

**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. 54/2022

Date of Registration : 10.10.2022
Date of Hearing : 19.10.2022/ 28.10.2022
Date of Order : 28.10.2022

Before:

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

In the Matter of:

M/s. Garrison Engineer,
Military Engineering Services,
Basoli (J&K), PO: Lakhapur,
Distt. Kathua (J&K)
Pin-184152.

**Contract Account Number:3007509007 (BS)
3007509008 (BS)**

...Appellant

Versus

Addl. Superintending Engineer,
DS City Division, Pathankot.

...Respondent

Present For:

Appellant: 1. Sh. Sudhir Nar, Sr. Asstt.
Appellant's Counsel.
2. Sh. Rajesh Kumar, JEE/M,
Appellant's Representative.

Respondent : 1. Er. Ashwani Kumar,
AEE/ DS Sub Division, PSPCL,
Sujanpur, Pathankot.
2. Shri Tarsem Lal, UDC.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 17.08.2022 of the Corporate Consumer Grievances Redressal Forum, Ludhiana in Case No. CF-073 of 2022, deciding that:

“i. The amount on a/c of ED & IDF, charged to both the accounts of the Petitioner are correct & recoverable as per the details given at point (vi) above.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 03.10.2022 i.e. within the period of thirty days of receipt of the decision dated 17.08.2022 of the CCGRF, Ludhiana in Case No. CF-073 of 2022. The Appellant had received the copy of the decision of the CCGRF, Ludhiana on 08.09.2022 and he attached the proof of the same. The Appellant had deposited the requisite 40% of the disputed amount vide BA16 receipt no. 157206409 dated 24.03.2021 for ₹ 23,92,540/- (including ₹ 13,63,824/- as Sundry Charges) and vide BA16 receipt no. 157206392 dated 24.03.2021 for ₹ 7,28,450/- (including ₹ 4,27,135/- as Sundry Charges). Therefore, the Appeal was registered on 10.10.2022 and copy of the same was sent to the Addl. SE/ DS City Divn., PSPCL, Pathankot for sending written reply/ parawise

comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 1089/1091/OEP/A-54/2022 dated 06.10.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 19.10.2022 at 01.00 PM and intimation to this effect was sent to both the parties vide letter nos.1107-0/OEP/A-54/2022 dated 11.10.2022. Both the parties were heard and copies of the Proceedings dated 19.10.2022 were sent to both the parties vide Memo No. 1149-1150/OEP/A-54/2022 dated 19.10.2022. The next date of hearing was fixed for 28.10.2022 at 01.30 PM because the Appellant had requested for filing of rejoinder. Arguments of both parties were heard on 28.10.2022.

4. Submissions made by the Appellant and the Respondent

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral deliberations made by the Appellant's Counsel 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 Bulk Supply Category Connections, bearing connection no. G57BS0100002 (A/c No. 3007509007) and connection no. G57BS0100004 (A/c No. 3007509008) with sanctioned load of 531.42 kW/500kVA and 200 kW/ 250 kVA running in the name of the Appellant from 11 kV Sub Station, Madhopur under DS City Divn., Pathankot. The Appellant was being billed with electricity billing amounting approximately 300 lac annually.
- (ii) The Respondent had raised electricity bill no. 20210316020044 dated 31.03.2021 and bill no. 20210316020045 dated 31.03.2021 against the above- mentioned connections amounting to ₹ 23,92,540/- and ₹ 7,28,450/- with sundry charges amounting to ₹ 13,63,824/- and ₹ 4,27,135/- which was deposited through Online System alongwith bill of 03/2021. The sundry charges which were levied by the PSPCL were totally irregular and unjustified.
- (iii) The Respondent had raised electricity bill no. 50016732671 dated 22.03.2022 and bill no. 51210221277 dated 22.03.2022

against the abovementioned connections amounting to ₹ 28,67,150/- and ₹ 7,91,420/- with sundry charges amounting to ₹ 15,67,436/- and ₹ 4,33,397/- which were to be deposited by due date 04.04.2022. The sundry charges which were levied by the PSPCL were totally irregular, unjustified and were not agreed/accepted by the Appellant i.e. MES, Garrison Engineer, Basoli, Pathankot.

- (iv) After receiving an exaggerated/inflated electricity bill dated 22.03.2022, the Appellant had approached the Respondent vide its office letter no. 4000/Elect bill/38/E4 dated 30.03.2022 and had requested to generate the bill after excluding the sundry charges by giving specific reasons that the office of Garrison Engineer, Basoli would not be able to pay the sundry charges amounting to ₹ 15,67,436/- and ₹ 4,33,397/- for the reason that the Respondent had not given any kind of calculation or supporting circulars/orders in order to charge electricity duty (ED) and Infrastructure Development Fund (IDF).
- (v) Thereafter, AEE/ DS S/D, Sujapur intimated the Appellant that electricity bill nos. 50016732671 and 5121022127 dated 22.03.2022 were correct and sundry charges amounting to ₹ 15,67,436/- and ₹ 4,33,397/- were calculated by Internal Audit as ED & IDF as per HM 51 & HM 50 dated 31.01.2022 for the

period 01/2016 to 08/2018 as per CC Nos. 38/2020 dated 02.09.2022 and 39/2020 dated 30.09.2020. It was further intimated by the Respondent to the Appellant to pay the pending sundry charges within 10 days to avoid any type of inconvenience.

