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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 32/2020**

 **Date of Registration : 09.07.2020**

 **Date of Hearing : 26.08.2020**

 **Date of Order : 31.08.2020**

**Before:**

 **Er. Gurinder Jit Singh,**

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

**In the Matter of:**

M/s. Sidharth Exporters,

Mohkam Arrian Road,

Jalalabad (W), Distt. Fazilka. PIN-152024

**Contract Account Number: 3000855886**

 ...Appellant

Versus

Addl. Superintending Engineer,

DS Division, PSPCL,

Jalalabad, Distt. Fazilka.

 ...Respondent

**Present For:**

 Appellant : Sh. Ashok Kumar Dhawan

 Appellant’s Representative (AR).

Respondent : 1. Er. Satwinder Singh Sodhi,

Addl. Superintending Engineer,

 DS Division, PSPCL, Jalalabad.

 2. Sh. Gian Chand,

 Lower Division Clerk.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 12.05.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-26 of 2020, deciding that:

“(a) *that refund if any for the bill issued in the month of 05/2018 on account of difference of tariff billed, and tariff admissible @Rs.5/- per unit, is admissible to the Petitioner.*

*(b) Further difference in the Security(Consumption) deposited by the petitioner from time to time and amount being reflected as Security(Consumption) on the bills be updated and credited to the account of the petitioner.*

*(c) Further interest for the period 01/2008 to 03/2008 as per the clarification provided by the office of CE/Commercial vide memo no 1038/43 dated 15.05.19 and also for the difference in the Security (Consumption) deposited by the petitioner from time to time and amount being reflected as Security (Consumption) on the bills is due to the petitioner.*

*(d) Further difference in total Security(Consumption) for the petitioner assessed as Rs. 10,96,850/- vide Half Margin no. 49dated 29.09.19 as per the provisions of Regulation 16 Supply Code 2014 and amount updated as (b) above is recoverable from the petitioner.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 09.07.2020 i.e. beyond the period of limitation of one month of receipt of order dated12.05.2020 of the CGRF, Patiala in Case No. CGP-26/2020. The Appellant also submitted an application giving reasons for not filing the Appeal within the limitation period and requested for condonation of delay in filing the Appeal in this Court. Since the dispute related to payment of interest/ additional interest on excess billed amount/ Security(Consumption),no amount was required to be got deposited by the Appellant for the registration of the present Appeal. Accordingly, the Appeal was registered and a copy of the same was sent to the Addl. Superintending Engineer/DS Divn., PSPCL, Jalalabad for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala to send the case file under intimation to the Appellant vide this office letter No. 561-563/OEP/A-31/2020 dated09.07.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 26.08.2020 and intimation to this effect was sent vide letter No. 746-747/OEP/A-32/2020 dated 19.08.2020 by e-mail. Copies of the minutes of proceedings held were sent to the Appellant as well as the Respondent vide letter No. 772-73 /OEP/A-32/2020 dated 26.08.2020.

**4.** **Condonation of Delay**:

At the start of hearing on 26.08.2020, the issue of condonation of delay was taken up. The Appellant stated that the Appeal could not be filed in this Court within one month of receipt of order dated12.05.2020 as the said order of the Forum was despatched vide Memo No. 926/CGP-26/2020 dated13.05.2020 and was received in the Post Office, Jalalabad on 28.05.2020 and the Appellant had received it after 3-4 days. Further, due to spread of COVID-19 Pandemic, non-availability of a representative to prepare the case and non-availability of means of transport, delay occurred only for 9 days. As such, the Appellant requested to entertain the appeal and to condone delay of 9 days as the delay was not intentional and it was due to unavoidable circumstances as stated above.

I find that the Respondent did not object to the condonation 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 one month from the date of receipt of the order of the Forum.*

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

I observe that non condonation of delay would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant was allowed to present the case.

