

**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. 56/2022

**Date of Registration : 17.10.2022
Date of Hearing : 28.10.2022/02.11.2022
& 07.11.2022
Date of Order : 07.11.2022**

Before:

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

In the Matter of:

M/s. JSW Vallabh Tinsplate Pvt. Ltd.,
Village Bapraur, Rajpura-140401
Distt. Patiala.

Contract Account Number: 3003351710(LS)

...Appellant

Versus

Addl. Superintending Engineer,
DS Division, PSPCL,
Rajpura.

...Respondent

Present For:

Appellant: Sh. Anil Kapoor,
Appellant's Representative.

Respondent : Er. Deepak Goel,
Addl. Superintending Engineer,
DS Division, PSPCL,
Rajpura.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 15.09.2022 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-077 of 2022, deciding that:

“Amount of Rs. 11146114/- charged to petitioner vide notice no. 1748 dated 20.08.2021 is correct and recoverable.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 17.10.2022 i.e. within the stipulated period of thirty days of receipt of the decision dated 15.09.2022 of the CCGRF, Ludhiana in Case No. CF-077 of 2022, received by the Appellant on 21.09.2022. The requisite 40% of the disputed amount was deposited. Therefore, the Appeal was registered on 17.10.2022 and copy of the same was sent to the Addl. SE/ DS Division, PSPCL, Rajpura for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 1131-1133/OEP/A-56/2022 dated 17.10.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 28.10.2022 at 11.30 AM and intimation to this

effect was sent to both the parties vide letter nos.1141-42/OEP/A-56/2022 dated 19.10.2022. As scheduled, the hearing was held in this Court and copies of proceedings dated 28.10.2022 were sent to both the parties vide letter nos. 1184-1185/OEP/A-56/2022 dated 28.10.2022. During hearing both the parties reiterated the submissions made in the Appeal/ Written reply. The next date of hearing was fixed for 02.11.2022 at 01.00 PM. Hearing could not be held on 02.11.2022 due to non-appearance of Appellant's Counsel due to strike of Lawyers. Next date of bearing was fixed for 07.11.2022 at 12.00 Noon. Copies of proceedings dated 02.11.2022 were sent to both parties vide letter nos. 1215-1216/OEP/A-56 /2022 dated 02.11.2022. During hearing on 07.11.2022, the Respondent submitted Memo No. 7490 dated 04.11.2022 which was taken on record. The Appellant's Representative submitted an application which was also taken on record. Arguments of both parties were heard.

4. Submissions made by the Appellant and the Respondent

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral deliberations made by the

Appellant's 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 a Large Supply Category connection with Sanctioned Load as 9000 kW/ CD as 10000 kVA under DS Divn., Rajpura bearing Account No. 3003351710 in the name of M/s. JSW Vallabh Tinplate Pvt. Ltd.
- (ii) An agreement was signed in 2011 by the Appellant for supply of electricity through a Cluster Sub-Station of M/s. Vardhman Industries Ltd. & M/s. JSW Vallabh Tinplate Pvt. Ltd. having Sanctioned Load/ CD of 4799.687kW/4500kVA & 7500kW/5000kVA respectively i.e. for a total Load/CD of 12299.687 kW/ 9500kVA with M/s. Vardhman Industries as leader of the cluster.
- (iii) On 01.09.2015, M/s. Vallabh Tinplate Ltd. vide letter no. 13305 alongwith requisite A&A form had requested for extension of their CD from 5000 kVA to 7000 kVA and M/s. Vardhman Industries Ltd. had requested for reduction of their CD from 4500 kVA to 2500 kVA and revised A&A forms were

approved accordingly. As a result of which total CD of the cluster remained 9500 kVA.