- (vi) The Appellant had approached the Respondent's Chairman cum Managing Director and other authorities vide its office letter no. 4000/Elect. Bill/47/E4 dated 09.05.2022 and stated about unjustified charging of sundry charges in the form of Electricity Duty and Infrastructure Development Fund but despite of putting forth the grievance by the Appellant nothing had been done by the Respondent for its redressal.
- (vii) After seeing that no heed was being given by the Respondent in order to lay the grievance of the Appellant to rest at its own level, the Appellant was forced to approach the Corporate Forum, Ludhiana vide its letter no. 4000/Elect Bill/53/E4 dated 10.05.2022.
- (viii) The Corporate Forum, Ludhiana intimated the Appellant to attend the pre-hearing of the case and during hearing of the case, the Corporate Forum had registered the case by considering the amount of ₹ 13,63,824/- and ₹ 4,27,135/- which was already paid by the Appellant on account of arrears of

Electricity Duty (ED) and Infrastructure Development Fund (IDF) charges for the month of September, 2018 to October, 2020 in the bill of March, 2021.

- (ix) The Corporate Forum, Ludhiana had not considered the contentions of the Appellant though the Appellant had specifically pointed out that the provisions of the Electricity Supply Instructions Manual-2018 wherein it was provided under Para 93.2 that as per Section 56 (2) of the Electricity Act, 1956, no sum due from any consumer shall be recoverable after the period of two years from the date when sum became first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. Therefore, in view of the above stated provision of law the imposition of ED and IDF were only demanded with the electricity bill dated 12.01.2022 in view of CC No. 38 dated 02.09.2020 and CC No. 39 dated 30.09.2022 which was not shown regularly and continuously recoverable as arrears of charges in any of the previous electricity bills. However, despite of that, justified request for waiving off the ED and IDF charges amounting to ₹ 29,31,360/- (₹ 13,63,824/- + ₹ 15,67,536/-) G57BS0100002 and ₹ 8,60,632/- (₹ 4,27,135/- + ₹ 4,33,497/-) G57BS0100004 was not considered by the

Corporate Forum, Ludhiana and was decided arbitrarily and illegally in the favour of the Respondent. The relevant extract of the provision para no. 93.2 of the Electricity Supply Instruction Manual-2018, dealing with the limitation for payment of arrears which were not originally billed was reproduced below:-

93 PAYMENT OF ARREARS NOT ORIGINALLY BILLED

93.1 XXX XXX XXX

93.2 Limitation:

Under Section 56 (2) of the Act, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.

93.3 XXX XXX XXX

- (xi) The Corporate Forum had passed the final speaking order dated 17.08.2022 received by the Appellant on 08.09.2022 against the Appellant arbitrarily, illegally and without considering the actual purport of the provisions and also without considering the facts and circumstances of the matter. The Corporate Forum while deciding the application filed by the Appellant returned the decision against the Appellant holding that the amount of ₹ 29,31,360/- (₹ 13,63,824/- + ₹ 15,67,536/-) against connection no. G57BS0100002 and ₹ 8,60,632/- (₹ 4,27,135/- + ₹

4,33,497/-) against connection no. G57BS010004 which were subsequently added to the bills as sundry charges, were correct and recoverable. The Corporate Forum while passing impugned speaking order dated 17.08.2022 had relied heavily on the Hon'ble Supreme Court's decision dated 05.10.2021 delivered in CA 7235 of 2009 titled as M/s. Prem Cottex Vs UHBVNL which was not applicable to the facts and circumstances of the present case. In the above- mentioned judgment relied upon by the Corporate Forum while deciding the claim of the Appellant had made an error and overlooked the fact that in the case the controversy arose due to the wrong multiplying factor of the meter by mistake which was held to be not a deficiency on the part of the Electricity Department.

- (xii) It was also pertinent to mention that the Respondent had raised an illegal and arbitrary demand of ₹ 29,31,360/- (₹ 13,63,824/- + ₹ 15,67,536/-) G57BS0100002 and ₹ 8,60,632/- (₹ 4,27,135/- + ₹ 4,33,497/-) G57BS0100004 for ED and IDF charges for the period 01/2016 to 10/2020. The Account No. 3007509007 of the Appellant was overhauled by Internal Audit vide Half Margin No. 61 dated 24.02.2021 and amount of ₹ 13,63,824/- was charged for the period from 09/2018 to 10/2020 as per Commercial Circular Nos. 38/2020 ad 39/2020. The Appellant

had deposited this amount. Similarly, another a/c no. 3007509008 of the Appellant was overhauled by Internal Audit vide Half Margin No. 62 dated 24.02.2021 amounting to ₹ 4,27,135/- for the period from 09/2018 to 10/2020 as per Commercial Circular Nos. 38/2020 and 39/2020. The Appellant had deposited this amount. The Audit Party again overhauled the Account No. 3007509007 of the Appellant vide Half Margin No. 51 dated 31.01.2022 and amount of ₹ 15,67,536/- was charged for the period from 01/2016 to 08/2018 as per Commercial Circular Nos. 38/2020 and 39/2020. Similarly, another Account No. 3007509008 was overhauled by the Audit Party vide Half Margin No. 50 dated 31.01.2022 and an amount of ₹ 4,33,497/- was charged for the period from 01/2016 to 08/2018 as per CC Nos. 38/2020 and 39/2022. The Appellant did not agree with the amount charged to both its connections.

- (xiii) The impugned order dated 17.08.2022 was liable to be set aside on the sole grounds that the same was passed by overlooking Article 287 of the Constitution of India which clearly provides that no law of the state shall impose or authorize the imposition of a tax on the consumption of sale of electricity (whether produced by the Government or other persons) which was consumed by the Government of India or sold to the

Government of India for consumption by that Government and further it was provided that any such law imposing or authorizing the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India, shall be less by the amount of the tax than the price charged to the other consumers. A relevant article 287 of the Constitution of India was reproduced for the proper adjudication of the present Appeal, which was overlooked by the Corporate Forum while passing the impugned order:-

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

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

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

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any

railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.”