**5.** **Submissions made by the Appellant and the Respondent**

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

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

The Appellant made the following submissions in the Appeal, received on 09.07.2020, for consideration of this Court:

1. The Appellant was having a LS category connection in its name and was running a Rice Mill and Sortex Plant with sanctioned load of 699.523 kW/CD 700 kVA. Although nature of Industry was seasonal yet it was running as a General Industry since 2014 till date as permissible under CC No. 44/2014. It was being run as single proprietorship concern by Sh. Rajinder Kumar.
2. The CGRF, Patiala, while deciding the case, had wrongly decided the issue regarding payment of interest on interest for ₹4,79,880/- and non-payment of interest against refund of incorrect bill for the month of 05/2018 for ₹21,405/-.
3. Out of four issues raised before the Forum, three issues were decided by the Forum and were in order. But 4th issue regarding non-payment of interest on interest was not discussed nor any observation regarding payment/ non-payment was made and this showed that the issue was avoided deliberately as it was legal and justified as per regulations of erstwhile PSEB/ now PSPCL as laid down in the Regulation No. 17 of the Supply Code, 2007 amended vide Supply Code, 2014 and ESIM applicable from time to time.
4. The refund, if any, for the bill issued during the month of 05/2018 on account of difference of tariff billed, and tariff admissible @ ₹ 5/- per unit was admissible to the Appellant.
5. The difference in the Security (Consumption) deposited by the petitioner from time to time and amount being reflected as Security (Consumption) on the bills be updated and credited to the account of the Appellant.
6. The interest for the period 01/2008 to 03/2008 as per the clarification provided by CE/Commercial vide Memo No. 1038/43 dated 15.05.2019 and also the difference in the Security (Consumption) deposited by the Appellant from time to time and amount being reflected as Security (Consumption) on the bills was due to the Appellant.
7. The difference in total Security (Consumption) for the Appellant assessed as ₹ 10,96,850/- vide half margin No. 49 dated 29.09.2019 as per the provisions of Regulation 16 of Supply Code, 2014 and amount updated as above was recoverable from the Appellant.
8. The Forum skipped the order regarding non-payment of interest on interest and payment of interest against refund of incorrect bill for the month 05/2018 as per ESIM-115.
9. The instructions regarding updation of ACD/Security (Consumption)/Security (Meter) and payment of interest were not being implemented properly by the offices of PSPCL. Therefore, to mitigate the difficulty being experienced by the consumers, a letter was issued by the office of CE/ Commercial vide Memo No. 1038/43 dated 15.05.2019 to complete the work of updation and payment of interest within 3 months of its issue.
10. Thus, despite clear instructions to allow interest w.e.f. 01.01.2008 and onwards within 90 days and a certificate was also required to be furnished to the higher authorities. But, the offices did not bother to comply with the instructions. It was further added that as per above mentioned letter/ memo No. 1038/43 dated 15.05.2019, no application was required to be given by the Appellant for updation of ACD/ AACD and refund of interest.
11. Chief Engineer/Commercial, PSPCL, Patiala, vide Memo No. 49/54 dated 08.01.2020, clearly admitted that instructions issued, vide Memo No. 1038/43 dated 15.05.2019, had not been complied with. Therefore, a period of another 3 months was given to complete the task and also to tender a certificate in this regard by the concerned offices. However, nothing was heard again. As a result, the Appellant was compelled to file a Petition in the Office of CGRF, Patiala on 17.01.2020 (within limitation period) with other issues also.
12. The Forum allowed the relief on other issues but the issue regarding payment of additional interest was left unheard and did not pass order in this regard and the issue remained untouched despite the clear instructions issued for payment of additional interest as per Regulation 17 of Supply Code-2007 amended vide Supply Code-2014.
13. It was not mandatory to give an application to allow the interest as the whole procedure was automatic. During the month of April, interest was allowed as a matter of routine and no application was given to allow interest. It was posted in the account of consumer automatically as per procedure mentioned in the rules and regulations.
14. Section 47 of the Electricity Act, 2003 provided that the security amount given by the person requiring supply of electricity shall be refundable and carry interest equivalent to Bank Rate or more as may be specified by the concerned State Commission.
15. It was in the shape of deposit i.e. Advance Consumption Deposit and it did not call to apply for taking interest as in a Bank, the customer did not apply for interest and it was credited into account automatically. Even if, the same was not drawn, it was credited into account and interest was treated as a part of interest for the future period. Therefore, it was unjustified to withhold interest if it was not paid due to negligence of an employee of the PSPCL.
16. It was also requested that value of money continued to decrease from time to time though invested in financial institutions was almost doubled in 6/7 years span of time. So, if unpaid amount was withheld by the PSPCL only on the ground that no application was submitted by the Appellant was not justified at all. Further, no circular/regulation in Supply Code or Electricity Act or ESIM had made any provision for the request to be tendered by the Appellant for allowing interest.
17. Regarding payment of interest, instructions were very clear and Section 17 of Supply Code, 2007applicable w.e.f.01.01.2008 to 31.12.2014 provided as under: -