- (iv) Thereafter, on 29.12.2017, M/s. Vardhman Industries Ltd. submitted a request for reduction of their CD from 2500 kVA to 600 kVA vide A&A Form No. 11664-A by depositing ₹ 2500/-. On 08.02.2018 vide his office Memo No. 1482/LS-356-PTA, CE/DS (South), Patiala approved Revised A&A forms for reduced CD w.e.f. 17.01.2018.
- (v) As a result of which total CD of the cluster became 7600 kVA (7000 kVA + 600 kVA). Accordingly, from billing cycle 03/2018 onwards, CD limit for the Cluster having only two constituent consumers i.e. M/s. Vardhman Industries and Vallabh Tinsplate Ltd. was duly reflected as 600 kVA and 7000 kVA respectively.
- (vi) It would be most material to state that despite the fact that the two connections were under cluster category, however two separate bills in respect of each consumer were being issued by the PSPCL even prior to reduction of load in January, 2018.
- (vii) PSPCL had been levying and recovering surcharges for excess demand against the constituent members individually by considering their CD as 7000 kVA and 600 kVA for both the constituent members respectively. In the bill for July, 2021;

M/s. JSW Vallabh Tinplate Private Industries (constituent member) having CD limit of 7000 kVA out of the cluster CD limit of 7600 kVA (amended limit) was surcharged for excess demand to the extent of 1739 kVA amounting to ₹ 13,04,250/-.

- (viii) On 28.06.2021, CE/ Commercial had issued letter vide Memo No. 944 purportedly clarifying clause 4.3.3 of the Supply Code, 2014 amended up to date. The said letter impinges upon tariff issues and by misreading and misinterpreting 'Annexure-6 of ESIM 2018' holds that draft agreement can be valid only for the parameter/ conditions mentioned therein (i.e. CD of the Cluster Sub Station, CD of each member, applicability of various charges, etc.). The letter further stated that billing w.r.t. levying Fixed Charges is to be carried out on the basis of Sanctioned Contract Demand of the Cluster Sub Station.
- (ix) In a most surprising manner, apparently without looking into the records of the PSPCL, on 20.08.2021, the Assistant Executive Engineer notified M/s. JSW Vallabh Tinplate Pvt. Ltd. demand of ₹ 1,11,46,114/- which was to be deposited within 15 days.
- (x) On 02.09.2021, M/s. JSW Vallabh Tinplate Pvt. Ltd. replied to the notice to SDO/ Commercial, Rajpura dated 20.08.2021 and submitted that the CD of the Cluster Sub Station was decreased

from 9500 to 7600 kVA effective from January,2018 and the same was modified vide Memo No. 2039/41 dated 23.02.2018. Also, A&A form was duly executed and accepted by the PSPCL. Still further, it was replied that both units have been running their operation within the sanctioned revised Contract Demand. The bills were raised as per the tariff and payments were made.

- (xi) On 21.09.2021, again a notice by the Assistant Executive Engineer was sent to the Consumer relying upon a letter Memo No. 944 dated 28.06.2021 issued by the Chief Engineer/ Commercial and stated therein that with increase/ decrease of CD of any constituent consumer, then cluster agreement will not remain valid and for keeping the agreement valid it needs to be revised. The CE/Commercial's letter issued vide Memo No. 944 dated 28.06.2021 saying that the Fixed Charges are to be levied upon Contract Demand mentioned in the cluster agreement irrespective of accepted reduction/ increase of load. The copy of Memo No. 944 dated 28.06.2021 was not supplied to the Consumer.
- (xii) On 11.10.2021, M/s. JSW Vallabh Tinplate requested by a representation to the Chief Engineer/ DS (South) to look into the matter and on 18.10.2021, the Chief Engineer replied vide

Memo No. 9196/97, requesting M/s. JSW Vallabh Tinplate and Dy. CE/ DS Circle, Patiala to submit a detailed report so that the same could be put up before the Higher Authorities for consideration.

- (xiii) On 18.10.2021, again a notice by the Assistant Executive Engineer notified both industries to pay Fixed Charges amounting to ₹ 1,21,01,495/- non-payment of which within 7 days will result in disconnection of electrical supply.
- (xiv) On 25.10.2021, M/s. JSW Vallabh Tinplate replied to SDO stating that the current matter was under consideration with Higher Authorities i.e. the Chief Engineer/ DS (South), Patiala along with Memo No. 9196/97.
- (xv) On 10.11.2021, M/s. JSW Vallabh Tinplate Pvt. Ltd. informed the SDO/PSPCL that the demand of ₹ 1,11,46,114/- was to be challenged before the Corporate Forum, Patiala and to that respect twenty percent of the disputed amount was to be deposited. On 10.11.2021, twenty percent amount of ₹ 22,29,223/- was deposited in case of M/s. JSW Vallabh Tinplate Pvt. Ltd and thereafter complaint was filed on 17.12.2021.
- (xvi) The Forum dismissed the complaint filed by the Appellant/ Petitioner vide communication dated 21.09.2022. The

Appellant was not satisfied with the decision of the Corporate Forum and had filed the Appeal before this Court and further 20% of the disputed amount was deposited. On 29.09.2021, twenty percent amount i.e. ₹ 22,29,223/- was deposited in case of M/s. JSW Vallabh Tinplate Pvt. Ltd.

