

**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. 11/2023**

**Date of Registration : 18.04.2023**

**Date of Hearing : 02.05.2023**

**Date of Order : 02.05.2023**

**Before:**

**Er. Gurinder Jit Singh,  
Lokpal (Ombudsman), Electricity, Punjab.**

**In the Matter of:**

M/s. Vijay Ice Factory,  
Malout Road Gidderbaha.

**Contract Account Number: 3000297023(MS)**

...Appellant

Versus

Senior Executive Engineer,  
DS Division, PSPCL,  
Gidderbaha.

...Respondent

**Present For:**

Appellant: (1) Sh. Ashok Dhawan,  
Appellant's Representative.

(2) Sh. Parshotam Girdhar,  
Appellant's Representative

Respondent : (1) Er. Kamaljit Singh Maan,  
Addl. SE/ DS Division, Gidderbaha.

(2) Er. Daljeet Singh,  
Revenue Accountant.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 21.03.2023 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-023/2023 deciding that:

- “i. The account of the petitioner has been rightly overhauled by taking MF as 2 (two) instead of 1 (one) from 29.09.2011 to 22.07.2016. However, the calculations be examined in light of relevant tariff order & applicable instructions at that time and correction(s), if any, be done. The amount so finalized be recovered accordingly.*
- ii. CE/ DS, West Zone, PSPCL, Bathinda, is directed to investigate the matter and fix responsibilities of the delinquent official(s)/ officer(s), for the lapse(s) which have lead to recurring financial loss to PSPCL.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 18.04.2023 i.e. within the stipulated period of thirty days of receipt of the decision dated 21.03.2023 of the CCGRF, Ludhiana in Case No.CF-023/2023. The Appellant deposited the requisite 40% of the disputed amount. Therefore, the Appeal was registered on 18.04.2023 and copy of the same was sent to the Addl. Superintending Engineer/ DS Divn., Gidderbaha for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the

Appellant vide letter nos. 313-15/OEP/A-11/2023 dated 18.04.2023.

### **3. Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 02.05.2023 at 12.00 Noon and intimation to this effect was sent to both the parties vide letter nos. 343-44/OEP/A-11/2023 dated 24.04.2023. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

### **4. 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 Representative and the Respondent alongwith 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 an Ice Factory and had obtained a MS Category Connection bearing Account No. 3000297023 with

Sanctioned load/ CD of 94.050kW/ 100 kVA under DS Divn., PSPCL, Gidderbaha.

- (ii) Being an ice factory, as per instructions of PSEB now PSPCL, process was started in the year 2007 to convert the Appellant's connection from LT Supply to HT Supply, which was actually converted in the year 2011, as per record of the office of the Respondent.
- (iii) The connection was converted to 11 kV Supply on 29.09.2011. It was required to be got checked from the AEE/ Enforcement/ MMTS within 30 days of the conversion to HT Supply, as per standing instructions of the PSPCL. But it was not done for a very long period i.e. from 29.09.2011 to 22.07.2016. The Checking Authority found that CT Ratio Capacity as 10/5 instead of 5/5. Therefore, ordered the overhauling of accounts for the period 29.09.2011 to the date of checking. As a result, a sum of ₹ 27,67,235/- was charged to the Appellant's account.
- (iv) The Appellant was surprised and was unable to deposit such a heavy amount and tried to get relief from the PSPCL. The Appellant had paid all the bills issued from time to time and nothing was payable as per record but the PSPCL authorities refused to listen. Therefore, the Appellant knocked the doors of the Punjab & Haryana High Court, Chandigarh. The Hon'ble Court

issued a stay order against recovery on the condition to pay current bills till the decision of the case. But after a very long period, on the pursuance of the Higher Authorities to resolve the issue through outside settlement out of the Court as per available remedy within the PSPCL as available under Electricity Act-2003, the Appellant agreed to withdraw the case from the Hon'ble High Court. The Court acceded to the permission on 23.11.2022 as per request of the Appellant.

- (v) Therefore, the Appellant presented the case before the Corporate Forum, Ludhiana. As per order of the Forum, the Appellant deposited 10% of the disputed amount in addition to the 10% amount already deposited and the case was registered on 21.02.2023 as Case No. CF-023/2023 and was decided on 21.03.2023 against the Appellant, without addressing to the grievances of the Appellant. The Forum while deciding the case had ignored a number of vital facts which were brought here for the kind consideration of this Hon'ble Court.
- (vi) The Forum had wrongly treated the Issue No. 1 regarding MF 1 or 2, which was never an issue in the Petition. The Appellant had never made it as issue which was decided as Issue No. 1 by the Forum. The relief prayed for before the Forum was as "To reduce the period of overhauling account from 4 years and 10 months to 2

years as per Regulation No. 32.2 of the Supply Code-2007/2014.”

The Appellant had prayed for the reduction of period of overhauling by the Respondent office and never asked for or rejected that calculation of MF as wrong, an analysis of the Petition made it very clear and would be presented in detail.