*“17.1 The Licensee will pay interest on Security (Consumption) at the SBI’s Long Term PLR prevalent on first of April of the relevant year, provided that the Commission may at any time by notification in official Gazette of the State specify a higher rate of interest.*

*17.2 The Licensee will indicate the amount becoming due to a consumer towards interest on the Security (Consumption) in the first bill raised after thirtieth of April every year.*

*17.3 The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/ or any amount becoming due to the Licensee thereafter.*

*17.4 In the event of delay in effecting adjustments due to the consumer as per Regulation 17.3, the Licensee will for the actual period of delay pay interest at twice the SBI’s Short Term PLR prevalent on first of April of the relevant year.”*

1. Section 17 of Supply Code, 2014 provided as under: -

*“17.1 The Distribution Licensee shall pay interest on Security (consumption) and Security (meter) at the Bank Rate (as on 1st April of each year) as notified by RBI.*

*17.2 The interest on Security (consumption) and Security (meter) shall be credited to the account of a consumer annually on first day of April each year and shall be adjusted/ paid in first bill raised after April every year against the outstanding dues and/ or any amount becoming due to the Distribution Licensee thereafter.*

*17.3 In the event of delay in effecting adjustments due to the consumer as per regulation 17.2, the distribution licensee shall for the actual period of delay pay interest at Bank Rate (as on 1st April of each year) as notified by RBI plus 4%.”*

1. It was crystal clear that erstwhile PSEB/PSPCL never issued any such instructions for the consumer to give application before credit of interest rather it was very clear that in case of delay in payment of interest at whatever rate of interest plus additional interest was payable. So, non consideration of additional interest without assigning any reason by the CGRF, Patiala was not justified.
2. In the event of delay in effecting adjustments due to the consumer as per Regulations applicable, the Licensee will, for the actual period of delay, pay interest at twice the SBI’s Short Term PLR prevalent on first of April of the relevant year.
3. In view of the above submissions, the Appeal may be allowed.

**(b) Submissions during Hearing**

During the hearing on 26.08.2020, the Appellant’s Representative reiterated the submissions already made in the Appeal and prayed to allow the same. On being asked, he confirmed that the Appellant had not submitted any application for correction in the energy bill for 05/2018 and for allowing interest on Security (Consumption) for the period 01/2008 to 03/2008 in the office of the Respondent. The Appellant did not point out the missing entries of Security(Consumption) or Security (Meter) to the Respondent till filing of the Case No. CGP-26/2020 in the Forum.