- (xiv) In a case whereby the Electricity Department/ erstwhile PSEB was levying Octroi on Union of India and UOI aggrieved by the action of the erstwhile Punjab State Electricity Board demanding Octroi on electricity consumed by the Union of India, the same was challenged by way of filing CWP No. 2225 of 2001 titled as Union of India Vs Punjab State Electricity Board and others reported as 2017 (1) PLR 237 the Hon’ble Punjab and Haryana High Court, Chandigarh held that the levy of Octroi on Union of India is barred and the demand of the Octroi is held to be illegal in view of the Article 287 of the Constitution of India reproduced supra.
- (xv) CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 on the basis of which the PSPCL was charging the ED and IDF were also liable to be set aside being *ultra vires* to the Article 287 wherein, it did not classify between offices and the residential buildings, emphasis was further laid that residential buildings in the Cantonment Area were meant for the employees of the Central Government doing public functions comes under the ambit of the definition Government

of India for the purpose of getting exemption from ED and IDF. The Circulars of the PSPCL/Respondent on the basis of which the tax in the shape of ED and IDF were being charged were totally contrary to the nexus achieved by Article 287 of the Constitution of India and impugned order dated 17.08.2022 which was passed without considering the same requires to be set aside.

(xvi) In spite of the facts mentioned above, the Appellant was continuously paying Electricity Duty and Infrastructure Development Fund charges provisionally from December, 2020 and arrears for the month of September, 2020 and November, 2020 had also been paid provisionally in view of the above stated circulars.

(xvii) An opportunity of hearing may kindly be granted to the Appellant before passing the order in the present Appeal.

(xviii) Therefore, it was respectfully prayed that the impugned order dated 17.08.2022 may kindly be set aside and further the PSPCL/Respondent may kindly be directed to waive off the Electricity Duty and Infrastructure Development Fund (ED & IDF) amounting to ₹ 29,31,360/- (₹ 13,63,824/-+ ₹ 15,67,536/-) G57BS0100002 (a/c no. 3007509007) and ₹ 8,60,632/-

(₹ 4,27,135/- + ₹ 4,33,497/-) G57BS0100004 (a/c no. 3007509008) and the amount already deposited by the Appellant may kindly be directed to be refunded or adjusted in the future bills. Further, the PSPCL may kindly be directed not to charge Electricity Duty (ED) and Infrastructure Development Funds (IDF) in the future bills till the final decision from this Court was taken in the present Appeal.

(b) Submission made in the Rejoinder

The Appellant submitted the following Rejoinder for consideration of this Court:-

- (i) It was already submitted that as per Article 287 of Constitution of India **“No law of State shall impose or authorize the imposition of tax on consumption or sale of electricity (whether produced by Govt. or other persons) which is consumed by Govt. of India or sold to Govt. of India for consumption by the Govt.”** and residents of military area were also occupying Govt. accommodation in the interest of State and no any ED & IDF charges were applicable to the occupants. Hence the demand raised was incorrect as per Articles 287 of Constitution of India.
- (ii) Further, as per Electricity Supply Instructions Manual, 2018 (ESIM) Para 93.2 where it is clearly mentioned that **“Under**

Section 56 (2) of the Act, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied” as imposition of ED & IDF were decided vide CC No. 38 dated 02.09.2020 & 39 dated 30.09.2022 and not regularly shown continuously recoverable as arrear of charge in any previous electric bills, hence ED & IDF charges amounting to ₹ 15,67,436 (A/c No. 3007509007) and ₹ 4,33,397/- (A/c No. 3007509008) was incorrect/unjustified as per Limitation Act.

- (iii) The matter was taken up with various Higher Authorities of the Respondent as mentioned in the Appeal but no reply was received. Hence, the Appellant had approached the Corporate Forum.
- (iv) It was again submitted that the judgment of Hon'ble Supreme Court dated 05.10.2021 delivered in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Virtran Nigam Ltd. was relating to the case of wrong multiplying factor of meter by mistake which was irrelevant with the Appellant's case as the imposition of ED & IDF was decided vide CC No. 38 dated 02.09.2020 & CC No. 39 dated 30.09.2020 and

amount of ₹ 15,67,436 (A/c No. 3007509007) and ₹ 4,33,397/- (A/c No. 3007509008) were not regularly shown continuously recoverable as arrear of charge in any previous electric bills.

- (v) It was submitted that limited number of families are residing in the Garrison and rotated on regular basis due shortage of accommodation. The families are residing not willfully but due to current employment of their better half in the Military Garrison and move over the Men & Women in the Armed Forces belong to various parts of the Country where they are already paying the respective electricity taxes of the State. Therefore, charging of electricity duty on domestic load as per pro-rata basis will be dual deduction to the residents.
- (vi) PSPCL Commercial Circular No. 38/2020 and CC No. 39/2020 and letter issued by Govt. of Punjab, Electricity Department, Urjashakha Memo No. 11/62/2079-2384 dated 31.10.2019 were/ are incorrect as per Article 287 Constitution of India.

(c) Submission during hearing

During hearing on 19.10.2022/ 28.10.2022, the Appellant's Counsel (AC) reiterated the submissions made in the Appeal as well as in the Rejoinder. AC confirmed that the electricity consumption bills of the residential colonies in the Cantonment

Areas are being regularly recovered from its occupants by the Appellant. AC omitted Respondent No. 1 (Principal Secretary/ Power, Govt. of Punjab) as the same was not made a party in the petition filed before Corporate Forum.

(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 is a prime Bulk Supply consumer of the Respondent having Connection No. G57BS0100002 (Account No. 30007509007) and G57BS0100004 (Account No. 30007509008) fed from 66 kV Sub Station, Sujampur. It was correct that Respondent had raised electricity Bill No. 20210316020044 dated 31.03.2021 and Bill No 20210316020045 dated 31.03.2021, Memo No. 338 dated 01.03.2021 and Memo No. 339 dated 01.03.2021 with ED charges (as Sundry Charges) amounting to ₹ 13,63,824-00 (September, 2018 to October, 2020) and amounting to ₹ 427135-00 (September, 2018 to October, 2020) which were paid on 30th March, 2021 but it was absolutely incorrect to allege that sundry charges which were levied by the Punjab

State Power Corporation Limited were totally irregular and not justified rather same were very much legal and the Appellant was liable to make payment of the same.