(xvii) The Forum had passed the impugned order dated 15.09.2022 without considering the evidence and pleadings of the Appellants. The said order was totally arbitrary, discriminatory apart from violating the fundamental provisions of law, mandatory provision of Electricity Act, 2003 and violated the regulations framed by the PSERC and also various instructions issued in this regard. The impugned order of the Forum was liable to be set aside inter-alia on the following grounds:-

A. Whether charges over and above, what are permitted under the law can be levied and recovered.

(i) The Forum had failed to consider the fact that the Consumer had already paid the electricity bills in accordance with the General Conditions of Tariff. The monthly consumption bills from the month of February, 2018 to August, 2021 consisting of both parts i.e. Fixed Charges and SOP concededly were issued by the PSPCL and not by the Consumer of its own. It was not a case that bills issued to the Consumer were against law or were violating any of the mandatory provisions.

- (ii) The Forum had failed to consider the fact that a simple letter by the CE/ Commercial cannot override the mandatory provisions of Electricity Act, 2003. Charges can only be recovered from a consumer in accordance with the Tariff Order and Regulations framed under the Act. Section 45 of the Electricity Act, 2003 is extracted below for ready reference:-

“Section 45. (Power to recover charges):- (1) *Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.*

(2) *The charges for electricity supplied by a distribution licensee shall be –*

(a) *fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;*

(b) *published in such manner so as to give adequate publicity for such charges and prices.*

(3) *The charges for electricity supplied by a distribution licensee may include*

(a) *a fixed charge in addition to the charge for the actual electricity supplied;*

(b) *a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.*

(4) *Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not*

show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.”

A perusal of above will clearly reveal that PSPCL being Distribution Licensee can only charge tariff determined by the PSERC and not even a penny more. The Fixed Charges so calculable on the basis of CD have already been billed and recovered through the monthly consumption bills. There is neither any provision in the Act nor any provision in any of the Regulation (including Supply Code) laying down that Fixed Charges are to be levied on the basis of Contract Demand mentioned in the draft cluster agreement.

- (iii) Upon passing of Tariff Orders for the respective years by the Hon'ble PSERC, the PSPCL had been circulating the same vide various circulars including CC Nos. 24/2019 and 27/2020. A perusal of the same will reveal that “Fixed Charges” for the LS Category (to which Complainant belongs) have been clearly and categorically specified, which can be levied on the sanctioned Contract Demand. The monthly bills raised against the complainant were strictly as per the Tariff fixed from time to time keeping in view the CD of the complainant. There was

no provision in either the tariff order or such Commercial Circulars providing of levy of Fixed Charges on the basis of Contract Demand mentioned in the draft cluster agreement. Accordingly, the Fixed Charges can be recovered only on the basis of individual sanctioned Contract Demand and not beyond it.

B. Whether Chief Engineer/ Commercial has any power/ jurisdiction to issue letter/ instruction having retrospective effect, that too in respect of tariff issues.

- (i) As mentioned above, charges can be recovered from any consumer in accordance with tariff order issued from time to time. No officer of the Distribution Licensee (PSPCL), howsoever high he may be, has power or authority to issue any instructions relating to tariff issues. Such instructions either in the form of Regulations or instructions manual having any adverse effect as far as tariff/ charges are concerned can only and only be issued by the PSERC.
- (ii) In a most arbitrary manner, the concerned AEE and/or Audit Branch had levied impugned charges with retrospective effect from February, 2018 on the basis of letter dated 28.06.2021. Such a course was not permissible in law. At the most, the CE/ Commercial can issue instructions to all concerned that in case of Cluster Sub Station, while enhancing or reducing Contract

Demand of member of Cluster Sub Station, such may be allowed only after/ simultaneously with the amendment of draft Cluster agreement.