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

The Respondent, in its reply sent vide e-mail dated 18.08.2020, submitted the following, in its defence, for consideration of the Court:

1. The Appellant was having a LS category connection under General category in the name of M/s. Sidharath Exports bearing A/c No. 3000855886 (Old A/c No. LS-60), with sanctioned load 699.523 kW and CD as 700 kVA since 2014.
2. The Appellant filed a case in the office of CGRF, Patiala for adjudication of 4issues of its dispute. The case was decided by the Forum on 12.05.2020.
3. The interest on Security(Consumption) and the refund for the bill for the month of 05/2018 had been credited to the account of the Appellant vide SCA No. 245/252/R-127 and the Appellant had not given any application for refund of excess amount paid against the bill for the month of 05/2018.
4. The present Appeal related to the issue regarding non-payment of interest on interest and interest payable against refund for the bill for the month of 05/2018. The Forum rightly decided that matter regarding payment of interest w.e.f. 01.01.2008 to 31.03.2008 was clarified by the CE/Commercial vide Memo No. 1038/43 dated 15.05.2019. Therefore, the question regarding payment of interest on interest did not arise. Thus, the Appellant was not entitled to payment of interest on interest as claimed.
5. The claim for the payment of interest on account of excess amount deposited by the Appellant against the bill for the month of 05/2018 was thus not justified because the Appellant had not given any request for correction of its bill for the month of 05/2018. However, sufficient relief had already been given by the Forum.
6. In view of the above submissions, the Appeal was liable to be dismissed.
7. **Submissions during Hearing**

During the hearings on 26.08.2020, the Respondent reiterated the submissions already made in its written reply. On being asked, he confirmed that the Appellant had not given any application regarding correction of the bill for the month of 05/2018 and for allowing interest on Security (Consumption) for the period 01/2008 to 03/2008 in the office of the Respondent.

**6.** **Analysis and Findings**

The issues requiring adjudication are the legitimacy of

1. Payment of interest on refund of excess billed amount for the month of 05/2018 (deposited on 18.06.2018) due to charging of higher tariff.
2. Payment of additional interest on interest on Security (Consumption) for the period 01/2008 to 03/2008 and due to updation/correction of Security(Consumption).

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

**Issue (i)**

a)The Appellant’s Representative submitted that the Appellant had, in its Petition No. CGP-26 of 2020, prayed to the CGRF, Patiala to allow refund with interest in respect of the amount of tariff charged in excess in the bill for 05/2018 against the provisions of CC No. 23/2017 and CC No. 46/2018. He submitted that the Forum, vide its order dated 12.05.2020, decided as under:

*“(a) that refund if any for the bill issued in the month of 05/2018 on account of difference of tariff billed, and tariff admissible @Rs.5/- per unit, is admissible to the Petitioner.”*

b) The Appellant’s Representative also submitted that the Forum had not passed any order on the request of the Appellant for payment of interest on the excess billed amount from 18.06.2018 (date of payment of bill for 05/2018) to 31.12.2019. In this connection, he prayed to allow interest by referring to the provisions contained in Regulation 35.1.3 of Supply Code-2014.

I find that the Respondent, in its written reply to the Appeal and also during hearing intimated that no application of the Appellant for refund of amount charged in excess in the bill for 05/2018 was received in its office. The Respondent stated that refund due to the Appellant relating to excess bill for 05/2018 had been credited to the Appellant’s account vide SCA No. 245/252/R-127.

I observe that the Appellant, on being asked during hearing on 26.08.2020, confirmed that it had not given any request in writing in the office of the Respondent for correction of bill or refund of excess billed amount and raised its grievance in the Forum, vide Petition No. 26/2020 registered on 17.01.2020.

c) It is observed that the Appellant, being a Large Supply Category consumer, ought to be aware of instructions regarding charging of Tariff as per Tariff Order for the relevant financial year and Commercial Circulars issued from time to time. Accordingly, the Appellant was supposed to bring to the notice of the AE/AEE concerned (authority competent to issue the bill) in writing about the Tariff charged in excess in the bill issued during 05/2018. The Appellant paid the said bill on 18.06.2018 and did not challenge the same in the office of the Respondent. It raised this issue in the Forum in January, 2020. Thus, the Appellant can’t absolve itself of the obligation/responsibility to seek appropriate remedy at the appropriate time. Had this been done, the dispute would not have arisen.