(vii) Regarding HT Rebate which was declared as time barred. The Appellant pleaded before the Forum to account for the HT Rebate as was admissible under Instruction No. 13.1.1 of ESIM-2010 and further from time to time as per different tariff orders approved by the Hon'ble PSERC. In response, the reply submitted by the Respondent office clarified that HT Rebate was allowed w.e.f. the year 2017 and the period for the 2011 to 2016 was time barred being more than 2 years old. So, the Forum without considering the actual facts of the matter and by treating as a separate issue, had declared it as time barred. In reply, the Appellant had requested in the Rejoinder as mentioned in the order that it was not a separate issue rather it was a calculation mistake done by the Respondent office against the claimed amount which was under consideration of the Forum. In response, the Forum agreed to it but never mentioned it in the order properly.

(viii) Thus, the Forum should have reversed its order dated 14.02.2023, as the Case at that time was in the stage of pre-hearing and had

passed an order in haste even before registering the Case as CF-023. The Forum observed that period from 2011 to 2016 for which HT Rebate was being claimed by the Appellant, as a Case older than 2 years, as a time-barred one as per Regulation No.2.25(c) of PSERC (Forum & Ombudsman) (2<sup>nd</sup> Amendment) Regulations, 2021 as “not maintainable in this Forum”. It was further added that time spent in any Court of law under part III of Law of limitation period-1963 sub section 14 & 15, the period during which the stay order was granted and the day of which it was ended should not be included for counting the period of limitation. This provision incorporated in the Act of Limitation, was under the Constitution of India and applicable to all Cases while computing the period of limitation. So, until the final order was issued, the Forum should not have considered any issue arose or to be arising as time barred. Thus, the period of stay as granted by the Hon’ble High Court from 25.07.2016 to 23.11.2022 was not accountable towards limitation period.

- (ix) If a calculation mistake in the disputed amount was time barred as per order of the Forum and it was not allowed to correct and declared it as time barred, then whole disputed amount may be time barred. As already mentioned that despite the fact the Forum accepted it during discussion that the Respondent office was bound

to correct the calculation mistake and final order had a clear reference about it, yet the Forum shied away to give a clear cut order in this regard.

- (x) The first para of the order was as – “The account of the petitioner has been rightly overhauled by taking MF as 2 (two) instead of 1 (one) from 29.09.2011 to 22.07.2016. However, the calculations be examined in light of relevant tariff order & applicable instructions at that time and correction(s), if any, be done. The amount so finalized be recovered accordingly.”The Respondent office had failed to act upon the order of the Forum as mentioned above as no revised notice had been issued in this regard. Neither calculation regarding accounting for HT Rebate nor the amount of arrear recovered against the revised tariff through the bill for the month 04/2012 for ₹ 10,709/- & for the month of 05/2012 for ₹ 10,710/- were recovered but not adjusted in the calculation sheet. Although, the Forum issued a reference in this regard, however, the Respondent office failed to act accordingly as per order of the Forum.

- (xi) It was mentioned by the Respondent office vide Memo No. 1171 dated 29.07.2016 that CT with Capacity as 10/5 A, Sr. No. 1203, make Adhunik was received through SR No. 86/11900 dated 29.03.2007 for conversion of LT connection into HT connection.

But it was not energized for a longer period of more than 4.5 years upto 29.09.2011 means the CT remained idle with the Respondent office and no reason for this delay was mentioned. No information was provided, if the CT was again got tested from the Lab before energization or not, nor any reason was mentioned for the delay to complete the work regarding conversion from LT to HT connection. No satisfactory answer was given by the Respondent office that why the CT/ PT unit was drawn about 5 years ago and why such a longer period was taken to complete the work for conversion of Supply from LT to HT Supply. Copy of the sealing record of the period when 11 kV meter was installed was missing. The Respondent office could not give satisfactory answer in this regard that copy of MSR was not available. It was a serious issue that such important record was missing or had been deliberately kept hidden to save the concerned responsible officers/ officials.

- (xii) The copy of Checking Report of MMTS had not been provided by the Respondent which was essential to be carried out before and after conversion of this connection from the LT Supply to HT Supply as it was mandatory provision that any HT connection should have been got checked from the MMTS/ Enforcement after the release/ conversion, within 30 days of the effect. Moreover, as per the RTI received from the office of Dy. CE/ Enforcement,

Bathinda vide Memo No. 324 dated 07.02.2023, the said connection was never checked from 29.09.2011 to 21.07.2016. However, no reason was mentioned for non-compliance of the instructions of the PSPCL.

- (xiii) As per RTI received from the office of the Asstt. Engineer/ City Sub-Division, Gidderbaha vide Memo No. 413 dated 13.02.2023, a sum of ₹ 34,994/- was got deposited vide BA 16 no. 169/58124 dated 05.08.2014, from the Appellant for shifting of transformer and meter room. Therefore, in the process when it was completed, the meter & CT/ PT units were also shifted, it means all the seals were broken and re-fixed at that time. Even at this stage, the concerned authorities i.e. JE/ AE failed to point out about the capacity of CT/ PT units and Multiplying Factor.
- (xiv) It was very surprising that AAE/ JE-1 was responsible to check and record reading every month as per Instruction No. 81 of ESIM-2011 and he was unable to detect the mistake for more than five years.

