

**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. 22/2022

Date of Registration : 28.04.2022
Date of Hearing : 10.05.2022, 17.05.2022
Date of Order : 17.05.2022

Before:

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

In the Matter of:

M/s. APS Associates Pvt. Ltd.,
D-133, Phase-V,
Focal Point, Ludhiana-141010
Contract Account Number: 3002809491(LS)

...Appellant

Versus

Senior Executive Engineer,
DS Focal Point (Spl.) Divn.,
PSPCL, Ludhiana.

...Respondent

Present For:

- Appellant:
 1. Sh. Sukhminder Singh,
Appellant's Representative.
 2. Sh. Amit Paul Singh,
Appellant's Representative.
 3. Sh. Gurdeep Singh,
Appellant's Representative.

Respondent : Er. Jagdeep Singh,
Senior Executive Engineer,
DS Focal Point (Spl.) Divn.,
PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 15.04.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-306 of 2020, deciding that:

- “i. The account of the Petitioner be overhauled as per conclusion arrived at Sr. No. (xviii) above, after getting it pre-audited from AO/Field.*
- ii. Dy. CA/Central Zone, Ludhiana will ensure that account of the petitioner be checked as per para xviii(3) above, within fifteen days.”*

Conclusion arrived at Sr. No. (xviii) of the decision of the Forum is as under:

“Keeping in view the above, Forum came to unanimous conclusion as under:

- 1. Petitioner has defaulted in timely payment of the instalment(s), therefore action be taken as per clause 93.3.3 of ESIM-2018.*
- 2. The Petitioner is liable to pay amount of AACD for the FY 2018-2019, as per Reg. 16.1 of Supply Code-2014. Further as this amount of AACD has already been adjusted from the payment made in 08/2020, therefore the LPI/LPS is liable to be paid by the Petitioner on unpaid/partial payment(s).*
- 3. As the accounting system/chronology of debits/credits, is a complex to understand for a common person like Petitioner and further no logic has been created in SAP, as per CC No. 25/2020, therefore, the total account/bills of the Petitioner from Oct/2019 to Oct/2020 be got checked/pre-audited from AO/Field, keeping in view the CC 25/2020 and amount be charged/refunded to the Petitioner accordingly.”*

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 21.04.2022 i.e. beyond the period of thirty days of receipt of decision dated 15.04.2021 of the CGRF, Ludhiana in Case No. CGL-306 of 2020. The Appellant deposited requisite 40% of the disputed amount on 21.04.2022. The Respondent confirmed on 26.04.2022 that the amount of ₹ 17,40,083/- has been deposited by the Appellant. Therefore, the Appeal was registered on 28.04.2022 and copy of the same was sent to the Sr. Xen/ DS Focal Point (Spl.) Divn., PSPCL, Ludhiana for sending written reply/ parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letter nos. 398-400/OEP/A-22/2022 dated 28.04.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 10.05.2022 at 03.15 PM and intimation to this effect was sent to both the parties vide letter nos. 416-17/OEP/A-22/2022 dated 04.05.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard. There were some differences in dates of payments made by the Appellant and some other points related to the case. The

Respondent demanded some time to retrieve the evidence of delivery of notice no. 292 dated 15.07.2019 to the Appellant. He assured the Court that he would produce the evidence on next date of hearing. This Court directed both the parties to reconcile the issues related to the case by sitting together in the office of the Respondent on 13.05.2022 at 09.00 AM and resolve the maximum issues mutually. The next date of hearing in this case was fixed for 17.05.2022 at 03.15 PM and intimation to this effect was sent to both the parties vide letter nos. 439-40/OEP/A-22/2022 dated 11.05.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. Condonation of Delay

At the start of hearing on 10.05.2022, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant's Representative stated that the Forum passed order in this case on 15.04.2021 and the Respondent sent notice to the Appellant vide Memo No. 3787 dated 06.07.2021 to deposit another amount of the surcharge/ interest of ₹ 9,04,770/- in addition to the amount already charged after implementation of the decision of the Forum. The Appellant filed complaint with the CE/ DS (Central), Ludhiana about wrong implementation of

the decision on 29.07.2021 and gave reminder vide letters dated 18.08.2021 and 25.08.2021. He further submitted that the Appellant also opted for OTS scheme of the PSPCL as per its CC No. 13/2021 dated 15.04.2021 by depositing the requisite fee on 07.06.2021. After a period of about 10 months, the OTS committee vide Memo No. 91/OTS dated 04.04.2022 intimated the Appellant that the case could not be considered for OTS as it had already been decided by the Forum. He also cited the ruling of the Hon'ble Supreme Court of India in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application no. 665 of 2021 in Sou Motu Writ Petition (C) No. 3 of 2020 regarding extension in the period of limitation in all the proceedings before the Courts/Tribunals till 28.02.2022. He further prayed that the delay in filing the present Appeal was neither intentional nor deliberate. As such, the delay may kindly be condoned and the Appeal be adjudicated on merits in the interest of justice. I find that the Respondent did not object to the condoning of the delay in filing the Appeal in this Court either in its written reply or during hearing 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 was observed that non condoning of delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Also, the Hon'ble Supreme Court of India, in its decision pronounced on 10.01.2022 in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Sou Motu Writ Petition (C) No. 3 of 2020, extended the period of limitation in all the proceedings before the Courts/ Tribunals till 28.02.2022. 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 Representative 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 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 LS category connection with Sanctioned Load as 2250 kW/ 2499 kVA, under DS Sub Division Unit-2 of Focal Point (Spl.) Division in its name.
- (ii) Chief Engineer/Commercial vide Commercial Circular No. 25/2020 dated 29.05.2020 issued instructions for providing relief to consumers for mitigating the impact of COVID-19. It was prescribed in the circular that

“Domestic, Commercial and all Industrial consumers who are unable to pay their bills up to 1st June 2020 will be given an option to pay the same in a maximum of 4 monthly installments. Further, in place of Late Payment Surcharge (LPS) and late payment interest (LPI) only 10% interest per annum shall be charged on reducing balance computed from 11.5.2020 (extended due date) or the original due date of the

bill, whichever is later, subject to condition that currents bills with due date on or after 1st June 2020 shall be deposited timely by the consumer”.

- (iii) In view of instructions issued vide CC No. 25/2020, AEE/ Commercial Focal Point Division allowed the Appellant four installments of ₹ 26,28,310/- each, of outstanding amount. As per installment plan allowed by AEE/Commercial, the amount of first installment of ₹ 26,28,310/- was charged/shown in the bill issued on 23.06.2020 for the period from 21.05.2020 to 21.06.2020 along with current bill of ₹ 56,62,594/- and due date of the bill was 03.07.2020. The Appellant made payment of current bill within due date vide RTGS dated 02.07.2020 for ₹ 20,62,594/- and RTGS dated 03.07.2020 for ₹ 36,00,000/- as per requirement of CC No. 25/2020. But due to adverse business conditions caused by COVID-19 Pandemic, there was shortage of funds, so payment against installment of ₹ 26,28,310/- was delayed by few days and was made on 15.07.2020.
- (iv) As per instructions issued vide CC No.25/2020, late payment interest (LPI) of only 10% interest per annum was required to be charged on reducing balance computed from 11.05.2020 (extended due date) or the original due date of the bill, whichever was later. However, as per energy bill issued on

23.07.2020 for the period from 21.06.2020 to 21.07.2020, an amount of ₹ 3,37,865/- as extra LPS was levied instead of 10% late payment interest per annum on reducing balance. **The charging of surcharge/ interest instead of only 10% interest per annum (LPI) was against the instructions issued vide CC No. 25/2020.**

- (v) Further, an amount of ₹ 1,02,49,419/- was outstanding towards the Appellant, whereas AEE/ Commercial Focal Point worked out outstanding amount as ₹1,05,13,240/- as on 01.06.2020, for which four installments of ₹ 26,28,310/- each were allowed. The difference of ₹ 2,63,821/- (₹ 1,05,13,240/- ₹ 1,02,49,419/-) remained un-reconciled.
- (vi) Further, the current energy bill for 08/2020 was issued for ₹ 93,95,468/- and the Appellant deposited the payment of ₹ 93,95,468/- within due date but an amount of ₹ 31,07,573/- was transferred to Security (Consumption), without the knowledge of the Appellant, whereas separate notice was required to be given for Security (Consumption). Moreover as per instructions issued vide CC No. 25/2020, revision of Security (Consumption) was deferred till December, 2020.
- (vii) Accordingly, petition was filed before CGRF (Case No. 306/2020) for (i) charging LPI instead of LPS/ Interest @1.5%

pm (ii) Reconciliation/correction of outstanding balance as on 01.06.2020 as ₹ 1,02,49,419/- instead of ₹ 1,05,13,240/- (iii) For rectifying wrong transfer of ₹ 31,07,573/- towards Security (Consumption) from the payment deposited against energy bill on 03.09.2020 amounting to ₹ 93,95,468/-. The Appellant mentioned that initially separate petition was filed for wrong transfer of ₹ 31,07,573/- towards Security (Consumption) but this case was clubbed in the case of wrong levy of LPS/Interest of ₹ 3,37,865/-.