**Issue (ii)**

a) This issue relates to the claim of the Appellant for allowing additional interest on interest in respect of the Security (Consumption) for the period 01/2008 to 03/2008 and due to updation/correction of Security (Consumption). The Appellant’s Representative stated that the Forum erred in not passing order on 12.05.2020 about admissibility of interest on interest in respect of Security(Consumption).

 b) The Appellant’s Representative also submitted that it was not mandatory to give an application to allow the interest as the whole procedure was automatic. During the month of April, interest was allowed on Security (Consumption) as a matter of routine and no application was given to allow interest and it was posted in the account of consumer automatically as per procedure mentioned in the applicable regulations.

The Appellant also submitted that the Security (Consumption) was in the shape of deposit i.e. Advance consumption Deposit (ACD) and it did not call to apply for taking interest as in a Bank, the customer did not apply for interest and it was credited into account automatically and even if, the same was not drawn, it was credited into account and interest was treated as a part of interest for the future period. Therefore, it was unjustified to withhold interest if it was not paid due to negligence of an employee of the licensee.

c) The Appellant’s Representative also referred to provisions contained in Regulation 17.3 of Supply Code-2007 (applicable from 01.01.2008 to 31.12.2014) amended vide Regulation 17.2 of Supply Code-2014(applicable from 01.01.2015) in this regard. These provisions stipulated that the interest on Security (consumption) and Security (meter) shall be credited to the account of a consumer on first day of April each year and shall be adjusted/paid in first bill raised after first April every year against the outstanding dues and/or any amount becoming due to the distribution licensee thereafter.

 d) The Appellant’s Representative also invited reference to provisions contained in Regulation 17.4 of Supply Code-2007 amended vide Regulation 17.3 of Supply Code-2014, providing for allowing interest in the event of delay in effecting adjustment due to the consumer as on 1st April of each year.

 e) It is observed that the Appellant was a Large Supply Category consumer and received regularly the energy bills issued by PSPCL from time to time. In all these bills issued from January, 2008 onwards, amount of Security (Consumption) was invariably depicted. The Appellant paid these bills regularly on receipt thereof but did not point out or represent to the Respondent about not crediting/adjusting the amount of Security (Consumption) for the period 01/2008 to 03/2008 in its bill issued during 04/2008. Further, the Appellant did not point out to the Respondent for updation/correction of Security(Consumption) subsequently. Thus, the Appellant did not take appropriate remedy at appropriate time despite the fact that provisions for allowing interest on Security (Consumption) were made in the Supply Code-2007 (applicable from 01.01.2008 to 31.12.2014) amended vide Supply Code-2014 (effective from 01.01.2015). Had the Appellant exercised necessary prudence/vigilance, the present litigation could have been avoided.

f) From the above analysis, it is concluded that the Respondent defaulted in charging the Tariff correctly in the energy bill of the Appellant issued during 05/2018 and also in not allowing the interest on Security (Consumption) for the period 01/2008 to 03/2008. The corrective action was taken after the decision dated 12.05.2020 of the Forum to whom the Appellant approached in January, 2020. At the same time, the onus for not taking timely appropriate remedies for both the disputed issues also rests on the Appellant, a Large Supply Category consumer. Instead of finding lacunae in the working of the Respondent, the Appellant was expected to be vigilant, update and prompt in discharging its obligations. He failed to point out to the Respondent to take timely action for updation/correction of Security (Consumption). The Appellant also never gave any representation to the Respondent for correction of missing entries of Security(Consumption). Accordingly, Issue (i) and Issue (ii) are decided against the Appellant after due consideration.

**7.** **Decision**

**As a sequel of above discussions, the Appeal is devoid of merit, hence, rejected/dismissed.**

**8**. The Appeal is disposed of accordingly.

**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.

 August 31, 2020 (GURINDER JIT SINGH)

 SAS Nagar (Mohali) Lokpal (Ombudsman)

 Electricity, Punjab.