*“81. METER READING:*

*81.1 Meter readings of various categories of consumers with loads upto 500 KW shall be taken by the following officials:-*

- i) DS/NRS (loads upto 20 KW/ SP Connections) (except spot billing) Meter reader*
- ii) DS/NRS (21-50 KW) / BS Connections upto 100 KW JE Incharge of feeder*
- iii) DS/NRS (51-100KW) / MS Connections AAE/JE-I*
- iv) DS/NRS/LS/BS (100-500 KW) Connections AE/AEE/Xen(DS)*

*The periodicity for taking readings shall be as mentioned in the Supply Code (Regulation No. 30). If the load exceeds 100 KW, passbooks shall be provided to the consumers. For loads up to 100 KW, meter reading cards shall be*

*provided to the consumer. The billing in respect of DS/NRS connections with load exceeding 100 KW shall be done by CBC cell.”*

It was mandatory instruction that all efforts should be made to install CT/ PT units and Meter Ratio of the same capacity and in this case, these were of different capacities, so Multiplying Factor should be written at site, meter reading record and MSR etc. in the red ink. But the Respondent office failed to perform the duty for more than five years of mistake. It was further added that on transfer of officer Incharge of the office, it was also duty of new officer to check all such connections of the Sub-Division and confirm the position of meters and CT/ PT units as per record. None of the officers of Enforcement/ MMTS were able to point out mistake for years together. Therefore, to punish the Appellant only for all this was not justified in the eyes of law.

- (xv) The case is not beyond doubt for the following reasons for which no reply or clarity was being given by the Respondent office:-
- a) The CT/PTs unit was drawn vide SR/ Issue Note No.86/11900 dated 29.03.2007, but the same was actually converted on 29.09.2011, after a gap of very long period. No reason for the delay had been given by the Respondent office.
  - b) The 11 kV connection alongwith CT/PTs unit was shifted as mentioned above. It was mandatory to get it checked from the office of ASE/Sr. Xen/ Enforcement-cum-MMTS and to take

the certificate regarding genuineness of seals etc. and it was also to get it checked after shifting from the office as mentioned above again, but how the rules were ignored by the Respondent office. Had these rules been followed, the mistake could have been detected at the same time. The violation of rules was a matter of great concern and needed to be probed.

(xvi) The Appellant was a small entrepreneur and sells his product according to fixed and variable cost of the particular period at a particular time and earned livelihood from the same with difficulty in the competitive world. Electricity was a major part of variable cost of the product in case of Ice Factory. The Appellant had sold product such as Ice @ rate which was affordable to him according to the cost. But the Appellant cannot demand arrears from the customers to whom he had sold it from time to time. Such a big amount can ruin his business. It was not correct that Ice was being sold at market price, as replied by the Respondent office. Therefore, keeping in view the circumstances, period of this disputed amount should be restricted to 2 years, otherwise it would become difficult for him to save his business, as the same was allowed by Hon'ble Ombudsman in a number of Cases e.g. Appeal Case No. 50 of 2012. In the similar Case as Appeal No. 39 of 2019, the Hon'ble

Court of Ombudsman had allowed to recover arrear amount in 60 no. installments without interest.

(xvii) There were so many examples of cases in which the period for overhauling due to wrong MF was reduced by the Hon'ble State Commission for Redressal of Grievances and also upheld by the Hon'ble High Court such as Complaint No. 28 of 2008 and first Appeal No. 127 of 2022.

(xviii) The Appellant would suffer irreparable losses, if relief was not provided. Therefore, it was humbly prayed to accept the Appeal in the interest of justice.

**(b) Submissions in the Rejoinder**

In its Rejoinder to the written reply of the Respondent, the Appellant submitted the following for consideration of this Court:

- (i) It was submitted that the reply of the Respondent was not upto mark and the Respondent had concealed many facts and tried to mislead the Court.
- (ii) As per reply, the MS connection of Ice Factory was converted from LT to HT w.e.f 29.09.2011, therefore, the Appellant was entitled for HT rebate from the date of conversion and the Respondent mentioned that same was allowed from the year 2015. However, no rules or circular had been mentioned for not allowing the same w.e.f 29.09.2011. Even the revised calculation sheet marked as

sheet B submitted before the Corporate Forum vide memo No. 918/19 dated 15.03.2023, it was allowed w.e.f 10/2015 and not for the full year 2015.

- (iii) Moreover, it has been further mentioned clearly that ₹ 21,419/- were not allowed/ adjusted as already recovered from the Appellant and regarding same a clear foot note under signature was mentioned.
- (iv) As per reply, only transformer was shifted during the year 2014 which was wrong as both CT/ PT's alongwith meter was also shifted.
- (v) The Corporate Forum after hearing the arguments of both, had clearly mentioned in the decision that "the account of the petitioner has been rightly overhauled by taking MF as 2 (two) instead of 1 (one) from 29.09.2011 to 22.07.2016. However, the calculations be examined in light of relevant tariff order and applicable instructions at that time and correction(s), if any, be done. The amount so finalized be recovered accordingly".
- (vi) The Respondent had neither adjusted ₹ 21,419/- nor had recalculated amount with HT rebate on the basis of the said decision, which is against the orders as mentioned. Therefore, the same should be allowed now keeping in view from the point of justice. The revision of the period of calculation as already

explained in the Appeal is also requested alongwith maximum nos. of instalments.