- (viii) The Forum provided partial relief in its decision dated 15.04.2021. The decision of Forum was against the instructions/spirit of CC No. 25/2020, and was arbitrary, wrong and non-speaking. The Appellant was not satisfied with the decision of the Forum.
- (ix) The Respondent did not provide the partial relief as given in para no. 2 of the conclusion of the Forum, rather asked the Appellant vide notice bearing Memo No. 3787 dated 06.07.2021 to deposit another amount of surcharge/interest of ₹ 9,04,770/- in addition to amount already charged and that too after nearly 3 months instead of 15 days as decided by the Forum. In the meantime, the Respondent kept on charging the Appellant with LPS & LPI on disputed amount.

- (x) The Appellant was surprised to receive notice of additional amount of ₹ 9,04,770/- instead of relief as ordered by CGRF. Therefore, the Appellant filed complaint with CE/ DS (Central) vide letter dated 29.07.2021 and gave reminders vide letters dated 18.08.2021 & 25.08.2021.
- (xi) In order to get justice, the Appellant also opted for OTS scheme introduced by PSPCL vide CC No. 13/2021 dated 15.04.2021 and deposited an amount of ₹ 5,000/- on 07.06.2021. The Application of the Appellant for settlement of case under OTS scheme was duly accepted and the Appellant was called for meeting in the office of AEE/ Focal Point, Ludhiana on 10.08.2021 at 02.30 PM vide Memo No. 4108 dated 05.08.2021. However, AEE/ PSPCL, Focal Point, Ludhiana cancelled the meeting at the 11th hour and informed the Appellant that the case had been sent to the CE/Commercial, PSPCL, Patiala for approval and proceedings.
- (xii) From that time onwards, the Appellant from time to time wrote number of reminders to PSPCL, Ludhiana and Patiala to know the status of case in order to settle the outstanding amount at the earliest, but both the offices of PSPCL didn't reply at all. However, after a period of about 10 months, the OTS Committee vide Memo No. 91/OTS dated 04.04.2022 intimated

that the case could not be considered for OTS as it had already been decided by CGRF on 15.04.2021. The majority of the amount outstanding towards the Appellant was LPI & LPS applied by PSPCL during this period, with no fault of the Appellant.

- (xiii) The Respondent's office also had not provided relief as admissible in view of decision of the Forum even after filing complaint with the CE/DS (Central), Ludhiana. Therefore, filing of appeal before the Court of the Ombudsman against the decision of CGRF had been delayed.
- (xiv) The Appellant had never defaulted in current bill payment and had deposited all the current bills from 06/2020 onwards till date. The Appellant had also paid the entire amount of installment plan provided for relief to consumers for mitigating the impact of COVID-19 i.e. four installments of ₹ 26,28,310/- each. The outstanding arrears of ₹ 1,25,63,171/- as per bill issued on 25.03.2022 was due to disputed amount of ₹ 43,50,208/- and balance amount was due to levy of LPS/ interest on outstanding amount every month because of wrong allocation/ adjustment of payments made against current bills to disputed amount account.

- (xv) It was brought out that due to curfew and lockdown conditions across the State of Punjab from 23rd of March-2020 in view of Corona Epidemic, the Govt. of Punjab and PSPCL announced various relief measures for electricity consumers.
- (xvi) PSPCL vide Commercial Circular No. 25/2020 dated 29.05.2020 provided option to consumers who were unable to pay their bills upto 1st June 2020 to pay the same in a maximum of 4 monthly instalments. The Appellant got approved installment scheme from the Respondent office (4 installments of ₹ 26,28,310/- each of outstanding amount). As per requirements/conditions prescribed in CC No.25/2020, the Appellant paid current bills within due date. As such, LPI of 10% was required to be charged on reducing outstanding amount instead of LPS/ Interest normally charged in the bills issued in SAP System.
- (xvii) The LPS @ 2% was charged up to 7 days and after 7 days up to 15 days, 5% LPS was charged and thereafter interest @ 1.5% pm was levied on unpaid amount. The logic in SAP system was required to be created as per requirement of CC No. 25/2020 for charging LPI instead of LPS/ Interest on unpaid amount. The Forum also confirmed that no logic had been created in SAP as per CC No. 25/2020 and therefore concluded as under:

“As the accounting system/chronology of debits/credits, is a complex to understand for a common person like Petitioner and further no logic has been created in SAP, as per CC No. 25/2020, therefore, the total account/bills of the Petitioner from Oct/2019 to Oct/2020 be got checked/pre-audited from AO/Field, keeping in view the CC 25/2020 and amount be charged/refunded to the Petitioner accordingly.”

Forum also observed that the difference in balance outstanding of ₹ 1,02,49,419/- as per the Appellant and ₹ 1,05,13,240/- as per the Respondent for which installments were made, could not be explained/reconciled by the Respondent.

However, instead of providing relief in view of CC No. 25/2020, the Respondent office asked the Appellant vide notice bearing Memo No. 3787 dated 06.07.2021 to deposit another amount of surcharge/interest of ₹ 9,04,770/- in addition to amount already charged.

This was a case of highhandedness on the part of the Respondent's office and Honorable Ombudsman may kindly take notice of the matter.

(xviii)The Forum had not properly interpreted the provisions of CC No. 25/2020 regarding levy of 10% LPI per annum on the reducing balance from 11.05.2020 and therefore, had concluded that *“Petitioner has defaulted in timely payment of the installment(s), therefore action be taken as per clause 93.3.3 of*

ESIM-2018”. Whereas it was clearly mentioned in CC No.25/2020 that outstanding amount could be deposited in 4 installments and 10% LPI per annum was to be charged on the reducing balance/unpaid amount. In the case of the Appellant, the entire outstanding amount as on 01.06.2020 was allowed to be deposited in installments then 10% LPI per annum was applicable on unpaid amount including unpaid installment, if any. Thus, the Forum had wrongly referred to clause 93.3.3 of ESIM-2018 for taking action when there was delay in deposit of due installment.

- (xix) The Forum had wrongly concluded that *“the Petitioner is liable to pay amount of AACD for the FY 2018-2019, as per Reg. 16.1 of Supply Code-2014. Further as this amount of AACD has already been adjusted from the payment made in 08/2020, therefore the LPI/LPS is liable to be paid by the Petitioner on unpaid/partial payment(s)”*. The conclusion/decision of the Forum was not only wrong but also not in consonance with the observations of the Forum on this point/issue. The Forum observed that:

“Further regarding 2nd issue in which an amount of Rs.31,07,573/- was charged in his bill issued on dated 24.08.2020, as an AACD for the year 2018-19. Petitioner stated that no notice was issued to him regarding the same. In this regards, Respondent submitted the copy of notice no. 292

dated 15.07.2019 amounting Rs. 31,07,573/-, issued to the Petitioner. But Petitioner stated that he has not received any notice in this regards.

Respondent could not produce any documents regarding delivery of the notice to the Petitioner; however stated that AACD notices were sent to many consumers, but their receiving has not been taken. He further stated that AACD amount has been charged for the year 2019 and not for the year 2020 but Petitioner is trying to take benefit of Covid-19.

Forum observed that the notice for AACD was issued vide memo no. 292 dated 15.07.2019, although there was no document to prove the delivery of the notice, but the security (consumption) is to be revised annually, as per Reg. 16.1 of Supply Code-2014”.

From the above observations of the Forum, it was clear that no notice was issued to the Appellant regarding Security (Consumption) then how the charging of amount of ₹ 31,07,573/- (relating to year-2018-19) in the bill of 08/2020 and adjusting the same from the payment of current bill deposited in 09/2020, could be justified especially considering the following:

- a) The revision of Security (Consumption) of all categories of consumers was deferred till 31st Dec-2020, irrespective of the year to which revision relates, in view of COVID Pandemic.

b) No notice and calculation sheet was sent to the Appellant.