- (ii) There was no denial of fact that after SDO/ DS S/D, Sujapur had issued Bill No. 50016732671 dated 22.03.22 and HM No. 51 dated 31.01.2022 with ED charges (as sundry charges) for an amount of ₹ 15,67,536/- (January, 2016 to August, 2018) and Bill No. 51210221277 dated 22.03.22 and HM No. 50 dated 31.01.2022 with ED charges (as sundry charges) for an amount of ₹ 4,33,497-00 (January, 2016 to August, 2018) as per CC No. 38/2020 dated 02/09/2020 and CC No. 39/2020 dated 30/09/2020 as calculated by the Internal Audit of the Respondent. In reply to remaining allegations that as per HM No. 51, HM No. 50 and Section 17(1)(c) of the Limitation Act, 1963 "In case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time", it was submitted that the same was not applicable in instant matter. In reply to remaining allegations that after receiving allegedly exaggerated/inflated electricity bill dated 22.03.2022, the Appellant approached SDO/ DS S/D, Sujapur vide their office letter no. 4000/Elect. Bill/38/E4 dated 30th March, 2022 and had requested to generate the bills after excluding the

sundry charges by giving specific reasons that the Appellant would not be able to pay the sundry charges amounting to ₹ 15,67,536-00 and amounting to ₹ 4,33,497-00 for the reason that the mistake was first discovered vide HM No. 51 dated 31.01.2022 and HM No. 50 dated 31.01.2022 hence the amount shall be recovered from 01.03.2021 onwards, it was explained to officials of Appellant that contention raised by them was not applicable in instant matter and as such, they were liable to make payment of sundry charges amounting to ₹ 15,67,536-00 and ₹4,33,497-00. It was incorrect to allege that amount already deposited under the Bill No. 20210316020044 dated 31.03.2021 and Bill No 20210316020045 dated 31.03.2021 amounting to ₹ 13,63,824-00 (September, 2018 to October, 2020) and amount of ₹ 4,27,135-00(September, 2018 to October, 2020) was liable to be refunded/ adjusted in future bills.

- (iii) There was no denial of fact that bills were issued by the Respondent i.e. Bill No. 50214439984 dated 23.04.2022 and Bill No. 50214439985 dated 23.04.2022 with previous month arrear ₹ 15,59,518-00 and ₹ 4,30,139-00 (levying penalty on the amount of arrear for ED charges i.e. ₹ 13,63,824-00 and ₹ 4,33,497-00).

- (iv) It was correct that the Appellant had approached the Corporate Consumer Grievances Redressal Forum, Ludhiana vide its office letter no. 4000/Elect. Bill/38/E4 dated 30th March, 2022 against the claim of Respondents but it was submitted that demand of the Respondents was very much legal one and as such, it was incorrect to allege that the Appellants were forced to approach Corporate Forum vide its office letter no. 4000/Elect. Bill/38 /E4 dated 30th March, 2022 against the claim of the Respondents.
- (v) The Corporate Forum had intimated to the Appellant vide memo no. 1158/T-97/2022 dated 22.06.2022 for attending pre-hearing on 11.07.2022 at the Corporate Forum for deciding the amount to be got deposited for case registration. It was incorrect to allege that Corporate Forum had not considered the contentions of the Appellant under the provisions of the Electricity Supply Instructions Manual, 2018 wherein it was provided under Para 93.2 that as per Section 56 (2) of the Electricity Act, 1956, no sum due from any consumer shall be recoverable after the period of two years from the date when sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. It was incorrect to allege that justified request for

waiving off the ED and IDF charges amounting to ₹ 29,31,360/- (₹ 13,63,824-00 + ₹ 15,67,536-00) and amounting to ₹ 8,60,362-00 (₹ 4,27,135-00 + ₹ 4,33,497-00) was not considered by the Corporate Forum and was decided arbitrarily and illegally in favour of the Respondents. Rather the demand of the Appellant was not tenable in the eyes of law.

- (vi) In fact, the arrear in question was pointed out by Audit Party for the first time vide Half Margin no. 51 dated 31.01.2022. It was further submitted that amount of ₹ 15,67,536-00 (for the period 01/2016 to 08/2018) was raised vide Half Margin no. 50 dated 31.01.2022. It was further submitted that amount of ₹ 4,33,497-00 (for the period 01/2016 to 08/2018) was the amount which PSPCL had earlier not demanded from the Appellant due to error and the same was demanded vide memo no. 396 dated 02.03.2022 .and memo no. 397 dated 02.03.2022. Similarly vide Half Margin no. 61 dated 24.02.2021, an amount of ₹ 13,63,824-00 and vide Half Margin no. 62 dt 24.02.2021, an amount of ₹ 4,37,135-00 was charged for the period from 09/2018 to 10/2020 and was demanded by PSPCL vide memo no. 338 dated 01.03.2021 and memo no 339 dt. 01.03.2021 for the first time as same was the amount which PSPCL had earlier not demanded from the Appellant due to error.

(vii) The Appellant had raised objection regarding period of limitation in instant matter and clarification of said point is that Section 56(2) of the Electricity Act, 1956 did not preclude the Licensee Company from an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bonafide error. It did not, however, empower the Licensee Company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand. As per Section 17(1)(c) of the Limitation Act, 1963, in case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

(viii) Even Hon'ble Supreme Court's in its decision dated 05.10.2021 delivered in Civil Appeal No. 7235/2009 titled as M/s. Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd. observed in para 24 & 25 as follows:

"24. Sub Section (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the

part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

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

(ix) So keeping in view above said observations of Hon'ble Supreme Court, amount charged to the Appellant on account of ED & IDF on the power consumed by residents residing in the residential colonies, was not time barred and was justified and recoverable.