**(c) Submission during hearing**

During hearing on 02.05.2023, the Appellant's Representative (AR) reiterated the submissions made in the Appeal as well as in the Rejoinder and prayed to allow the same.

**(B) Submissions of the Respondent**

**(a) Submissions in the written reply**

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

- (i) PSPCL had passed an Estimate No. 03670/ 2010-2011 dated 25.03.2011 to convert supply from LT to HT of 14 no. MS Category Connections- 11 no. Rice Sheller and 3 no. Ice Factories. Out of these, M/s Vijay Ice Factory, Gidderbaha was converted to HT on 29.09.2011 vide SJO No. 14/98522 after checking by Enforcement on 28.05.2011 vide ECR No. 39/1195.
- (ii) The connection of M/s Vijay Ice Factory, Gidderbaha bearing a/c no. Y21MS21-0004(3000297023) was checked on 22.07.2016 by ASE/ Sr. Xen/ MMTS, Bathinda vide ECR No. 34/683. During the checking, metering equipment/ particulars at the site were found as under as per ECR: -

Meter Sr. No. PBB05788;

Make SECURE;

Meter Capacity:- 5/5A

CT Set Sr. No. 1203;

CT Set Capacity:- 10/5A

Overall Multiplying Factor = (CT Ratio/ Meter Ratio) = (10/5)/  
(5/5) =2

- (iii) When the particulars of metering equipment were cross checked with the official record/ SAP, it was found that overall multiplying factor was 1 instead of 2 from the date of installation of Meter Sr. No. PBB05788 & CT Set Sr. No. 1203. The Electric Meter (Sr. No. PBB05788) alongwith CT's was installed at the Appellant's connection as on 29.09.2011 and the same was updated in the ledger record, but multiplying factor of metering equipment was wrongly implemented as 1 instead of 2, thus account of the Appellant was overhauled as per note under the Regulation 21.5.1 of Supply Code, 2014 and Instruction No. 58.1 of ESIM-2018 from the date of implication of wrong multiplication factor and ₹ 27,67,235/- was charged to the Appellant on account of energy charges for actual units consumed and not billed, for the period of 29.09.2011 to 30.06.2016. Notice No. 1101 dated 25.07.2016 was issued to the Appellant to pay the said amount.
- (iv) The Appellant had approached the High Court of Punjab & Haryana, Chandigarh on 02.08.2016. The Hon'ble High Court allowed the hearing on 05.08.2016.

- (v) At the same time on 03.08.2016, the Appellant submitted its request to ZDSC (Chief Engineer, West Zone, Bathinda) to file the case and on the request of the Appellant, 10% of the total amount i.e. ₹ 2,76,730/- was deposited by the Appellant vide BA-16 No. 264/58152 on 03.08.2016 to file the case in DSC.
- (vi) The Punjab & Haryana High Court in its hearing on 05.08.2016 ordered Stay on recovery of amount demanded by the PSPCL vide notice dated 25.07.2016 for ₹ 27,67,235/-, even the Appellant was liable to pay electricity bill duly raised in routine by PSPCL (next date of hearing was 09.09.2016) as per order. After filing case in DSC, the Appellant had never submitted its written petition in ZDSC, Bathinda, even after many requests by ZDSC, Bathinda for which it had deposited 10% of the total amount.
- (vii) On 23.11.2022, the Appellant had withdrawn its petition from Punjab & Haryana High Court, Chandigarh. As per High Court order dated 23.11.2022, the Appellant was allowed to avail alternative remedy. After withdrawal of case by the Appellant, the stay order of High Court order dated 05.08.2016 became void and PSPCL sent reminder vide Memo No. 2931 dated 12.12.2022 and again reminder 3<sup>rd</sup> notice vide Memo No. 2983 dated 19.12.2022 to pay due amount. Even then, the Appellant did not pay any amount demanded vide notice dated 25.07.2016 by the PSPCL till date.

- (viii) The Appellant filed dispute case in CCGRF, Ludhiana bearing Case No. CF-023/2023. After proper hearing, oral discussion, reconciliations of calculations by both the parties and under the light of concerned regulations, the case was decided in the favour of PSPCL on 21.03.2023. After reconciliation by both the parties the revised calculations were given to the Appellant on 16.03.2023 for ₹ 27,61,884/-. After the decision of CCGRF, Ludhiana, a notice was issued to the Appellant for ₹ 78,96,852/- (Reconciliation amount with interest @ 1.5% per month on gross outstanding amount, due up to 31.03.2023). Now, the Appellant had filed an Appeal against the decision of the CCGRF, Ludhiana dated 21.03.2023.
- (ix) The account of the Appellant was overhauled as per note under the Regulation 21.5.1 of Supply Code-2014 and Instruction No. 58.1 of ESIM-2018 from the date of implication of wrong multiplication factor and against the electricity units actually consumed by the Appellant but not actually billed. The PSPCL authorities had never refused to listen to the Appellant.
- (x) The Appellant had raised 3 issues in its Appeal as under-
- Issue No. 1- To reduce the period of overhauling account for 4 years and 10 months to 2 years.

Issue No. 2- To allow HT Rebate as admissible as per Clause 13 of the Conditions of Tariff from the date of conversion to date.