(iii) It had been brought on record that right from inception in the year 2011, when the cluster agreement came into existence, the PSPCL had been sending separate electricity bills to the constituent members. Such, bills were always on the basis of individual sanctioned Contract Demand and not on the basis of draft cluster agreement. This practice continued even when dual tariff system came into existence and Fixed Charges as well as variable charges were being billed. All of a sudden, on the basis of 28.06.2021 letter, Fixed Charges on the basis of Contract Demand mentioned on the draft cluster agreement had been imposed retrospectively that too for a long period of more than 3 years w.e.f. February, 2018. PSPCL had not adopted the system of imposing Fixed Charges and billing on the basis of Draft Cluster Agreement. In any case, no action had been taken against the Billing Department which had been sending separate bills to both the Consumers even prior to reduction of load.

(iv) Furthermore, it had been demonstrated above by virtue of the bill for July, 2021, whereby M/s. JSW Vallabh Tinsplate Private

Industries (constituent member) having CD limit of 7000 kVA out of the cluster CD limit was surcharged for excess demand to the extent of 1739 kVA amounting to ₹ 13,04,250/-. Had combined CD mentioned on the cluster agreement be the guiding factor, then uptill 9500kVA no surcharge could have been levied. Thus, it was clear that the PSPCL was trying to blow hot and cold in the same breath.

C. Whether procedure prescribed for reduction of cluster demand had been adhered to/ followed, if yes what would be the effect.

- (i) As far as procedure prescribed for reduction of load (Contract Demand), the same was provided in Regulation 8.5 of Electricity Supply Code, 2014. The provision only provides for submission of fresh A&A Form. Regulation 8.5 is reproduced herein below for kind perusal: -

“8.5 Reduction in Sanctioned Load/Demand-

The request for reduction in sanctioned demand/ load by a consumer shall be submitted on A & A form prescribed by the distribution licensee along with processing fee and electrical contractor’s test report only in case there is change in connected load and/or electrical installation.

The request shall be granted by the distribution licensee within a maximum period of fifteen (15) days from the date of its submission of revised A&A form and deposit of necessary charges, wherever applicable, failing which

the demand/ load shall be deemed to have been reduced as requested by the Consumer.

Provided further that in case a consumer (except seasonal industrial category) requests for increase in his sanctioned contract demand/ load upto the original sanctioned demand/ load within a period of one year from the date of approval in reduction in demand/ load, the same shall be allowed subject to technical feasibility, without recovery of any Service Connection Charges/ Line Charges or proportionate cost of the common portion.

Provided also that such option shall be exercised by the consumer only once.”

(ii) Moreover, Instruction No. 27.5 of Electricity Supply Instruction Manual talks about the reduction in the Contract Demand by HT/ EHT Consumers. A perusal of the instruction will reveal that the Consumer was to apply for reduction in Contract Demand by applying on prescribed A&A Form which was duly done by Complainant.

(iii) Similarly, Para 25 of 'Conditions of Supply' also prescribes only submission of A&A as prescribed by the PSPCL.

Consumer having submitted requisite A&A form for reduction of load/ CD from 2500 kVA to 600 kVA and the same having been accepted w.e.f. 17.01.2018, no fault could be found against the Consumer for failing to amend cluster agreement, the same being not required under law.

D. Whether under any of the provision of the Electricity Act, 2003 or any Regulation, it is mandatory to amend cluster agreement.

- (i) Besides, Electricity Act, Supply Code, Conditions of Supply and Electricity Supply Instructions Manual, the Draft Agreement (Annexure '6' of ESIM 2017) in Condition No. 3 (c) talks of extension in Contract Demand. However, neither any requirement/ condition had been put forward nor any mandate of the submission of new/ afresh draft agreement for cluster as regard to reduction of CD had been specified to be entered into between the parties. The draft agreement does not talk of requirement of the submission of new/ afresh draft agreement in case the CD is reduced.
- (ii) The Regulation 4.3 of the Supply Code, 2014 is relevant to billing of Cluster Sub Station. Regulation 4.3 is reproduced herein below for consideration: -

“4.3 Cluster Sub-Stations

4.3.1 A group of new/existing HT/EHT consumers having their total contract demand above 4000 kVA, may jointly install a 33 kV or higher voltage cluster Sub-Station to be owned and maintained by them. The supply of electricity shall be provided by the distribution licensee to the cluster sub- station at a voltage as specified in Regulation 4.2 above based on the sanctioned contract demand of the cluster sub-station in the premises of the leader of the group & actual cost of the HT/EHT line

from feeding grid sub-station to cluster sub-station along with bay shall be payable by the constituent members of the group.