(x) The Corporate Forum had passed final speaking order dated 17.08.2022 against the Appellant but it was incorrect to allege that same was passed arbitrarily, illegally and without considering the actual purport of the provisions and also without considering the facts and circumstances of the matter.

It was correct that the Corporate Forum while deciding the application filed by the petitioner returned the decision against the appellants holding that the amount of ₹ 15,67,536-00 added in the electricity Bill No. 50016732671 dated 22/03/2022, ₹ 4,33,497-00 added in Bill No. 15210221277 dated 22.03.22

and amount of ₹ 13,63,824-00 Bill No. 20210316020044 dated 31.03.2021, ₹ 4,27,135-00 Bill No. 20210316020045 dated 31.03.2021 as sundry charges were correct and recoverable. It was further correct that the Corporate Forum while passing speaking order dated 17.08.2022 had relied heavily on the Hon'ble Supreme Court decision dated 05.10.2021 delivered in CA 7235 of 2009 titled M/s. Prem Cottex Vs UHBVNL but it was incorrect to allege that same decision was not applicable to the facts and circumstances of the present case. In reply to remaining allegation of same para of the Appeal, it was submitted that it is incorrect to allege that the above- mentioned judgment relied upon by the Corporate Forum while deciding the case had made an error or overlooked the fact that in that case the controversy arose due to the allegedly deficiency on the part of the Electricity Department.

- (xi) It was incorrect to allege that the Respondent had raised an illegal or arbitrary demand of ₹ 29,31,360-00 and amounting to ₹ 8,60,362-00 for ED and IDF charges for the period January, 2016 to October, 2020 or the action of the Respondents in charging ED and IDF as sundry charges in electricity bill dated 12.01.2022 was also bad in law as the monetary liability had been fasten upon the Appellant without any locus and that too

retrospectively w.e.f. January, 2016 or the Appellant who was the Central Government Organization under the Ministry of Defence being a Public Authority was compelled to pay the huge and arbitrary amount out of the public money which was to be spent on various Centrally sponsored multifarious activities which was not sustainable in the eyes of law. Moreso, when there was no fault on the part of the Appellant, the Appellant was paying the electricity bills as demanded by the Respondent. It was submitted that the Respondent was performing duties of State & cannot run its affairs without money.

- (xii) It was incorrect to allege that order dated 17.08.2022 was liable to be set aside on the sole grounds that the same was passed by overlooking Article 287 of the Constitution of India which clearly provides that no law of the State shall impose or authorize the imposition of a tax on the consumption of sale of electricity (whether produced by the Govt. or other persons) which was consumed by the Govt. of India or sold to the Govt. of India for consumption by that Govt. and further it was provided that any such law imposing or authorizing the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Govt. of India, shall be less by

the amount of the tax than the price charged to the other consumers. It was submitted that when Article 287 of the Constitution of India & CC No. 38 dated 02.09.2020 as well as CC No. 39 dated 30.09.2020 were read together picture became more clear. It was pertinent to mention that vide above said circulars, instructions were issued to the effect that Electricity Duty shall be levied on the residential colonies of Central Govt. organizations and that electricity duty cannot be exempted on the power consumed by the residents residing in the residential colonies owned by the Govt. of India (Army, Railway, BSF, etc.). Further, Memo No. 220-225 /RG-366/ED/SV/V-14 dated 30.09.2020 was issued for clarification regarding Bulk Supply connection of Railway, BSF, Army, Central Government institution etc. and the said instructions are as under :-

“It is observed that many connections of the Central Govt. institutions are released under Bulk supply category, which comprises of mixed load of Domestic as well as motive/industrial load subject to minimum of 25% domestic load. Therefore, Electricity Duty be charged on pro-rata basis of total consumption of Bulk Supply connection on the basis of percentage of sanctioned residential/colony load (as per registered A&A Form) subject to a minimum of 25% to total sanctioned load.”

So, it was submitted that electricity duty was not exempted to the consumers who are residing in colonies where electricity was being consumed by them from Bulk Supply connection of Railway, BSF, Army, Central Government Institution etc. Even Government of Punjab, Electricity Department (Energy Branch) had issued letter bearing memo no. 11/62/2019 in this regard to Chief Electrical Inspector, Punjab.

- (xiii) It was incorrect to allege that CC No. 38 dated 02.09.2020 and CC No. 39 dated 30.09.2020 on the basis of which the Respondent was charging the ED and IDF were also liable to be set aside allegedly being ultravires to Article 287 wherein it does not classify between offices and the residential buildings, emphasis was further laid that residential buildings in the Cantonment Area were meant for the employees of the Central Govt. doing public functions come under the ambit of the definition of Govt. of India for the purpose of getting exemption from ED and IDF. It was incorrect to allege that the circulars of the PSPCL/Respondent on the basis of which the tax in the shape of ED and IDF was being charged was totally contrary to the nexus achieved by Article 287 of the Constitution of India or order dated 17.08.2022 which was

allegedly passed without considering the same requires to be set aside.

- (xiv) The Appellant was bound to pay Electricity Duty and Infrastructure Development Funds to the Respondents as per law.

In view of the above, the Appeal of the Appellant was liable to dismissal and may kindly be dismissed with costs.

(b) Submission during hearing

During hearing on 19.10.2022/ 28.10.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal. The Respondent confirmed that the requisite 40% of the disputed amount has been deposited by the Appellant. The Respondent also confirmed that the Electricity Duty (ED) & Infrastructure Development Fund (IDF) were used to be charged regularly to the Appellant before 01/2016 and after 10/2020. The Respondent could not give satisfactory reply for not charging ED/IDF during the disputed period (01/2016 to 10/2020).