The method of delivery of notice was prescribed in Regulation 42 of Supply Code-2014, reproduced as under:-

“42. SERVICE OF NOTICE

42.1 Any order/notice to a person/consumer by the distribution licensee including a notice under Section 56 of the Act, shall be deemed to be duly served by the distribution licensee if it is:

(a) sent by registered post, speed post, under certificate of posting, or by courier or through e-mail at registered mail Id of the consumer;

(b) delivered by hand to a consumer/person and an acknowledgement taken from any person in the premises; &

(c) affixed at a conspicuous part of such premises in case there is no person available, to whom the order/notice can, with reasonable diligence, be delivered.

42.2 Any notice by the consumer to the distribution licensee shall be deemed to be duly served, if given in writing, and delivered by hand or sent by registered post or through courier to the concerned Officer In charge.”

c) There was no question of revising the Security (Consumption) in 08/2020 relating to the year 2018-19, as Security (Consumption) was to be revised every year based on a review as per Regulation 16.4 of

Supply Code-2014, demand for shortfall or refund of excess Security (Consumption) should be affected by the Distribution Licensee from/to the consumer. As such, in 08/2020, the Security (Consumption) due for revision was for FY2019-20 and notice for revision was required to be issued after 31st December, 2020 in view of CC No. 25/2020. There was no necessity of revision of Security (Consumption) relating to the year 2018-19 in 08/2020 as there might not be any shortfall in the relevant FY 2019-20.

(xx) The revision of Security (Consumption) and issue of notice had been dealt with as per Regulation 16.4 & 16.5 of Supply Code -2014, reproduced as under:

“16.4 The adequacy of the amount of Security (Consumption) in accordance with regulation 16.1 of these Regulations shall be reviewed by the distribution licensee after every three years (preferably after revision of tariff for the relevant year) based on the average monthly consumption for the twelve months period from April to March of the previous year except for HT/EHT consumers in whose case review of Security (Consumption) shall be carried out annually. In case of new connection or extension in load/demand of an existing connection which is less than one year old, the first review shall be carried out only after 12 months consumption from April to March is available

with the distribution licensee. Provided that in case of reduction in load/demand by the consumer during the period from April to March of the previous year the Security (Consumption) shall be reviewed for the current year based on the consumption of the previous year extrapolated on the basis of the reduced load/demand.

16.5 Notice for Additional Security (Consumption)

16.5.1 Based on a review as per regulation 16.4, demand for shortfall or refund of excess Security (Consumption) shall be effected by the distribution licensee from/to the consumer. Provided, however, that if the Security (consumption) payable by the consumer is short or excess by not more than 10% of the existing Security (consumption), no action shall be taken.

16.5.2 If the Security (Consumption) payable by a consumer after review as per regulation 16.4 is found to be short by more than 10% of the existing Security (Consumption), the distribution licensee shall refund the excess amount to such consumer by adjustment against any outstanding dues and/or any amount becoming due to the distribution licensee immediately thereafter.

16.5.3 Where the consumer is required to pay the additional Security (Consumption), the distribution licensee shall issue to the consumer a separate notice cum bill specifying the amount payable along with supporting calculations.

16.5.4 The consumer shall be liable to pay the additional Security (Consumption) within thirty (30) days from the date of service of the notice.

16.5.5 In the event of any delay in payment, the consumer shall for the actual period of default pay interest thereon at the SBI's base rate prevalent on first of April of the relevant year plus 2% without prejudice to the licensee's right to disconnect supply of electricity, under these Regulations."

However, no separate notice with supporting calculations had been issued for additional Security (Consumption) for 2018-19 and an amount of ₹ 31,07,573/- had been transferred to Security (Consumption) from the payment deposited against energy bill issued in 08/2020 for ₹ 93,95,468/- without any intimation/knowledge of the Appellant, which resulted into consideration of part payment of current energy bill and consequently levy of surcharge/interest in the bill of 08/2020 and subsequent bills.

(xxi) The Respondent's office could have charged interest as per Regulation 16.5.5 or had disconnected the supply against default in payment but only after issuing/delivering the notice as per Regulation 16.5 & 42 of Supply Code-2014, but it was again brought out for the kind consideration of the Honorable Ombudsman that no such notice was ever issued to the Appellant.

(xxii) It was also brought to the notice of Honorable Ombudsman that the Appellant had not been given interest on Security deposit

for the FY 2020-21. As per message(s)/note No.7 given below the bill issued on 22.4.2021, the amount of interest on security had been mentioned as ₹ 6,11,305/- and TDS of 10% i.e. 61,131/- had been charged as Sundry Charges but erroneously credit/refund of ₹ 6,11,305/- as interest on security deposit had not been given in the bill. The Respondent may kindly be directed to adjust/allow refund of interest from 04/2021.

(xxiii) In view of position as explained above, the Appellant humbly requested to the Court of Ombudsman that decision dated 15.04.2021 of the Forum may be quashed and the Appeal may be allowed.

(xxiv) It was requested that an amount of ₹ 31,07,573/- may kindly be ordered to be considered as payment towards current energy bill of 08/2020 and surcharge/interest levied against the energy bill of 08/2020 and in subsequent bills against inflated outstanding amount may kindly be waived off.

(xxv) Further, LPI instead of LPS/Interest may kindly be ordered to be charged as per CC No.25/2020, on the principle of natural justice and fairness.

(xxvi) The Respondent may be directed to provide the following record/information at the earliest so that further submission can be made for the kind consideration of the Ombudsman:-

Complete billing/payment detail from 03/2020 onwards, such as, the amount of bill, sundry charges/allowance (if any), payment deposited, surcharge/interest levied, LPI required to be levied as per CC No. 25/2020 and outstanding amount at the end of each month.

(b) Submissions made in the Rejoinder:

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

- (i) The Reply submitted by the Respondent was incomplete and non-convincing as the Rules and Regulations mentioned in the Appeal had not been referred to in the reply. Further, the Respondent had twisted some of the facts as mentioned in the Appeal. The Appellant deposited the current bill of 06/2020 on 08.06.2020 (due date), only thereafter AEE/Commercial allowed 4 installments of arrears amount as per CC No. 25/2020.
- (ii) The Respondent should provide the copy of the bill issued in 06/2020 instead of the SAP statement, which was not sent along with the energy bill. Even from the judgment of the Forum, it was evident that the Appellant was eligible for relief as per CC No. 25/2020. The reply of the Respondent was silent

as to whether alleged notice bearing Memo No. 292 dated 15.07.2019 for Security (Consumption) was served to the Appellant as per Regulation 42 of Supply Code-2014.

- (iii) The Respondent could not even produce before the Forum any evidence of delivery of notice to the Appellant. Similarly, the Respondent also had not made clear as to why the amount of Security (Consumption) of ₹ 31,07,573/- was charged in the regular energy bills in violation of Regulation 16.5 of Supply Code-2014.
- (iv) Further, as submitted in the petition, LPS @ 2% was charged up to 7 days and after 7 days up to 15 days, 5% LPS was charged and thereafter, interest @ 1.5% pm was levied on unpaid amount, in the SAP system of billing, then how additional demand of surcharge/interest of ₹ 9,04,770/- (in addition to amount already charged in SAP system) was possible while working out relief of LPI of 10% p.a. on unpaid amount, as per CC No. 25/2020. The Respondent had not clarified the position in this regard.
- (v) It was brought out here that the Appellant opted for OTS by depositing ₹ 5,000/- on 07.06.2021, whereas notice of additional demand of ₹ 9,04,770/- was issued vide Memo No. 3787 dated 06.07.2021 nearly a month later. However, the

Respondent had wrongly stated in the reply that the Appellant opted for OTS scheme after the implementation of decision of the Forum. Actually, the Respondent was deliberately delaying implementing the decision of the Forum and kept on billing LPS & LPI to the Appellant.

- (vi) The Respondent made compliance of the Forum order after 3 months, instead of 21 days as required under Regulation 2.41 of the Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulations, 2016. Even then the O/o the Respondent did not make proper implementation of the decision of the Forum for providing relief as per CC No.25/2020.
- (vii) The Respondent may kindly be questioned for the reason for delay in implementation of decision of the Forum in stipulated time. The Respondent may kindly be questioned for the reason of accepting OTS application from the Appellant, if the Appellant was not eligible to be covered under OTS scheme. The OTS settlement application along with the processing fee was duly accepted from the Appellant by O/o the Respondent AEE/ Commercial. The Respondent may be questioned for cancelling meeting on 10.08.2021 called vide Memo No. 4108 dated 05.08.2021 for OTS settlement.