Issue No. 3- To allow Power Factor incentives as was allowed from time to time by PSPCL.

- (xi) Reply of Issue No. 1- Keeping in view the petition, reply, oral discussion, after hearing both the parties, perusal of the record produced, it was observed by the CCGRF, Ludhiana that account of the consumer was overhauled on account of wrong MF as 1 instead of 2. The consumer in its petition pleaded that its account be overhauled for a period of 2 year as per Regulation 32.2 of Supply Code-2014. The above claim of the Appellant was not maintainable in the light of Hon'ble Supreme Court decision dated 05.10.2021 delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Limited. As mentioned in the note of Regulation 21.5.1 of Supply Code-2014, the account of the petitioner was required to be overhauled for the period mistake of wrong MF continued.
- (xii) Reply of Issue No. 2- HT Rebate was already given to the Appellant with the bills issued with effect from 2015. The period of HT rebate from conversion to HT from LT up to 2012 was treated as time barred as it was older than 2 years, as per Regulation 2.25(c) of PSERC (Forum and Ombudsman) (2<sup>nd</sup> Amendment)

Regulations, 2021, hence, this issue was not maintainable. The Appellant claimed that period of stay order issued by the High Court on 05.08.2016 for the period of 05.08.2016 to 23.11.2022 cannot be counted while calculating limitation period on the issue of HT rebate. This statement was incorrect/ invalid as issue of HT rebate had no concern with this case as the Appellant had never stated this issue to the PSPCL or any Court/Forum after the issue of notice dated 25.07.2016. **Time spent on stay order of High Court dated 05.08.2016 was applicable only on Recovery of amount & disconnection of electricity supply of consumer due to non payment of notice dated 25.07.2016, and stay order had no concern with/ effect on HT rebate claim by the Appellant. He was free to submit his request to PSPCL in this regard any time but he had never approached/claimed to PSPCL or any other authority before filing CCGRF Case No. CF-23/2023.**

- (xiii) **Reply to point no. IV at page no. 5 of the Appeal:** - In the rejoinder submitted by the Appellant on 28.02.2023, the calculations of notice dated 25.07.2016 was challenged and as per order of CCGRF, Ludhiana dated 28.02.2023 regarding reconciliation of calculation to both the Appellant and the Respondent, PSPCL reconciled the calculation with the consent and presence of the Appellant and the Respondent and submitted the

reconciled calculation sheet to CCGRF, Ludhiana as well as to the Appellant. After the said adjustment of both bills for the month of 4/2012 for ₹ 10,709/- & for the month 5/2012 for the ₹ 10710/- totaling to ₹ 21,419/-. This statement submitted in this Appeal was false and misleading. The reconciled calculation sheet was provided to the Appellant on 16.03.2023 at the time of hearing in the CCGRF, Ludhiana vide Memo No. 919 dated 15.03.2023 for the total amount of  $(27,83,303-21419) = ₹ 27,61,884/-$ . A registered notice with detailed (reconciled and revised) calculation was sent again to the Appellant vide Memo No. 956 dated 13.04.2023.

- (xiv) **Reply to point no. 3 at page no. 6 of the petition:** - The accuracy factor of meter and CT set was not involved in this case so this point was not relevant. The PSPCL passed an Estimate No. 03670/2010-2011 dated 25.03.2011 to convert supply from LT to HT of 14 no. MS Category Connections- 11 no. Rice Sheller and 3 no. Ice Factory, out them M/s Vijay Ice Factory, Gidderbaha was converted to HT on 29.09.2011 vide SJO No. 14/1195 after checking by Enforcement vide ECR No. 39/1195 dated 28.05.2011. All the record as requested by the Appellant via RTI and through CCGRF, Ludhiana was provided to the Appellant except MSR as all record was moved to many offices/ Court's because of

departmental enquiry and cases. MSR had no concern with this case of wrong implication of MF.

(xv) **Reply to point no. 4 at page no. 6 of the appeal:-** M/s Vijay Ice Factory, Gidderbaha was converted to HT vide SJO No. 14/98522 dated 29.09.2011 after checking by Enforcement vide ECR No. 39/1195 dated 28.05.2011. The copy of ECR No. 39/1195 dated 28.05.2011 was already provided to the Appellant with RTI reply and during the hearing in the CCGRF, Ludhiana in Case No. CF-23/2023.

(xvi) **Reply to point no. 4 at page no. 6 of the appeal:-** In this point, the Appellant wrongly submitted that during 2014-15, PSPCL shifted the ‘transformer and meter room’ of the Appellant, it was submitted that PSPCL passed an estimate no. 43330/2014-15 on the request of the Appellant and deposit of ₹ 34,994/- as on 05.08.2014 to shift electricity transformer only, not meter room, of M/s Vijay icefactory. Shifting of electricity transformer on the request of the Appellant had no connection with implication of multiplying factor, thus this point was not relevant.

(xvii) **Reply to point no. 6 at page no. 7 of the appeal: -** The Appellant submitted that PSPCL officials had not performed their duties as per Instruction No. 81 of ESIM-2011, it was submitted that it was a matter of departmental enquiry and the same was already

conducted by PSPCL. The Appellant cannot claim the waiver of amount of electricity units actually consumed by him on the consideration of negligence in duty by any officials, thus this point was not relevant.