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the amount of ₹ 13,63,824-00 for the period from 09/2018 to 10/2020 and ₹

15,67,536-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509007 and amount of ₹ 4,27,135-00 for the period from 09/2018 to 10/2020 and ₹ 4,33,497-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509008 of the Appellant and subsequently added in the bills as Sundry Charges on account of Electricity Duty & IDF in accordance with Commercial Circular Nos. 38/2020 & 39/2020.

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

- (i) The Appellant's Counsel (AC) reiterated the submissions made in the Appeal. He pleaded that the disputed amount of Electricity Duty & IDF charged to the Appellant were totally irregular, not justified and were not agreed/ accepted by the Appellant's office. The Corporate Forum had not considered the contentions of the Appellant. It specifically pointed out the provisions of the ESIM-2018, wherein it was provided under Instruction No. 93.2 that as per Section 56 (2) of the Electricity Act, 2003, no sum due from any consumer shall be recoverable after the period of two years from the date when sum became first due, unless such sum had been shown continuously as recoverable as arrears of charges for electricity supplied.

Therefore, in view of the above stated provision of law, the imposition of ED and IDF were only demanded with the electricity bills dated 12.01.2022 in view of CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 which was not shown regularly and continuously recoverable as arrears of charges in any of the previous electricity bills. However, despite of that, justified request for waiving off the ED and IDF charges amounting to ₹ 29,31,360-00 (₹ 13,63,824-00 + ₹ 15,67,536-00) in respect of Account No. G57BS0100002 and ₹ 8,60,632-00 (₹ 4,27,135-00 + ₹ 4,33,497-00) in respect of Account No. G57BS0100004 was not considered by the Corporate Forum and the case was decided arbitrarily and illegally in favour of the Respondent. The Forum while passing impugned speaking order dated 17.08.2022 had relied heavily on the Hon'ble Supreme Court decision dated 05.10.2021 delivered in CA 7235 of 2009 titled M/s. Prem Cottex Vs UHBVNL. However, the facts of that case were not applicable to the facts and circumstances of the present case. In the abovementioned judgment, the dispute arose due to the deficiency on the part of the Electricity Department. The Respondent had raised an illegal and arbitrary demand of ₹ 13,63,824-00 for the period from 09/2018 to

10/2020 and ₹ 15,67,536-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509007 and amount of ₹ 4,27,135-00 for the period from 09/2018 to 10/2020 and ₹ 4,33,497-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509008 on account of ED and IDF charges. It was a matter of record that the Respondent had not demanded any ED and IDF charges and the same was also not reflected in the bills continuously and regularly as an arrear of bills by the Respondent, till the issuance of the CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020. The action of the Respondent in charging ED and IDF as Sundry Charges in electricity bills dated 12.01.2022 was also bad in law as the monetary liability had been fastened upon the Appellant without any locus standi and that too retrospectively w.e.f. 01/2016. The Appellant was the Central Government Organization under the Ministry of Defence. He pleaded that the impugned order dated 17.08.2022 was also liable to be set aside on the sole ground that the same was passed by overlooking Article 287 of the Constitution of India which clearly provided that no law of the State shall impose or authorize the imposition of a tax on the consumption of sale of electricity (whether produced by the Govt. or other persons)

which was consumed by the Govt. of India or sold to the Govt. of India for consumption by that Govt. Further, it was provided that any such law imposing or authorizing the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Govt. of India, shall be less by the amount of the tax than the price charged to the other consumers. The Electricity Department/erstwhile PSEB was levying octroi on Union of India and UOI aggrieved by the action of the erstwhile PSEB, challenged the same by way of filing CWP No. 2225 of 2001 in case titled *Union of India Vs PSEB and Others reported as 2017 PLR 237*, in which the Hon'ble Punjab and Haryana High Court, Chandigarh held that *levy of octroi on Union of India is barred and the demand of the octroi is held to be illegal in view of the Article 287 of the Constitution of India* reproduced supra. CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 on the basis of which the PSPCL was charging the ED and IDF were also liable to be set aside being ultravires to Article 287 wherein it did not classify between offices and the residential buildings, emphasis was further laid that residential buildings in the Cantonment Area were meant for the employees of the Central Govt. doing Public functions came under the ambit of the definition of

Govt. of India for the purpose of getting exemption from ED and IDF. He prayed that the impugned order dated 17.08.2022 may kindly be set aside. Further the Respondent may kindly be directed to waive off the Electricity Duty and Infrastructure Dev. Fund (ED & IDF) amounting to ₹ 29,31,360-00 and ₹ 8,60,632-00 already deposited by the Appellant. The Respondent may kindly be directed to refund or adjust the amount in the future bills. Also, PSPCL may kindly be directed not to charge Electricity Duty (ED) and Infrastructure Dev. Fund (IDF) in future bills till the final decision from this Court was taken on the present Appeal.

- (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 it was absolutely incorrect to allege that sundry charges which were levied by the PSPCL were totally irregular & not justified rather same were very much legal one and the Appellant was liable to make payment of the same. He argued that it was incorrect to allege that justified request for waiving off the ED and IDF charges amounting to ₹ 29,31,360-00 (₹ 13,63,824-00 + ₹ 15,67,536-00) and ₹ 8,60,632-00 (₹ 4,27,135-00 + ₹ 4,33,497-00) was not considered by the Corporate