- (viii) The Respondent and the OTS committee should be questioned for delaying the matter for 10 months i.e. from 07.06.2021 (date of OTS application filed by the Appellant) to 04.04.2022 (date of decision of OTS committee that case can't be considered under OTS scheme) to refuse the OTS request of the Appellant.
- (ix) In order to get relief measures approved by Honorable CM. Punjab the Appellant got approved Installment scheme from the Respondent O/o AEE/Commercial on 08.06.2020, being the due date for COVID period bills in respect of Commercial Circular No. 25/2020 dated 29.05.2020 – relief to electricity consumers in the state of Punjab for mitigating the impact of Covid-19. The Respondent approved the EMI plan only after accepting the full outstanding arrear amount pertaining to period prior to lockdown, from the Appellant on 08.06.2020, in respect of CC No. 25/2020 dated 29.05.2020.
- (x) The Installment plan was approved by the Respondent on 08.06.2020 but was entered in SAP system on 18.06.2020, for the reason known best to the Respondent only. This mistake and negligence on part of O/o the Respondent resulted in levy of wrong LPS & LPI by SAP system and the Appellant was

being made to suffer for the fault committed by the Respondent office.

- (xi) The Respondent may kindly be questioned for the reason for delay in entering EMI plan in SAP system for 10 days. The Respondent had wrongly stated that the Appellant had not cleared the whole amount at the time of approval of EMI Plan. If the Appellant had not cleared the whole amount then the Respondent should be questioned for approving the EMI plan. In actual, the Respondent had cleared the entire payable amount on 08.06.2020 as per following details:-

TOTAL PAYABLE AMOUNT AT THE TIME OF APPROVAL OF EMI PLAN

Bill Cycle	Current Bill Amt.	B/F arrear	LPS LPI	Arrear & LPS LPI	Total Payable
02/2020					3525000
03/2020	9628669	3525000	227928	3752928	13381589
04/2020	508973	13381589			13890562
05/2020	40752	13890562			13931314
TOTAL PAYABLE ON 08.06.2020 (A)					13931314

PAYMENT/ADJUSTEMENT MADE ON 08.06.2020 BY O/O AEE PSPCL

Date	Receipt No.	Amount	Total	Total Paid/Adj
08.06.2020	219700204769	40752	40752	
08.06.2020	144089600	3000000	3040752	
08.06.2020	ACD INTT less TDS	641144	3681896	
08.06.2020	EMI PLAN TFD	10513194	14195090	
TOTAL PAID/ADJUSTED ON 08.06.2020 (B)				14195090
EXTRA PAID AMOUNT (A)-(B)				₹ 2,63,776/-

The bifurcation of Billing/Payable amount and payment adjustment made by O/o the Respondent on 08.06.2020 in respect of prior to lockdown and during the lockdown period, to approve EMI plan of the petitioner, was as hereunder:

BILLING – PRIOR TO LOCKDOWN PERIOD.

The Appellant had outstanding/arrear of ₹ 35,25,000/- from Billing Cycle 02/2020 the detail of which was mentioned hereunder:-

Bill Cycle	Bill Date	Bill No.	Due Date	Bill Amount
02/2020	25.02.2020	10022585045	06.03.2020	INR 12121660

Payment Cycle	Payment Date	Receipt No.	Amount Paid	Balance Payable
02/2020	06.03.2020	141596782	INR 3121660	INR 9000000
02/2020	06.03.2020	141596718	INR 4700000	INR 4300000
02/2020	22.03.2020	142133602	INR 775000	INR 3525000

To this lockdown prior period balance of ₹ 35,25,000/-, an additional amount of ₹ 2,27,928/- was levied on account of LPS and LPI and so the total arrear became ₹ 37,52,928/- and this amount was carried out as arrears in Bill Cycle 03/2020.

When the Appellant approached the Respondent on 08.06.2020 with a request for installment plan, the Appellant was told to pay the arrear amount first, pertaining to prior period of curfew and lockdown, to get the relief under EMI plan. The O/o Respondent itself worked out ₹ 30,40,752/- to be deposited by

the Appellant and the same was deposited by the Appellant on the spot on 08.06.2020 as per detail mentioned hereunder. Only thereafter receiving the arrear amount of period prior to lockdown, the Respondent O/O AEE/ Commercial allowed 4 installments of arrears amount as per CC No. 25/2020 but detail of installment plan was never provided to the Appellant.

DETAIL OF PAYMENT MADE/ADJUSTED AS PER INSTRUCTIONS OF AEE/COMMERICAL ON 08.06.2020 AGAINST ARREAR AMOUNT PAYABLE BEFORE LOCKDOWN PERIOD - AMOUNTING INR 3752928

RECEIPT NO. 219700204769 DATED 08.06.2020 : INR 3000000

RECEIPT NO. 144089600 DATED 08.06.2020 : INR 40752

ACD INTEREST OF FY 2019-2020 ADJUSTED :INR 712382

TOTAL	:	INR 3753134
PAYABLE AS MENTIONED	:	INR 3752928
<hr/>		
EXTRA PAID	:	INR 206

It was evident from above that the Appellant had an outstanding of ₹ 37,52,928/- (and not ₹ 32,53,443/- as wrongly stated by the Respondent) and it was fully paid by the Appellant on 08.06.2020 (and not on 18.06.2020 as once again wrongly stated by the Respondent in the reply made on 06.05.2022 to the Hon'ble OMBUDSMAN) at the time of opting for installment plan. The Respondent had wrongly certified that the balance of ₹ 2,53,443/- was outstanding to carry forward. (Manual account statement received from PSPCL at CGRF court:-

**BILLING – DURING LOCKDOWN PERIOD – AND DUE DATES
AS PER PSPCL CIRCULARS IN LOCKDOWN PERIOD**

Bill Cycle	Bill Date	Bill No.	Due Date	Current Bill Amt. In INR	Due Date As Per CC 16/2020	Due Date As Per CC 19/2020	Due Date As Per CC 25/2020
03/2020	24.03.2020	1002628828	03.04.2020	9628669	20.04.2020	10.05.2020	01.06.2020
04/2020	24.04.2020	5040808347	04.05.2020	508973		10.05.2020	01.06.2020
05/2020	28.05.2020	1002667653	08.06.2020	40752			08.06.2020
CURRENT BILL AMOUNT 03/2020 - 05/2020 PAYABLE ON 08.06.2020				10178394			
ADD: TDS ACD FY 2019-2020 10% ON INR 712382				71238			
TOTAL AMOUNT PAYABLE 03/2020 TO 05/2020				10249632			
AMOUNT TAKEN FOR EMI PLAN				10513194			
EXTRA AMOUNT TAKEN				263562			

So an amount of ₹ 102.49 Lacs was outstanding towards the Appellant for bills raised during lockdown period i.e. bill cycle 03/2020, 04/2020 & 05/2020, whereas AEE/Commercial Focal Point worked out outstanding amount as ₹ 105.13 Lacs for which 4 installments of ₹ 26,28,310/- each were allowed on 08.06.2020. The difference of ₹ 2.63 Lacs (₹ 105.13- ₹102.49) was taken in excess from the Appellant, the reason of which was never explained by the Respondent and still remained unreconciled. So even if an amount of INR ₹ 2,53,443/- was outstanding towards the Appellant before the approval of EMI plan (as wrongly stated and being claimed by the Respondent) this amount still stands recovered for the Respondent by way of taking ₹ 2,63,562/- more in the EMI plan as explained above.

Subsequently, as no outstanding amount pertaining to period prior to lockdown was pending towards the Appellant, an

amount of ₹ 3,37,865/- LPS levied extra instead of 10% late payment interest per annum on reducing balance in energy bill issued for the period of 21.06.2020- 21.07.2020 clearly violates the instructions issued vide CC No. 25/2020 and defeated the soul, spirit and purpose of the CC 25/2020. The Respondent instead of admitting that LPS had been charged instead of 10% LPI on reducing balance as instructed by CC No. 25/2020 had submitted complicated SAP statements to twist the matter. Moreover, there was no point in submitting SAP statements as no logic had been created in the SAP system, as per CC No. 25/2020, according to the judgment of the Forum.