(xviii) **Reply to point no. 7 at page no. 8 of the appeal:-**7 a) Accuracy

factor of meter and CT set was not involved in this case so this point was not relevant. It was submitted that PSPCL passed a deposit Estimate No. 43330/2014-15 on the request of the Appellant and deposit of ₹ 34,994/- as on 05.08.2014 to shift electricity transformer only, not meter room, of Ms Vijay Ice Factory. The shifting of electricity transformer on Appellant request had no connection with implication of multiplying factor, thus this point was not relevant.

(xix) **Reply to point no. 8, 9 & 10 at page no. 8 of the appeal:-** The Ice

Factory sell their product on Market Rate and the Appellant had gained extra gross profit by selling his product on market rate with less electricity cost. Due to less electricity cost, he had already gained extra gross profit which was not actually due to him because PSPCL was charging electricity on almost half because of wrong implication of multiplying factor. The period of wrong multiplying factor cannot be restricted to 2 years in light of regulations and natural justice. The Appellant had not paid electricity charges

charged to him vide notice dated 25.07.2016 for a long period and approached to 4<sup>th</sup> Authority/Court as under:-

**Case 1-** in Zonal Level Dispute Settlement Committee- petition was not submitted by the Appellant.

**Case 2-** in the Hon'ble High Court Punjab & Haryana- petition was withdrawn by the Appellant.

**Case 3-** in CCGRF, Ludhiana- case was decided in the favour of PSPCL.

**Case 4-** in the Court of Ombudsman, Electricity, Punjab.

(xx) Hence, the Appellant had filed this Appeal without following proper procedure of grievance, petition in ZLDSC was not submitted by the Appellant. This appeal was filed without facts and ground to waste the valuable time of the Court.

(xxi) In the light of above submissions, facts and natural justice, it was prayed that this appeal may be dismissed with the direction to pay the amount(due with Appellant) immediately to PSPCL **with interest**& without installment at rate as per policy of PSPCL and issued notice by the PSPCL.

**(b) Submission during hearing**

During hearing on 02.05.2023, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

## 5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the claim of the Appellant to reduce the period of overhauling of account due to application of wrong MF of 2 instead of 1 from 4 years 10 months to 2 years & to allow HT Rebate & PF Incentive from the date of conversion of his connection from LT to HT supply.

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

- (i) The Corporate Forum in its order dated 21.03.2023 observed as under:-

“Forum observed that Petitioner in his petition raised the following two issues:

Issue No. 1: -

Account of the petitioner was checked by ASE/Sr. Xen, MMTS, Bathinda on 22.07.2016 and ECR no. 34/683 dated 22.07.2016 was prepared at site. As per ECR, meter capacity and CT/PT unit capacity were found 5/5A & 10/5A respectively and accordingly MF of 2 was to be charged to the petitioner for billing. But petitioner had been issued bills with MF as 1. Connection of the petitioner had been changed from LT to HT vide SJO no. 14/98522 dated 13.05.2011 effected on 29.09.2011 when CT/PT unit of 10/5A capacity and meter of 5/5A capacity, resulting in MF as 2, were installed. Hence, all the bills issued to petitioner from 29.09.2011 onward till date of checking i.e., 22.07.2016 were to be issued with MF as 2. In accordance with the ECR no. 34/683 dated 22.07.2016, account of the petitioner was overhauled for MF as 2 from 29.09.2011 to 22.07.2016 and petitioner was issued notice vide Memo no. 1101 dated

25.07.2016 to deposit an amount of Rs. 2767235/- within 7 days. Petitioner did not agree to the amount charged to him and filed his case in Hon'ble Punjab and Haryana High Court, Chandigarh where stay order was issued against the said notice and thereafter petitioner kept on depositing the current bills only. Petitioner on 23.11.2022 withdrew his case from Hon'ble Punjab and Haryana High Court, Chandigarh and filed his case in Corporate CGRF, Ludhiana.

Issue No. 2: -

Second issue of the petitioner is regarding the HT rebate as connection of the petitioner was changed from LT to HT on 29.09.2011. During hearing dated 14.02.2023, Forum observed that period from 2011 to 2016 for which HT rebate is being claimed by Petitioner, being older than 2 years, is time-barred as per Reg. no. 2.25(c) of PSERC (Forum & Ombudsman) (2nd Amendment) Regulation 2021. Hence, Forum decided that being time barred, this issue was not maintainable in this Forum.

Besides these issues, petitioner has also made a vague reference regarding Power Factor incentive without giving any specific details, however that was not considered by the Forum being without any details.

Forum observed that account of the petitioner for the period from 29.09.2011 to 22.07.2016, i.e., a period of approx. 4 years and 10 months, was overhauled on account of wrong MF as 1 instead of actual MF as 2. Petitioner in his petition pleaded that his account be overhauled for a period of 2 years as per Regulation 32.2 of Supply Code-2014. The above claim of the petitioner is not maintainable in the light of Hon'ble Supreme Court's decision dated 5.10.2021 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)."

In this case the negligence of wrong application of multiplying factor was detected on 22.07.2016 and immediately notice was issued on 25.07.2016.