Forum, Ludhiana and was decided arbitrarily and illegally in favour of the Respondent. Rather demand of the Appellant was not tenable in the eyes of law. The facts of the matter was that arrears in question were pointed out by Audit Party for the first time vide Half Margin No. 51 dated 31.01.2022 and Half Margin No. 50 dated 31.01.2022. It was further submitted that amount of ₹ 13,63,824-00 for the period from 09/2018 to 10/2020 and ₹ 15,67,536-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509007 and amount of ₹ 4,27,135-00 for the period from 09/2018 to 10/2020 and ₹ 4,33,497-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509008 of the Appellant was the amount which the PSPCL had earlier not demanded from the Appellant due to error and same was demanded vide bills dated 22.03.2022. The Appellant had raised objection regarding period of limitation in instant matter and clarification of the said point was that Section 56(2) of the Electricity Act, 2003 did not preclude the Licensee Company from an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bonafide error. It did not, however, empower the Licensee Company to take recourse to the coercive measure of disconnection of electricity

supply for recovery of the additional demand. As per Section 17(1)(c) of Limitation Act, 1963; in case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.” Even as per the observations of the Hon’ble Supreme Court in its decision dated 05.10.2021 delivered in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd., amount charged to the Appellant on account of ED & IDF on the power consumed by residents residing in the residential colonies, was not time barred and was justified and recoverable. It was also submitted that the Respondents were also performing duties of State & could not run its affairs without money. It was submitted that when Article 287 of the Constitution of India & CC No. 38/2020 dated 02.09.2020 as well as CC No. 39/2020 dated 30.09.2020 were read together, then picture became more clear. It was pertinent to mention that vide above said circulars, instructions were issued to the effect that electricity duty should be levied on the residential colonies of Central Government Organizations and that electricity duty could not be exempted on the power consumed by the residents residing in the residential colonies owned by the Government of India (Army, Railway, BSF etc.). Further, Memo No. 220-225/RG-366/ED/

SV/V-14 dated 30.09.2020 was issued for clarification regarding Bulk Supply connection of Railway, BSF, Army, Central Government Institution etc. It was submitted that the Appellant was duty bound to pay Electricity Duty and Infrastructure Development Funds to the Respondent as per law. He prayed that keeping in view above noted facts and circumstances, present Appeal of the Appellant was liable to be dismissed and may kindly be dismissed with costs.

- (iii) The Corporate Forum in its order dated 17.08.2022 observed as under:-

“Forum observed that PSPCL vide CC nos. 38 & 39/2020, issued instructions/clarification that levy of ED cannot be exempted on the power consumed by residents residing in residential colonies owned by the Govt. of India (Army, Railways, BSF etc.) and BS connections of Central Govt. institutions comprising of mixed load subject to minimum of 25% domestic load. As ED was not being charged to the petitioner’s accounts, so the Account of the petitioner (A/c no. 3007509007) was overhauled by Internal Audit vide Half Margin no. 61 dated 24.02.2021 and amount of Rs. 1363824/- was charged for the period from 09/2018 to 10/2020, as per Commercial Circular no. 38/2020 and 39/2020. Petitioner deposited this amount online along with the bill of 03/2021 on 24.03.2021. Audit Party again overhauled the account of the petitioner vide Half Margin no. 51 dated 31.01.2022 amounting to Rs. 1567536/- for the period from 01/2016 to 08/2018 as per Commercial Circular no. 38/2020 and 39/2020. Petitioner was intimated by AEE/Sujanpur vide Memo

No. 396 dated 02.03.2022 and the amount was also charged in bill of month 03/2022.

Similarly, another account no. 3007509008 of the petitioner was overhauled by Internal Audit vide Half Margin no. 62 dated 24.02.2021 amounting to Rs. 427135/- for the period from 09/2018 to 10/2020. Petitioner deposited this amount online along with the bill of 03/2021 on 24.03.2021. Audit Party again overhauled this account vide Half Margin no. 50 dated 31.01.2022 amounting to Rs. 433497/- for the period from 01/2016 to 08/2018 as per Commercial Circular no. 38/2020 and 39/2020. Petitioner was intimated by AEE/Sujanpur vide Memo No. 397 dated 02.03.2022 and the amount was also charged in bill of month 03/2022.

Petitioner did not agree to the amount charged to both his above connections and filed a case in the Forum.

Petitioner in his petition contended that *"It is clearly mentioned in the letter of SDO S/D PSPCL office, in case of mistake the limitation period begins to run from the date when the mistake is discovered for the first time"*.

Therefore, the amount charged is not justified. Petitioner also submitted that as per article 287 of Constitution of India **"No law of state shall impose or authorized the imposition of tax on consumption or sale of electricity (Whether produced by Govt or other Persons) which is consumed by Govt of India or sold to Govt of India for consumption by the Government"** and resident of cantonment area are also occupied Govt accommodation in the interest of state and no any ED & IF charges are applicable to the occupants.

During proceedings petitioner was asked that the above article 287 of Constitution of India does not exempt the resident residing in the residential colonies to which petitioner admitted that they are now paying the ED & IDF regularly as charged in the bills but pleaded that the

sundry charges of previous period may be waived off being time-barred.

Respondent stated that in the half margin it is mentioned that the Legal section of the PSPCL vide its U.O. no. 1248 dated 27.10.2021 addressed to Chief Engineer Commercial, Patiala has clarified about the period of limitation, as under:

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

Respondent was asked to submit the copy of the above clarification during discussion and he submitted the copy of the same.

Forum observed that vide CC no. 38 & 39/2020 only clarification has been issued regarding levy of ED & IDF, which was discontinued to such consumers due to one reason or other. This mistake was noticed and instructions were issued vide above circulars on dated 02.09.2020 & 30.09.2020.

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

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

"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to

*Subsection (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity** or any sum other than a charge for electricity. **What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.***

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

From the above, Forum observed that as per CC no. 38/2020, the levy of ED cannot be exempted on the power consumed by the residents residing in the residential colonies owned by Govt of India (Army, Railway, BSF etc.), therefore the amount has been rightly charged. Further the same cannot be considered as time barred in the light of the decision of Hon'ble Supreme Court delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd. Therefore, Forum is of the opinion that amount charged to the petitioner on a/c of ED & IDF on the power consumed by residents residing in the residential colonies, is not time barred and is justified and recoverable.