- (xii) The Respondent may kindly be questioned for the reason of approving EMI plan of the Appellant, if the whole payable amount pertaining to prior period of lockdown was not cleared by the Appellant.
- (xiii) The Respondent may kindly be questioned for the reason of applying LPS instead of 10% and violating terms of CC No. 25/2020. The Respondent may also be questioned that how the Appellant could be termed defaulter in making EMI payments, even before the completion of 4 months allotted period for installment payments i.e. up to 05.10.2020 the date intimated by the Respondent to the Forum.

(xiv) An amount of ₹ 31,07,573/- was transferred to AACD account from the payment made of ₹ 93,95,468/- by the Appellant towards the energy bill for bill cycle of 08/2020 within due date up to 03.09.2020 without any intimation/ knowledge of the Appellant based on a probably forged AACD notice, which was never issued and served to the Appellant. An arrear amount of ₹ 87,46,522/- was included in Bill No. 50013123155 dated 24.08.2020 of Bill Cycle 08/2020 for period 21.07.2020 to 21.08.2020, the detail of which was never provided to the Appellant. No separate notice with supporting calculations was issued for additional Security (Consumption) for 2018-19 to the Appellant. The Respondent had failed to produce any document regarding delivery of the notice to the Appellant even in the Forum. Deduction of ₹ 31,07,573/- (in violation of Regulation-16.5 of Supply Code-2014) from the payment deposited against energy bill issued in 8/2020 for ₹ 93,95,468/- resulted into consideration of part payment of current energy bill and consequent levy of surcharge/interest in the bill of 08/2020 and subsequent bills.

(xv) Moreover, the revision of Security (Consumption) was deferred till 31.12.2020 as per CC No. 25/2020 dated 29.05.2020, irrespective of the year to which revision relates,

in view of COVID Pandemic. Deduction of AACD from current bill payment of the Appellant defeated the soul, spirit and purpose of the CC No. 25/2020 dated 29.05.2020 and efforts put forth by the State Government to mitigate the impact of COVID-19 and to provide relief to Industry. Due to adverse financial and business conditions after COVID epidemic, when a consumer approaches the Respondent to get EMI plan approved to survive, the levy of AACD, wrong LPS and LPI defeated the purpose of CC No. 25/2020 and efforts of the state government to provide relief measures.

- (xvi) The Respondent may kindly be questioned if the AACD of year 2018-19 vide Notice No. 292 was served on 15.07.2019 then what was the reason for not recovering said AACD of 2018-19 from the Appellant from previous energy bills of the Appellant i.e. Bill Cycle 08/2019 to 12/2019 or even up to 02/2020 during the period prior to curfew and lockdowns. Why the Respondent choose only COVID-19 effected worst period for recovery when the Appellant was struggling for survival of its unit, after nearly a year from the date of un served forged notice, and that too from the back door without even informing the Appellant by deducting the amount from

the current month bill payment made of 08/2020 by the Appellant.

(xvii) The Respondent may kindly also be instructed to bring a dispatch register on the date of hearing in the Hon'ble OMBUDSMAN Court.

(xviii) The Appellant had duly complied with the condition laid in Part 2 of CC No. 25/2020 and had timely made the payment of all the current bills due on or after 1st June 2020 (extended date 8th June 2020). The complete detail had already been provided with the Petition. The balance amount in the account of the Appellant was due to the levy of wrong LPS and LPI on disputed amounts, every month, because of wrong allocation/ posting/ adjustment of payment made against current bills. This unexplained arrear amount of ₹ 87,46,522/- in bill cycle 08/2020 and wrong charging of LPS & LPI had resulted into confusion and dispute, which ultimately resulted in delay of installment payments also.

(xix) There was a provision and option of locking a disputed amount in SAP System, where any disputed amount can be locked till the decision of the competent authority. The Respondent never locked the disputed amount despite the case was being under dispute for nearly two years now.

- (xx) Due to this unlocked disputed amount of the Appellant, LPS & LPI were being kept on charged by the SAP System from the Appellant account and disputed amount of ₹ 3,37,835/- and ₹ 31,07,573/- has been increased to ₹ 1,25,63,168/- in less than two years up to March, 2022. The complete reconciliation of arrear amount ₹ 1,25,62,168/- from 05/2020 to 03/2022 and the summary extract of the same is as below:

Account (S) Other than of Current Bills Say- Arrear Account From 05/2020 to 03/2022	Amount In INR
LPS	7303613
LPI	2146943
LPS AS PER MEMO NO 3787 06.07.2021	904770
UNEXPLAINED CREDITS IN ACCOUNT	-170130
AACD 2018-19	3107573
TOTAL AMOUNT IN ARREAR ACCOUNT	13292769
AMOUNTS STAND RECOVERABLE BY PETITIONER	
ACD INTEREST 2020-21 Rs.611305 less TDS Rs.61131 (NOT ADJUSTED IN CURRENT BILL PAYMENTS)	-550174
EARNEST MONEY (NOT ADJUSTED IN CURRENT BILL PAYMENTS)	-180310
EXTRA PAYMENT OF CURRENT BILLS	-117
NET BALANCE IN DISPUTED ACCOUNT	12562168

- (xxi) From the above arrear account, it was clear that ₹ 98,47,331/- was debited to the Appellant account towards LPS & LPI. No fair natural justice could justify charging of LPS & LPI amounting ₹ 98,47,331/- on wrongly charged LPS ₹ 3,37,865/- in July, 2020 and AACD amount ₹ 31,07,573/- in Aug, 2020.
- (xxii) The Appellant was turning no stone unturned to settle the matter as soon as possible for more than 2 years, but the

Respondent was deliberately delaying the matter without following the Rules and Regulations as mentioned by the Appellant in the Petition.

(xxiii) The Respondent may kindly be questioned as to the reason for not locking the disputed amount for nearly two years.

(xxiv) The Appellant had made the payment of all the current bills due on or after 1st June, 2020. The Appellant had not deducted ACD interest while making current bill payments to avoid any confusion in explaining detail of current bill payments made. The interest on security deposit ₹ 6,11,305/- less TDS ₹ 61,130/- for the FY 2020- 21 was still recoverable from the Respondent and was outstanding in total arrear amount account.

(xxv) In view of the position as explained above, the Appellant requested that decision dated 15.04.2021 of the Forum may be quashed and an amount of ₹ 31,07,573/- may kindly be ordered to be considered as payment towards current energy bill of 08/2020 and surcharge/interest levied against the energy bill of 08/2020 and in subsequent bills against inflated outstanding amount may kindly be waived off. Further, LPI instead of LPS/Interest may kindly be ordered to be charged

as per CC No. 25/2020, on the principle of natural justice and fairness.

(c) Additional submissions made by the Appellant

Vide email dated 09.05.2022

- (i) The Respondent had once again tried to mislead the Hon'ble Court by indicating wrong dates of payment against current energy bills, although now the Respondent had admitted that Appellant had deposited all the energy bills.
- (ii) As already brought in the Rejoinder that the Respondent deliberately evaded reference to rules and regulations and twisted some of the facts. The Respondent had again shown wrong dates of payment against current energy bills and made an attempt to justify the levy of LPS/ Interest and had again tried to mislead the Hon'ble Court.
- (iii) The Appellant had deposited all the current energy bills within the due date from 06/2020 onwards till date.
- (iv) The bill dated 22.03.2021 was issued with a due date as 01.04.2021 but later the due date was extended to 03.04.2021 for all the consumers as 01.04.2021 and 02.04.2021 were Bank holidays due to Year end Closing of Banks and Good Friday respectively. The Appellant deposited the payment within an extended due date. Further, one payment by NEFT

executed by the Appellant on 01.02.2021 (due date) for ₹ 1,71,590/- from Union Bank of India, Sector 32 Branch, Chandigarh Road, Ludhiana, was credited by PSPCL on 02.02.2021. The Appellant had made the payment within the due date.

- (v) In view of the position as explained and considering the fact that the Respondent had no references reply to the rules and regulations mentioned in the Appeal and Rejoinder except twisting the facts and deliberately delaying the case and subsequently justice to the Appellant. It was humbly requested that the decision dated 15.04.2021 of the Forum may be quashed and an amount of ₹ 31,07,573/- may kindly be ordered to be considered as payment towards current energy bill of 08/2020 and surcharge/ interest levied against the energy bill of 08/2020 and in subsequent bills against inflated outstanding amount may kindly be waived off. Further, LPI instead of LPS/ interest may kindly be ordered to be charged as per CC No. 25/2020 on the principle of natural justice and fairness.

