brought on record. Keeping in view the above, Forum is of the opinion that the amounts of Rs. 5992848/- for the period from 09/2018 to 03/2021 vide notice no. 593 dated 04.05.2021, Rs. 529201/- for the period from 03/2021 to 07/2021 vide notice No. 1373 dated 06.09.2021 and Rs. 43278462/- for the period from 04/2011 to 08/2018 vide notice no. 245 dated 25.02.2022, charged on account of Electricity Duty/IDF, are correct and recoverable.”

- (ii) I have gone through the written submissions made by the Appellant in the Appeal, written reply alongwith additional reply of the Respondent as well as oral arguments of both the parties during the hearing on 27.03.2024. It is observed by this Court that the Department of Power (Energy Branch), Govt. of Punjab vide its letter to the Chief Electrical Inspector, Patiala which was endorsed to the Licensee vide Endst. No. 11/62/2019-EB4/1688 dated 10.08.2020 for information and necessary action, clarified as under:

“that levy of electricity duty cannot be exempted on the power consumed by the residents residing in the residential colonies owned by the Government of India (Army, Railway, BSF, etc.)”

Taking action on the above clarification by the Govt. of Punjab (authority to levy or exempt ED & IDF), the Licensee issued Commercial Circular No. 38/2020 dated 02.09.2020 for the meticulous compliance of the above instructions by the field officers of the PSPCL. Further, it was clarified by the PSPCL vide Commercial Circular No. 39/2020 dated 30.09.2020 that in case of Bulk Supply connections to Government of India, ED be charged on pro-rata basis on the basis of percentage of sanctioned residential/colony load (as per registered A&A Form) subject to a minimum of 25% to total sanctioned load.

- (iii) On the basis of these Commercial Circulars, the Respondent charged ₹ 4,32,78,462/- for the period from 04/2011 to 08/2018 and ₹ 71,69,169/- for the period from 09/2018 to 09/2021 Account No. 3002836867 of the Appellant and subsequently added in the bills as Sundry Charges. The Appellant contended that the amount charged was time barred as per Section 56 (2) of Electricity Act, 2003. I don't agree with this contention of the Appellant as the Supreme Court of India had decided this issue in the Civil Appeal No. 7235 of

2009 titled as M/s. Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd. &Ors. Hon'ble Supreme Court in para 24 & 25 of this judgment observed as follows:

*"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity** or any sum other than a charge for electricity. **What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.***

*25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistakes detected is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer **under this Section**", appearing in Subsection (2)."*

On perusal of above paras & complete judgment of Hon'ble Supreme Court of India, it is very clear that the Respondent can recover the amount of short billing due to negligence on the part of the Licensee even after two years.

- (iv) The Appellant pleaded that Hon'ble Supreme Court's ruling was not relevant in the present case as the facts of the case were different. In my opinion, this Supreme Court ruling on

Section 56 (2) of Electricity Act, 2003 is very clear and relevant to the present case also.

- (v) The Appellant also contended that the Commercial Circular Nos. 38/2020 & 39/2020 were ultravires to the Article 287 of the Constitution of India as residential buildings in the Cantonment Area meant for the employees of the Government of India came under the ambit of the definition of Government of India for the purpose of getting exemption from ED & IDF. In this regard, I am of the opinion that Government of Punjab had clarified regarding this to the Licensee vide Endst. No. 11/62/2019-EB4/1688 dated 10.08.2020 and the Licensee had acted accordingly.
- (vi) The Respondent submitted that the office record was not found for the period before 2011 as the office was shifted from old building to new building in year 2016. He confirmed that now from 03/2022 onwards, ED/IDF have been regularly charged to the Appellant as per Commercial Circulars (38/2020 & 39/2020) & the Appellant is paying it. The Respondent could not give satisfactory reply for not charging ED/IDF during the disputed period. This is a serious lapse on the part of officials/ officers of the Licensee.

(vii) Electricity Duty (ED) is being levied as per The Punjab Electricity (Duty) Act, 2005. As per this Act, the State Government may, in public interest by notification in the Official Gazette, exempt any licensee, consumer or person from the payment of the whole or part of the electricity duty for such period and subject to such conditions as may be specified in such notification. Punjab Govt. had already clarified regarding levy of Electricity Duty on the residential colonies of the Central Govt. organisations vide Endst. No. 11/62/2019/ EB4/1688 dated 10.08.2022 and ED is leviable to the Appellant as per this letter. The Appellant may approach Punjab Govt. in case levy of ED/IDF is to be got exempted in future for electricity consumption in residential colonies. The Licensee is not empowered to exempt ED/IDF applicable to the Appellant.

(viii) The Appellant's Counsel confirmed during hearing on 27.03.2024 that the electricity consumption bills of the Residential Colonies in the Cantonment Areas are being regularly recovered from its occupants by the Appellant. It is felt that ED/IDF levied during the period in dispute shall also be recovered from the occupants of residential colonies by the

Appellant and burden on this account shall not pass on to Govt. of India (Central Govt.).

- (ix) It is observed that the Corporate Forum did not decide on the part of the dispute related to period from 15.08.2021 to 16.09.2021 amounting to ₹ 6,47,120/-. But this Court is of the view that the same is also recoverable from the Appellant.
- (x) In view of the above, this Court is of the view that the amount of ₹ 4,32,78,462/- for the period from 04/2011 to 08/2018 charged vide notice bearing Memo No. 245 dated 25.02.2022 and ₹ 71,69,169/- for the period from 09/2018 to 09/2021 charged vide notice bearing Memo No. 1837 dated 29.11.2021 to Account No. 3002836867 of the Appellant and subsequently added in the bills as Sundry Charges on account of Electricity Duty & IDF in accordance with Commercial Circular Nos. 38/2020 & 39/2020 are correct and hence fully recoverable.

7. Decision

As a sequel of above discussions, the order dated 12.01.2024 of the CCGRF, Ludhiana in Case No. CF-171 of 2023 is amended & it is decided that the amount of ₹ 4,32,78,462/- for the period from 04/2011 to 08/2018 charged vide notice bearing Memo No. 245 dated 25.02.2022 and ₹ 71,69,169/-

for the period from 09/2018 to 09/2021 charged vide notice bearing Memo No. 1837 dated 29.11.2021 to Account No. 3002836867 of the Appellant and subsequently added in the bills as Sundry Charges on account of Electricity Duty & IDF in accordance with Commercial Circular Nos. 38/2020 & 39/2020 are correct and hence fully recoverable..

8. The Appeal is disposed of accordingly.
9. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/order within 21 days of the date of its receipt.
10. 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.

March 27, 2024
S.A.S. Nagar (Mohali).

(ANJULI CHANDRA)
Lokpal (Ombudsman)
Electricity, Punjab.