Keeping in view the above, Forum came to unanimous conclusion that amount of Rs. 1363824/- for period from 09/2018 to 10/2020 vide notice no. 338 dated 01.03.2022 & Rs. 1567536/- for period from 01/2016 to 08/2018 vide notice no. 396 dated 02.03.2022, charged to a/c no. 3007509007 and amount of Rs. 427135/- for

period from 09/2018 to 10/2020 vide notice no. 339 dated 01.03.2022 and Rs. 433497/- for period from 01/2016 to 08/2018 vide notice no. 397 dated 02.03.2022, charged to a/c no. 3007509008, on account of Electricity Duty, is correct and recoverable”.

- (iv) I have gone through the written submissions made by the Appellant in the Appeal and Rejoinder, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 19.10.2022/ 28.10.2022. It is observed by this Court that the Department of Power (Energy Branch), Govt. of Punjab vide its letter to the Chief Electrical Inspector, Patiala which was endorsed to the Licensee vide endst. No. 11/62/2019-EB4/1688 dated 10.08.2020 for information and necessary action, clarified as under:

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

Taking action on the above clarification by the Govt. of Punjab (authority to levy or exempt ED & IDF), the Licensee issued Commercial Circular No. 38/2020 dated 02.09.2020 for the meticulous compliance of the above instructions by the field officers of the PSPCL. Further, it was clarified by the PSPCL vide Commercial Circular No. 39/2020 dated 30.09.2020 that in case of Bulk Supply connections to Government of India,

ED be charged on pro-rata basis on the basis of percentage of sanctioned residential/colony load (as per registered A&A Form) subject to a minimum of 25% to total sanctioned load.

- (v) On the basis of these Commercial Circulars, the Respondent charged ₹ 13,63,824-00 for the period from 09/2018 to 10/2020 and ₹ 15,67,536-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509007 and amount of ₹ 4,27,135-00 for the period from 09/2018 to 10/2020 and ₹ 4,33,497-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509008 of the Appellant and subsequently added in the bills as Sundry Charges. The Appellant contended that the amount charged was time barred as per Section 56 (2) of Electricity Act, 2003. I don't agree with this contention of the Appellant as the Supreme Court of India had decided this issue in the Civil Appeal No. 7235 of 2009 titled as M/s. Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd. &Ors. Hon'ble Supreme Court in para 24 & 25 of this judgment observed as follows:

*"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by***

section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

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

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

- (vi) The Appellant pleaded that Hon'ble Supreme Court's ruling was not relevant in the present case as the facts of the case were different. In my opinion, this Supreme Court ruling on Section 56 (2) of Electricity Act, 2003 is very clear and relevant to the present case also.
- (vii) The Appellant also contended that the Commercial Circular Nos. 38/2020 & 39/2020 were ultravires to the Article 287 of the Constitution of India as residential buildings in the Cantonment Area meant for the employees of the Government of India came under the ambit of the definition of Government of India for the purpose of getting exemption from ED & IDF.

In this regard, I am of the opinion that Government of Punjab had clarified regarding this to the Licensee vide Endst. No. 11/62/2019-EB4/1688 dated 10.08.2020 and the Licensee had acted accordingly.

(viii) The Respondent confirmed that the Electricity Duty (ED) & Infrastructure Development Fund (IDF) were used to be charged regularly to the Appellant before 01/2016 on the basis of information provided by the Appellant regarding the number of electricity units consumed by the residential colonies in the Cantonment Area and after 11/2020, ED/IDF have been regularly charged to the Appellant as per Commercial Circulars (38/2020 & 39/2020). The Respondent could not give satisfactory reply for not charging ED/IDF during the disputed period. This is a serious lapse on the part of officials/ officers of the Licensee.

(ix) Electricity Duty (ED) is being levied as per The Punjab Electricity (Duty) Act, 2005. As per this Act, the State Government may, in public interest by notification in the Official Gazette, exempt any licensee, consumer or person from the payment of the whole or part of the electricity duty for such period and subject to such conditions as may be specified in such notification. Punjab Govt. had already clarified regarding

levy of Electricity Duty on the residential colonies of the Central Govt. organisations vide Endst. No. 11/62/2019/EB4/1688 dated 10.08.2022 and ED is leviable to the Appellant as per this letter. The Appellant may approach Punjab Govt. in case levy of ED/IDF is to be got exempted in future for electricity consumption in residential colonies. The Licensee is not empowered to exempt ED/IDF applicable to the Appellant.

- (x) AC confirmed during hearing on 19.10.2022 that the electricity consumption bills of the Residential Colonies in the Cantonment Areas are being regularly recovered from its occupants by the Appellant. It is felt that ED/IDF levied during the period in dispute shall also be recovered from the occupants of residential colonies by the Appellant and burden on this account shall not pass on to Govt. of India (Central Govt.).
- (xi) In view of the above, this Court is not inclined to differ with the decision dated 17.08.2022 of the Corporate Forum in Case No. CF-073 of 2022. The amount of ₹ 13,63,824-00 for the period from 09/2018 to 10/2020 and ₹ 15,67,536-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509007 and amount of ₹ 4,27,135-00 for the period from 09/2018 to 10/2020 and ₹ 4,33,497-00 for the period from 01/2016 to 08/2018 charged to Account No. 3007509008 and

subsequently added in the bills as Sundry Charges on account of Electricity Duty & IDF in accordance with Commercial Circular Nos. 38/2020 & 39/2020 are correct and hence fully recoverable.

6. Decision

As a sequel of above discussions, the order dated 17.08.2022 of the CCGRF, Ludhiana in Case No. CF-073 of 2022 is hereby upheld.

7. The Appeal is disposed of accordingly.

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

9. In case, the Appellant or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the Appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016.

October 28, 2022
S.A.S. Nagar (Mohali)

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