Vide email dated 15.05.2022 and 17.05.2022

The Appellant in additional submissions on 15.05.2022 and 17.05.2022 reiterated the same facts as already submitted in the

Appeal and its earlier Rejoinder and additional submission, which were also deliberated during the hearings.

(d) Submission during hearing

During hearing on 10.05.2022 and 17.05.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal as well as in the Rejoinder and by way of Additional Submissions and prayed to allow the same. The Appellant admitted on 17.05.2022 that he had deposited only two instalments out of four instalments allowed by the Respondent before 18.10.2020.

(B) Submissions of the Respondent

(a) Submissions in written reply

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

- (i) The Appellant was having LS Category Connection bearing Account No. 3002809491/E32-FP52-00804 with Sanctioned load/CD as 2250 kW/ 2499 kVA under DS Focal Point (Spl.) Divn., Ludhiana.
- (ii) As per CC No. 25/2020, the Appellant opted for four installments and accordingly installment plan was made in SAP on 18.06.2020 for monthly installment of ₹ 26,28,310/-

each for outstanding amount of ₹ 1,05,13,194/-. But the Appellant had not cleared the whole amount of ₹ 32,53,443/-. The Appellant had paid only ₹ 30,00,000/- and balance ₹ 2,53,443/- continued to carry forwarded in the bills.

- (iii) ₹ 31,07,573/- had been charged on account of AACD for the year 2018-19 vide Notice No. 292 dated 15.07.2019.
- (iv) The Appellant filed the petition in the Forum for above issues. As per the decision of the Forum, the account had been overhauled by the Audit Party and intimated vide their Memo No. 139 dated 25.06.2021 to charge ₹ 9,04,770/-. The Appellant was intimated vide Memo No. 3787 dated 06.07.2021 regarding implementation of decision of the Forum and charging of amount.
- (v) After implementation of decision of the Forum, the Appellant applied for OTS Scheme as per CC No. 13/2021, but OTS committee intimated vide their Memo No. 91/OTS dated 04.04.2022 to recover the full amount because as per para-4 of Annexure-A of Commercial Circular No. 13/2021 dated 15.04.2021, the cases in which some issues stand decided by any Court, that particular issue/ decision of the Dispute Settlement Committee/ Court should not be covered under the OTS scheme. The Appellant was intimated to deposit the full

amount vide Memo No. 789 dated 04.04.2022. The Appellant was not satisfied with the decisions and filed the Appeal to the Hon'ble Ombudsman.

(vi) In para 2 of CC No. 25/2020, it was clearly mentioned that:

“Domestic, Commercial and all industrial consumers i.e. Small Power (SP), Medium Supply(MS) and Large Supply(LS) who are unable to pay their bills upto 1st June 2020 will be given an option to pay the same in a maximum of 4 monthly installments. Further, in place of late payment surcharge (LPS) and late payment interest (LPI), only 10% interest per annum shall be charged on reducing balance computed from 11/5/2020 (extended due date) or the original due date of the bill, whichever is later, subject to the condition that current bills with due date on or after 1st June 2020 shall be deposited timely by the consumer.”

But the Appellant had not complied with the condition laid in para 2 of CC No. 25/2020 regarding timely payment of current bills.

(vii) The revision of Security (Consumption) for the year 2019-20 was deferred till 31.12.2020 as per CC No. 25/2020. However, the amount of ₹ 31,07,573/- as AACD was charged for the year 2018-19 and intimation regarding the same had already been sent to the Appellant vide Notice No. 292 dated 15.07.2019.

(viii) The amount had been charged in the bill issued on 24.08.2020 which was a supplementary notice to the consumer and the

same had been decided by the Forum that the revision of Security (Consumption) was deferred till 31.12.2020 vide CC No. 25/2020 issued on 29.05.2020, to give the relief to the consumers for mitigating the impact of Covid-19. But in this case, the demand had already been raised for FY 2018-19 vide notice no. 292 dated 15.07.2019. So, CC No. 25/2020 did not apply in this case. Therefore, the Appellant was liable to pay amount of AACD for the FY 2018-19, as per Regulation 16.1 of Supply Code-2014.

(ix) The amount of ₹ 6,11,305/- had been given as interest on Security deposited for the FY 2020-21.

(b) Additional submissions made by the Respondent

(i) The Respondent reiterated in the additional submissions vide email dated 09.05.2022 that the Appellant had deposited all the current bills but not on the due date. The excel sheet, which was self explanatory of late payment, was attached with the additional submissions. Therefore, the LPS and interest as defined in instruction No. 93.3.3 of ESIM, 2018 was recoverable from the Appellant.

(ii) The Respondent, in additional submissions vide its Memo No. 498 dated 16.05.2022, reiterated the same facts as already submitted in the written reply to the Appeal and its earlier

additional submissions, which were also deliberated during the hearings.

(c) Submission during hearing

During hearing on 10.05.2022 and 17.05.2022, the Respondent reiterated the submissions made in the written reply to the Appeal as well as additional submissions and prayed for the dismissal of the Appeal. The Respondent admitted that notice no. 292 dated 15.07.2019 relating to Security (Consumption) was not served as per Section 171 of the Electricity Act, 2003. He also clarified that only two instalments were deposited by the Appellant before 18.10.2020 and CC No. 25/2020 is not applicable in this case.

6. Analysis and Findings

The issues requiring adjudication are the legitimacy of the LPS/LPI of ₹ 3,37,865/- levied to the Appellant which was further increased by ₹ 9,04,770/- after implementation of decision of the Forum, (ii) Extra amount of ₹ 2,63,821/- charged while converting outstanding balance as on 06/2020 in 4 installments and (iii) Issue regarding charging of AACD of ₹ 31,07,573/- revised for FY 2018-19 as per Regulation 16.4 of Supply Code-2014 in the month of 08/2020.

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

- (i) The Appellant's Representative (AR) reiterated the submissions made by the Appellant in the Appeal. He pleaded that the Appellant applied to the Respondent for allowing 4 installments of the outstanding amount as per Commercial Circular (CC) No. 25/2020 and the same were allowed by the Respondent. He pleaded that an amount of ₹ 1,02,49,419/- was outstanding towards the Appellant, whereas AEE/Commercial Focal Point worked out outstanding amount as ₹ 1,05,13,240/- as on 01.06.2020, for which four installments of ₹ 26,28,310/- each were allowed. The difference of ₹ 2,63,821/- (₹ 1,05,13,240/- ₹ 1,02,49,419/-) remained un-reconciled. He prayed that either the Respondent should reconcile this difference of ₹ 2,63,821/- or correct the outstanding amount to ₹ 1,02,49,419/-. Further, he pleaded that the amount of first installment of ₹ 26,28,310/- was charged/shown in the bill issued on 23.06.2020 for the period from 21.05.2020 to 21.06.2020 along with current bill of ₹ 56,62,594/- and due date of the bill was 03.07.2020. The Appellant made payment of current bill within due date as per requirement of CC No. 25/2020. But due to adverse business conditions caused by COVID-19 pandemic, there was shortage

of funds, so payment against installment of ₹ 26,28,310/- was delayed by few days and was made by the Appellant on 15.07.2020. He contended that as per instructions issued vide CC No. 25/2020, interest of only 10% per annum was required to be charged on reducing balance computed from 11.05.2020 (extended due date) or the original due date of the bill, whichever was later. However, as per energy bill issued on 23.07.2020 for the period from 21.06.2020 to 21.07.2020, an amount of ₹ 3,37,865/- as extra LPS was levied instead of 10% interest per annum on reducing balance. Further, the current energy bill for 08/2020 was issued for ₹ 93,95,468/- and the Appellant deposited the payment of ₹ 93,95,468/- within due date but an amount of ₹ 31,07,573/- was transferred to Security (Consumption), without the knowledge of the Appellant, whereas separate notice was required to be given for Security (Consumption). Moreover, as per instructions issued vide CC No. 25/2020, revision of Security (Consumption) was deferred till December, 2020. Accordingly, a petition was filed by the Appellant before the Forum, but the Forum provided only partial relief. The Respondent did not provide even the partial relief as given in para no. 2 of the conclusion of the Forum, rather asked the Appellant vide notice bearing Memo No. 3787