Forum observed that Regulation No. 21.5.1 of Supply Code-2014 deals with the cases of application of wrong Multiplying Factor. The note of Regulation 21.5.1 of Supply Code-2014 dealing with inaccurate meters is reproduced as under:

**21.5.1 Inaccurate Meters**

.....

.....

**Note: Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.**

As mentioned in the Note of above appended to Regulation no. 21.5.1 of Supply Code-2014, the account of the petitioner is required to be overhauled for the period mistake of wrong MF continued.

Petitioner in his petition/rejoinder also raised some issues of wrong calculations. In this regard both the parties were directed

to reconcile the calculations. However, respondent submitted his calculations to which respondent did not agree.

Further petitioner has mentioned that it is very surprising that AAE/JE-1 was responsible to check and record reading every month as per instruction no. 81 of ESIM-2011 and was unable to deduct the mistake for more than five years. In this regards Forum observed the clause 81 of ESIM-2011 reproduced as under:

**81. METER READING:**

**81.1 Meter readings of various categories of consumers with loads upto 500 KW shall be taken by the following officials: -**

- i) *DS/NRS (loads upto 20 KW/ SP Connections) (except spot billing) : Meter reader.*
- ii) *DS/NRS (21-50 KW)/BS Connections upto 100 KW : JE in charge of feeder*
- iii) *DS/NRS (51-100KW)/MS Connections : AAE/ JE-1*

Forum observes that this is a MS connection and while shifting the supply from LT to HT supply, the MF should have been clearly mentioned on the job order and accordingly correct advice should have been sent for billing purpose. Moreover, this connection is being used for ice factory, as such it should have been checked before start of every season, which in this case has not been done although the periodic checking as per clause 104 of ESIM-2011 were required to be carried out. Therefore, the concerned officials/officers of PSPCL have failed to detect the mistake of application of wrong MF for a long period i.e., from 29.09.2011 to 30.06.2016, causing recurring revenue loss to the PSPCL. The matter needs to be investigated and responsibilities are required to be fixed, for this lapse which has lead to recurring financial loss to PSPCL.

Regarding the second issue raised by the petitioner, Forum in its hearing dated 14.02.2023 had already decided that the case being older than 2 years, is time barred as per Reg. No. 2.25(c) of PSERC (Forum & Ombudsman) (2nd Amendment) Regulation 2021. Hence, this issue was not maintainable in this Forum.

Forum have gone through the written submissions made by the Petitioner in the petition, written reply of the Respondent, rejoinder by Petitioner, oral discussions made by Petitioner along with material brought on record. Keeping in view of the above, Forum is of the opinion that the account of the petitioner has been rightly overhauled by taking MF as 2 (two) instead of 1 (one) from 29.09.2011 to 22.07.2016 on the basis of the checking by ASE/Sr. Xen, MMTS, Bathinda vide ECR no. 34/683 dated 22.07.2016. However, on the observation of the petitioner, the calculations are required to be examined in light of relevant tariff order & applicable instructions at that time and correction(s), if any, are required to be done. The amount so finalized is to be recovered accordingly.

Keeping in view of the above, Forum came to the conclusion that the account of the petitioner has been rightly overhauled by taking MF as 2 (two) instead of 1 (one) from 29.09.2011 to 22.07.2016. However, the calculations be examined in light of relevant tariff order & applicable instructions at that time and correction(s), if any, be done. The amount so finalized be recovered accordingly. CE/DS, West Zone, PSPCL, Bathinda, is directed to investigate the matter and fix responsibilities of the delinquent official(s)/officer(s), for the lapse(s) which have lead to recurring financial loss to PSPCL.”

- (ii) I have gone through the written submissions made by the Appellant in the Appeal as well as in the Rejoinder, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 02.05.2023. It is observed by this court that the Appellant was having MS Category connection for an ice factory on LT Supply. His connection was converted to HT Supply on 29.09.2011 vide SJO No. 14/98522 dated 13.05.2011 when CT/PT unit of 10/5A capacity and meter of 5/5A capacity with resulting

MF (Multiplying Factor) of 2 were installed. But due to the negligence on the part of the official/ officer concerned, the Respondent made a mistake in this SJO mentioning the capacity of CT/PT units as 5/5A instead of 10/ 5A. MF was not mentioned on the SJO, but due to wrong mentioning of the capacity of CT/PT unit, the billing of the Appellant continued on MF = 1 from the date of effecting the SJO, i.e. 29.09.2011. This mistake was carried on till the connection of the Appellant was checked on 22.07.2016 by Sr. Xen/ MMTS, Bathinda vide ECR No. 34/683 dated 22.07.2016 where the CT/ PT unit of capacity 10/5A was found installed. On the basis of this checking report, the Appellant's MF was corrected to 2 in the billing software w.e.f. 01.07.2016. The Appellant's account was overhauled and an amount of ₹ 27,67,235/- was charged to the Appellant due to overhauling of the account of the Appellant from 29.09.2011 to 30.06.2016 by applying correct Multiplying Factor of 2 instead of 1 vide Notice No. 1101 dated 25.07.2016. The Appellant never challenged the fact that MF of 2 was imposed to his electric connection. His only contention was that the period of overhauling of account should be 2 years as per Regulation 32.2 of Supply Code, 2014 instead of period of approximately 4 years & 9 months.