4.3.2 4 [The Licensee shall sanction the contract demand of the cluster sub-station and individual consumers connected to the cluster sub-station provided the contract demand of the cluster shall not be less than sum total of sanctioned contract demands of constituent members of the group.]

4.3.3 4 [The Fixed Charges shall be levied on the basis of sanctioned contract demand of the cluster sub-station in accordance with the General Conditions of Tariff approved by the Commission for the relevant year. The Energy Charges shall be levied on the consumption recorded by the HT/EHT meter installed at the cluster sub-station. The total bill amount including fixed, energy and other applicable charges shall be apportioned to the individual consumers as under: The Fixed Charges shall be apportioned to individual consumers in proportion to the sanctioned contract demand. The energy & other applicable charges shall be apportioned in proportion to the consumption recorded by the meter installed on the 11 kV feeder of each consumer at the cluster substation. The licensee shall install, seal & maintain all the meters including 11 kV meters as per regulation 21 of Supply Code, 2014, as amended from time to time.]

4.3.4 Peak load/weekly off-day violation penalty, if any, shall be levied to individual consumer on the basis of readings recorded on the 11 kV feeder of each consumer.

4.3.5 In case maximum demand of the cluster sub-station

exceeds its sanctioned contract demand then the demand surcharge shall be levied as per General Conditions of Tariff and shall be apportioned amongst constituent consumers exceeding their sanctioned contract demand according to the maximum demand recorded over and above the sanctioned contract demand during the month.

4.3.6 All consumers of the group shall jointly execute an agreement on the proforma prescribed by the distribution licensee for abiding by the conditions applicable to consumers catered supply from cluster sub-station.

4.3.7 Each consumer shall be deemed to be connected at the voltage at which supply is catered to the cluster sub-station and separate bills shall be issued to each constituent member of the cluster sub-station.

4.3.8 The erection of all the 11 kV feeders from cluster sub-station to individual constituent consumer shall be the responsibility of the concerned consumer. However the job may be carried out by the licensee if so requested by constituent members at their cost as a deposit work. The operation and maintenance of these feeders shall be the responsibility of the constituent members. Provided where 11 kV feeder(s) for individual cluster constituent member(s) is/are required to be erected/ laid in public land, the same shall be erected/laid and maintained by licensee at the cost of that constituent member(s).”

- (iii) A perusal of amended Clause 4.3.3 will reveal that Fixed Charges as mentioned at Cluster Sub-Station were to be

apportioned to individual consumers in the proportion to their sanctioned Contract Demand. Meaning thereby, there cannot be any imaginary Contract Demand of individual consumer. In the given situation, when a major constituent consumer had lawfully got his contract demand reduced/ sanctioned, the Fixed Charges which were to be levied on the sanctioned Contract Demand of cluster substation would also be deemed to be reduced, otherwise how second part of Clause 4.3.3 would be given effect. Conversely, if a constituent member enhances his Contract Demand and the sum total of the CDs of the constituent members exceeds the CD mentioned in the cluster agreement, the vital question which needs answer was as to whether still the PSPCL would raise its bills on the basis of lesser CD?

- (iv) CE/ Commercial letter issued vide Memo No. 944 dated 28.06.2021 with subject 'Billing for Cluster Sub-Station' stating that the Fixed Charges were to be levied upon Contract Demand mentioned in the cluster agreement irrespective of accepted reduction/ increase of load thereafter and was therefore contrary to the various legal provisions of the Electricity Act 2003, Regulations framed there under and even contrary to Manual of Instructions.

(v) The Corporate Forum had wrongly adjudicated the fate of Memo No. 944 dated 28.06.2021 issued by the CE/Commercial as the same cannot be made applicable in the present case where separate bills were raised even much prior to year 2018. The said letter assuming to be legal and valid will only have a prospective effect and under no circumstances can be made applicable from an anterior date.

Furthermore, if such letter was applied retrospectively, the same would not only be unjust enrichment of the Distribution Licensee but would also be ultravires to the Supply Code and other regulations framed by the PSERC. As such, same being without jurisdiction, was liable to be ignored all together.