dated 06.07.2021 to deposit another amount of surcharge/ interest of ₹ 9,04,770/- in addition to amount already charged and that too after nearly 3 months instead of 15 days as decided by the Forum. In the meantime, the Respondent kept on charging the Appellant with LPS & LPI on disputed amount. Then the Appellant opted for OTS scheme introduced by PSPCL vide CC No.13/2021 dated 15.04.2021 and deposited an amount of ₹ 5,000/- on 07.06.2021. However, after various reminders, the OTS committee vide Memo No. 91/OTS dated 04.04.2022, after a period of about 10 months, intimated that the case could not be considered for OTS as it had already been decided by CGRF on 15.04.2021. The majority of the amount outstanding towards the Appellant was LPI & LPS applied by PSPCL during this period, with no fault of the Appellant. The AR contended that the decision of the Forum was against the instructions/spirit of CC No. 25/2020 and was arbitrary, wrong and non-speaking. The Forum had not properly interpreted the provisions of CC No. 25/2020 regarding levy of 10% interest per annum on the reducing balance from 11.05.2020 and therefore had concluded that *“Petitioner has defaulted in timely payment of the installment(s), therefore action be taken as per clause 93.3.3 of ESIM-2018”*. Whereas it was clearly

mentioned in CC No. 25/2020 that outstanding amount could be deposited in maximum 4 installments and 10% interest per annum was to be charged on the reducing balance/unpaid amount. In the present case, the entire outstanding amount as on 01.06.2020 was allowed to be deposited in installments then 10% interest per annum was applicable on unpaid amount including unpaid installment, if any. Thus, the Forum had wrongly decided to take action as per Instruction 93.3.3 of ESIM-2018 when there was delay in deposit of due installment. Further, the Forum had wrongly concluded that *“the Petitioner is liable to pay amount of AACD for the FY 2018-2019, as per Reg. 16.1 of Supply Code-2014. Further as this amount of AACD has already been adjusted from the payment made in 08/2020, therefore the LPI/LPS is liable to be paid by the Petitioner on unpaid/partial payment(s)”*. The decision of the Forum was not only wrong but also not in consonance with the observations of the Forum on this point/issue as the Forum itself observed that the Respondent failed to produce any document to prove the delivery of notice of AACD vide Memo No. 292 dated 15.07.2019 to the Appellant. The AR pleaded that no notice or calculation sheet was sent to the Appellant regarding AACD. Also, there was no question of revising

Security (Consumption) relating to FY 2018-19 in 08/2020 as per Regulation 16.4 of Supply Code-2014. Instead, it should be of FY 2019-20 and further for FY 2019-20, the notice for revision was required to be issued after 30.12.2020 in view of CC No. 25/2020. He pleaded that the Respondent's office could have charged interest as per Regulation 16.5.5 or had disconnected the supply against default in payment but only after issuing/delivering the notice as per Regulation 16.5 & 42 of Supply Code-2014, but no such notice was ever issued to the Appellant. He further contended that the Appellant had not been given interest on Security deposit for the FY 2020-21. He requested that the decision dated 15.04.2021 of the Forum may be quashed and the amount of ₹ 31,07,573/- may kindly be ordered to be considered as payment towards current energy bill of 08/2020 and surcharge/ interest levied against the energy bill of 08/2020 and in subsequent bills against inflated outstanding amount may kindly be waived off. Further, interest @ 10% per annum be charged on the installment amounts including delayed installments on reducing basis as per CC No. 25/2020, on the principle of natural justice and fairness.

- (ii) On the other hand, the Respondent controverted the pleas raised by the Appellant in its Appeal and reiterated the submissions

made by the Respondent in the written reply. The Respondent argued that as per CC No. 25/2020, the Appellant opted for four installments and accordingly installment plan was made in SAP on 18.06.2020 for monthly installment of ₹ 26,28,310/- each for outstanding amount of ₹ 1,05,13,194/-. But the Appellant did not clear the whole amount of ₹ 32,53,443/-. The Appellant paid only ₹ 30,00,000/- and therefore, balance ₹ 2,53,443/- continued to carry forwarded in the bills. He argued that the Appellant did not comply with the condition laid in Para 2 of the CC No. 25/2020 regarding timely payment of the current bills with due date on or after 01.06.2020, hence the Appellant was not eligible for concessional 10% interest in lieu of LPS and LPI. The LPS and LPI levied to the account of Appellant was correct and recoverable. He submitted that the account of the Appellant was overhauled by the Audit party and informed them to charge additional amount of ₹ 9,04,770/- after implementation of the decision of the Forum and the same was communicated to the Appellant. He further countered the contention of the Appellant regarding charging of amount of ₹ 31,07,573/- as AACD in the bill of 08/2020 and argued that the demand had already been raised for FY 2018-19 vide notice no. 292 dated 15.07.2019. So, CC No. 25/2020 did not apply in

this case. Therefore, the Appellant was liable to pay amount of AACD for the FY 2018-19 as per Regulation 16.1 of Supply Code-2014. He prayed for the dismissal of the Appeal.

(iii) The Forum in its order dated 15.04.2021 observed as under:

“Forum observed that the present dispute has risen due to the different interpretation of the CC 25/2020 by both parties. Forum also observed that the circular is silent about the action to be taken, in case any consumer does not pay installment (s), in time. Forum is of the opinion that in such eventuality, the prevailing instruction regarding non-payment of installment (s), should be made applicable. The relevant portion of clause 93.3.3 of ESIM-2018, applicable in this case, is reproduced as under:

93.3.3 Levy of LPS for failing to make payment: The total surcharge where applicable shall be divided in equal instalments and in case the consumer does not make payment of instalments by the due date, the discount be forfeited/surcharge be levied in respect of that instalment only.

Petitioner further stated that he is unable to understand the chronology/charging of the LPS/LPI by the system and requested for the date wise account statement along with dates of Surcharge & Interest applied to his account, to enable him to check the correctness of the same. Respondent submitted the copy of the installment plan made by the SAP. Petitioner stated the installment plan submitted by the Respondent is not understandable and does not serve any purpose. He submitted manual account statement prepared by him.

Forum observed that the difference in balance outstanding of Rs. 10249419 as per Petitioner and Rs. 10513240/- as per Respondent for which installments were made, could not be explained/reconciled by the Respondent, as the accounting system/chronology of

debits/credits, is a complex to understand for a common person like Petitioner. Moreover as per respondent, as of now, no logic has been created in SAP as per CC 25/2020, therefore Forum is of the opinion that the total account/bills of the Petitioner is required to be checked/pre-audited from AO/Field.

Further regarding 2nd issue in which an amount of Rs. 3107573/- was charged in his bill issued on dated 24.08.2020, as an AACD for the year 2018-19. Petitioner stated that no notice was issued to him regarding the same. In this regards, Respondent submitted the copy of notice no. 292 dated 15.07.2019 amounting Rs. 3107573/-, issued to the Petitioner. But Petitioner stated that he has not received any notice in this regards. Respondent could not produce any documents regarding delivery of the notice to the Petitioner, however he stated that AACD notices were sent to many consumers, but their receiving has not been taken. He further stated that AACD amount has been charged for the year 2019 and not for the year 2020 but Petitioner is trying to take benefit of Covid-19. Forum observed that the notice for AACD was issued vide memo no. 292 dated 15.07.2019, although there was no document to prove the delivery of the notice, but the security (consumption) is to be revised annually, as per Reg. 16.1 of Supply Code-2014. It is also fact that the Petitioner's bill in 08/2020, includes the previous disputed amount along with the amount of AACD of Rs. 3107573/-and he deposited the current bill only. However as per the priority adjustments of the amount in SAP system, the deposited amount was adjusted against the AACD as per priority adjustments of the SAP. Due to this, LPS/LPI was charged later on, in his next bills by SAP due to non-payment/partial payment of current energy bill of 08/2020.

Forum is of the opinion that the revision of Security (Consumption) was deferred till 31.12.2020 vide CC no. 25/2020 issued on dated 29.05.2020, to give the relief to the consumers for mitigating the impact of Covid-19. But in this case, the demand has already been raised for FY

2018-19 vide notice no. 292 dated 15.07.2019, so, CC no. 25/2020 does not apply in this case. Therefore, the Petitioner is liable to pay amount of AACD for the FY 2018-2019, as per Reg. 16.1 of Supply Code-2014.