- (iii) In view of above, it is proved beyond doubt that the MF was actually 2, but due to the mistake of the officials/ officers of the Respondent, the capacity of the CT/PT unit was mentioned wrongly on the SJO No. 14/98522 dated 13.05.2011 effected on 29.09.2011. Thus, the Appellant was wrongly billed on MF 1 instead of MF 2 from 29.09.2011 (date of effecting SJO No. 14/98522) to 30.06.2016, when the correction was done in billing software on the basis of checking vide ECR No. 34/683 dated 22.07.2016 of Sr. Xen/ MMTS, Bathinda. So, the amount of ₹ 27,67,235/- charged to the Appellant due to overhauling of the account of the Appellant from 29.09.2011 to 30.06.2016 by applying correct Multiplying Factor of 2 instead of 1 vide Notice No. 1101 dated 25.07.2016 is recoverable. However, the corrections/ reconciliations of this demand, if any are permitted.
- (iv) As regards the contention of the Appellant that the period of overhauling of account should be 2 years as per Regulation 32.2 of Supply Code, 2014 instead of period of approximately 4 years & 9 months, the Respondent argued that this Appeal be decided in view of judgment dated 05.10.2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. &Ors.

- (v) I had gone through above mentioned judgment of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court had observed in its judgment dated 05.10.2021 as under: -

*“The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it was not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.*

- (vi) I am of the opinion that the above judgment of the Hon'ble Supreme Court of India is applicable to the facts of the present case. The amount of ₹ 27,67,235/- charged to the Appellant due to overhauling of the account from 29.09.2011 to 30.06.2016 by applying correct Multiplying Factor of 2 instead of 1 is an “escaped assessment” which was detected by the Respondent after the checking of the Appellant's premises vide ECR No. 34/683 dated 22.07.2016 of Sr. XEN/ MMTS, Bathinda in which it was found that the meter capacity was 5/5A and CT/ PT unit capacity was 10/5A, so the MF was 2, but the Appellant was being billed at MF= 1. The Appellant was charged for the electricity actually consumed by it which could not be charged earlier due to the mistake of the officials/officers of the Respondent. Hence, the amount of

₹ 27,67,235/- charged to the Appellant is fully recoverable from the Appellant being escaped assessment. The demand cannot be restricted to 2 years as prayed by the Appellant.

- (vii) The second issue raised by the Appellant was to allow HT Rebate from the date of conversion of supply from LT to HT on 29.09.2011. The Respondent countered this claim of the Appellant & submitted that the HT Rebate had already been given to the Appellant with the bills issued with effect from 2015. HT Rebate for the period from conversion to HT from LT in 2011 till 2015 was treated as time barred as it was older than 2 years, as per Regulation 2.25(c) of PSERC (Forum and Ombudsman) (2<sup>nd</sup> Amendment) Regulations, 2021, hence, this issue was not maintainable. The Appellant's claim that period of stay order issued by High Court on 05.08.2016 for the period of 05.08.2016 to 23.11.2022 cannot be counted while calculating limitation period on the issue of HT rebate was incorrect/invalid as issue of HT Rebate had never been raised by the Appellant before the PSPCL or any Court/ Forum after the issue of notice dated 25.07.2016 till filing his case before the Corporate Forum. The stay order of High Court dated 05.08.2016 was applicable only on Recovery of amount & disconnection of electricity supply of consumer due to non- payment of notice dated 25.07.2016, and stay order had no

concern with/effect on HT rebate claim by the Appellant. He was free to submit his request any time to PSPCL in this regard but he had never approached/claimed to PSPCL or any other authority before filing CCGRF Case No. CF-23/2023. It is observed by this Court that the Appellant had not raised the issue of HT Rebate in his petition before the Hon'ble Punjab & Haryana High Court, so the claim of the Appellant is time-barred in this regard as decided by the Corporate Forum.

- (viii) The third issue raised by the Appellant was to allow PF incentive. This was not considered by the Corporate Forum as no specific details were given by the Appellant there, as recorded in the order of Corporate Forum. Even with this Appeal, no specific details or any documentary evidence was attached by the Appellant in this regard. I agree with the decision of the Corporate Forum in this regard.
- (ix) In view of the above and in the light of judgment dated 05.10.2021 of the Hon'ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., this Court is not inclined to interfere with the decision dated 21.03.2023 of the Corporate Forum in Case No. CF-023 of 2023. The period of overhauling cannot be reduced to 2 years as requested by the Appellant.

- (x) The Respondent had informed this court that the departmental enquiry had already been conducted by the PSPCL against the erring officials/ officers responsible for various lapses in this case. The officials/ officers responsible for lapses in this case may not remain unpunished.

## 6. Decision

As a sequel of above discussions, the order dated 21.03.2023 of the Corporate Forum in Case No. CF-023 of 2023 is hereby upheld.

7. The Appeal is disposed of accordingly.
8. 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.
9. 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.

May 02, 2023  
S.A.S. Nagar (Mohali)

(GURINDER JIT SINGH)  
Lokpal (Ombudsman)  
Electricity, Punjab.