Keeping in view the above, Forum came to unanimous conclusion as under:

- 1. Petitioner has defaulted in timely payment of the installment(s), therefore action be taken as per clause 93.3.3 of ESIM-2018.**
- 2. The Petitioner is liable to pay amount of AACD for the FY 2018-2019, as per Reg. 16.1 of Supply Code-2014. Further as this amount of AACD has already been adjusted from the payment made in 08/2020, therefore the LPI/LPS is liable to be paid by the Petitioner on unpaid/partial payment(s).**
- 3. As the accounting system/chronology of debits/credits, is a complex to understand for a common person like Petitioner and further no logic has been created in SAP, as per CC No. 25/2020, therefore, the total account/bills of the Petitioner from Oct/2019 to Oct/2020 be got checked/pre-audited from AO/Field, keeping in view the CC 25/2020 and amount be charged/refunded to thePetitioner accordingly.”**

- (iv) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 10.05.2022 and 17.05.2022. It is observed that as per CC No. 25/2020, Domestic, Commercial and all industrial consumers who were unable to pay their bills upto 01.06.2020, an option was given to them to pay the same in maximum of 4 installments and in place of late payment surcharge (LPS) and

late payment interest (LPI), only 10% interest per annum was to be charged on the reducing balance computed from 11/05/2020 (extended due date) or the original due date of the bill, whichever was later, subject to the condition that current bills with due date on or after 01.06.2020 shall be deposited timely by the consumer. This Court is of the opinion that the said Commercial Circular clearly specified that the benefit of charging 10% interest per annum on reducing balance could be given to only those consumers who paid their total outstanding amount in 4 monthly installments and timely cleared their current bills with due date on or after 01.06.2020. In the present case, the total outstanding amount as on 01.06.2020 of the Appellant was converted into 4 monthly installments by the Respondent on 18.06.2020. So, the Appellant was supposed to pay all 4 monthly installments by 18.10.2020 but the Appellant paid only 2 installments by 18.10.2020. Since the Appellant did not fulfill the conditions of the CC No. 25/2020, so it cannot be given the benefit of concessional 10% interest per annum on reducing balance and hence the LPS/ Late Payment Interest (LPI) should be charged to the Appellant as per the prevailing instructions of the Distribution Licensee.

- (v) As regards the issue of difference of ₹ 2,63,821/- raised by the Appellant, this Court is of the view that since the chronology of debits and credits in SAP billing system is complex to understand and further no logic has been created in SAP system as per CC No. 25/2020, as such this amount should be audited by the AO/Field keeping in view the relief given to consumers in CC No. 25/2020 and accordingly the account of the Appellant be overhauled strictly as per regulations/ instructions.
- (vi) As regards the issue of adjusting amount of ₹ 31,07,573/- paid as current bill to Security (Consumption), I am of the view that the Respondent had wrongly adjusted this amount against the Security amount resulting in levying of LPS and LPI to the account of the Appellant. The issue was required to be dealt as per Regulations 16.4 and 16.5 of the Supply Code-2014 which were not followed by the Respondent. The Respondent was supposed to issue to the Appellant, a separate notice cum bill specifying the amount payable alongwith supporting calculations as per Regulation 16.5.3 of the Supply Code-2014 and in the event of non-payment of the said amount by the Appellant within 30 days, the Appellant was liable to pay interest as per Regulation 16.5.5 for the period of delay and its electricity connection was also liable to be disconnected. The

Respondent submitted that the Appellant was served notice vide Memo No. 292 dated 15.07.2019, which the Appellant denied. The instructions regarding “Service of Notice” are contained in the Regulation 42 of the Supply Code, reproduced as under:

“42. SERVICE OF NOTICE

42.1 Any order/notice to a person/consumer by the distribution licensee including a notice under Section 56 of the Act, shall be deemed to be duly served by the distribution licensee if it is:

(a) sent by registered post, speed post, under certificate of posting, or by courier or through e-mail at registered mail Id of the consumer;

(b) delivered by hand to a consumer/person and an acknowledgement taken from any person in the premises; &

(c) affixed at a conspicuous part of such premises in case there is no person available, to whom the order/notice can, with reasonable diligence, be delivered.

42.2 Any notice by the consumer to the distribution licensee shall be deemed to be duly served, if given in writing, and delivered by hand or sent by registered post or through courier to the concerned Officer In charge.”

- (vii) The Respondent, during hearing on 10.05.2022, could not produce the evidence of service of notice no. 292 dated 15.07.2019 as per above Regulation 42 and demanded some time from this Court to retrieve the same. He assured the Court that he would produce the evidence on next date of hearing on 17.05.2022. But today also, the Respondent failed to produce any evidence which shows that the said notice was not

delivered to the Appellant at all. The Respondent also did not levy any interest nor disconnected the electricity connection of the Appellant as per Regulation 16.5.5. But charged this amount to the account of the Appellant in the month of 08/2020, when it actually became redundant due to the fact that as per Regulation 16.4, the review of Security (Consumption) was to be carried out annually in case of HT/EHT consumers. So, in the month of 08/2020, the Security (Consumption) of the Appellant should have been revised as per FY 2019-20 and not as per FY 2018-19. Also, the review of Security (Consumption) of all categories of consumers was deferred till 31.12.2020 vide CC No. 25/2020. So, in view of above, the Respondent is directed to consider the payment of ₹ 31,07,573/- as payment towards current bill of 08/2020 and any LPS and any subsequent LPI levied to the account of the Appellant on this regard be revised. The Respondent should withdraw the amount of ₹ 31,07,573/- from Security (Consumption) of the Appellant and also charge the amount of interest given to the Appellant on this Security amount to the account of the Appellant. Further, the Respondent is directed to review the Security (Consumption) of the Appellant afresh as per Regulation 16.4 of the Supply Code-2014 and recover any shortfall or refund

any excess Security (Consumption) by following proper procedure contained in Regulation 16.5 of the Supply Code-2014.

(viii) The issue of non-provision of interest on Security for the FY 2020-21 was not raised by the Appellant before the Forum. So, this Court cannot take fresh issue in this Appeal and hence cannot decide on it.

(ix) In view of the above, this court is not inclined to agree with the decision dated 15.04.2021 of the Forum in Case No. CGL-306 of 2020. It is decided that since the Appellant did not fulfill the condition of the CC No. 25/2020, so it cannot be given the benefit of concessional 10% interest per annum on reducing balance and hence the LPS/ late payment interest (LPI) should be charged to the Appellant on this amount as per the prevailing instructions of the Distribution Licensee.

Further, the Respondent should get the account of the Appellant audited from the AO/Field in regard to the issue of difference of ₹ 2,63,821/- raised by the Appellant keeping in view the relief given to consumers in CC No. 25/2020 and overhaul the account accordingly.

The Respondent is also directed to consider the payment of ₹ 31,07,573/- as payment towards current bill of 08/2020 and

any LPS and any subsequent LPI levied to the account of the Appellant in this regard be revised. The Respondent should withdraw the amount of ₹ 31,07,573/- from Security (Consumption) of the Appellant and also charge the amount of interest given to the Appellant on this Security amount to the account of the Appellant. Further, the Respondent may review the Security (Consumption) of the Appellant afresh as per Regulation 16.4 of the Supply Code-2014 and recover any shortfall or refund any excess Security (Consumption) by following proper procedure contained in Regulation 16.5 of the Supply Code-2014.

7. Decision

As a sequel of above discussions:-

- (i) The order dated 15.04.2021 of the Forum in Case No. CGL-306 of 2020 is hereby quashed.
- (ii) It is decided that since the Appellant did not fulfill the conditions of CC No. 25/2020, so it cannot be given the benefit of concessional 10% interest per annum on reducing balance and hence the LPS/ late payment interest (LPI) should be charged to the Appellant on this amount at the rates as per the prevailing instructions of the Distribution Licensee.

- (iii) Further, the Respondent should get the account of the Appellant audited from the AO/ Field in regard to the issue of difference of ₹ 2,63,821/- raised by the Appellant keeping in view the relief given to consumers in CC No. 25/2020 and overhaul the account accordingly.
- (iv) The Respondent is also directed to consider the payment of ₹ 31,07,573/- as payment towards current bill of 08/2020 and any LPS and any subsequent LPI levied to the account of the Appellant in this regard be revised. The Respondent should withdraw the amount of ₹ 31,07,573/- from Security (Consumption) of the Appellant and also charge the amount of interest given to the Appellant on this Security amount to the account of the Appellant. Further, the Respondent may review the Security (Consumption) of the Appellant afresh as per Regulation 16.4 of the Supply Code-2014 and recover any shortfall or refund any excess Security (Consumption) by following proper procedure contained in Regulation 16.5 of the Supply Code-2014.

- 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.

May 17, 2022
S.A.S. Nagar (Mohali)

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