(vi) The Corporate Forum had totally failed to understand and had misread Para 4.3.3 of the Supply Code. It cannot be assumed and presumed that combined CD of the cluster was to prevail over the accepted A&A Form of all the constituent members. There was no sanctity attached to the draft cluster agreement and therefore, the amendment of the combined CD was not mandatory. It maybe only required for ancillary purposes but not for raising bills.

E. Whether the impugned demand/ memo no. 1748 dated 20.08.2021 is in sync with object and purpose of cluster substation.

- (i) The object of providing scheme of having “Cluster Sub-Stations” was to reduce the operational expenses (transformation and line losses) occurring to the Distribution Licensee so that group of consumers can receive supply at high voltage (66 kV in the present case). The object was not to punish, charge more than the requisite charges to such consumer.

F. Whether distribution licensee is stopped from raising supplementary demand by principle of ‘Estoppel’ ‘Acquiescence’ ‘waiver’.

- (i) The Forum had completely ignored the principle of estoppel. On the one hand, through Demand Notice dated 20.08.2021, the PSPCL was assuming and presuming 9500 kVA and further assume and presume the CD to be taken jointly and then bills be apportioned according to their respective CD Limit. On the other hand, the PSPCL had been levying and recovering surcharges for excess demand against the constituent members individually by considering their CD as 7000 kVA and 600 kVA respectively.
- (ii) The Corporate Forum had completely overlooked the Principle of Acquiescence. It was always open to the Competent Authority to refuse reduction in the CD until and unless cluster agreement was revised. Concededly no such objection was

raised, rather strictly in accordance with Regulation 4.3.7, the Chief Engineer/ DS (South), Patiala vide letter no. 2039/41 dated 23.02.2018, CD of complainant was reduced from 2500 kVA to 600 kVA w.e.f. 17.01.2018 and in furtherance of which bill(s) for the months of March, 2018 onwards were raised on the reduced CD of 600 kVA. The Competent Authority having accepted the CD of individual members of the cluster cannot now turn around and say that there was any irregularity in reduction of CD.

G. CGRF failed to interpret and give effect to provisions of Insolvency Bankruptcy Code, 2016.

- (i) Concededly it was on record that M/s. Vardhman Industries Ltd. had gone in insolvency. The present Appellant took over as successful Resolution Applicant in respect of Corporate Debtor (Vardhman). All previous liabilities come to an end from the date of taking over as per the provisions of IBC, which has got overriding effect on all other provisions of statutes.
- (ii) The Forum had wrongly held that the present occupier had to accept all the liabilities of the previous consumer in view of Clause No. 30.2 of ESIM over and above the judgment of NCLAT. It needs special mention here that neither any objection or Appeal in respect of liability/ dues of M/s.

Vardhaman Industries Ltd. was raised by the PSPCL before NCLT/ NCLAT nor any such objections/ reply to the letter dated 09.07.2020, whereby Consumer informed the Respondent about the Orders of NCLT/ NCLAT and exhaustion of liability of the old Consumer was given, meaning thereby the extinguishment of liability, if any, up-till the final order passed by the NCLAT was accepted by the Distribution Licensee/ PSPCL.

- (vii) The Corporate Forum had totally ignored the alternative submission of the complainant that in any case the amount demanded cannot date back for a period more than 2 years due to limitation of 2 years as prescribed under Section 56(2) of the Electricity Act and in Regulation 93.2 of the ESIM.
- (iv) Therefore, it was prayed that the Appeal of the Appellant may kindly be accepted and the impugned order dated 15.09.2022 passed by the Corporate Forum by virtue of which the Forum dismissed the Petition filed by the Petitioner/ Appellant against the illegal Demand Notice of ₹ 1,11,46,114/- vide Memo No.1748 dated 20.08.2021, may kindly be set aside and the Appeal may kindly be allowed with costs throughout, in the interest of justice. Any other relief which the Hon'ble Court

deem fit may also be granted in favour of the Appellant and against the Respondent.

(b) Additional submissions:

The Appellant made the following additional submissions vide its application dated 02.11.2022 for consideration of this Court:-

- (i) The Appellant had filed Appeal against demand notice dated 20.08.2021 issued by the Respondent whereby Respondent had levied ₹ 1,11,46,114/- as arrears for more than 3 years on the basis of alleged irregularity of non submission of revised Cluster Draft Agreement by the consumer(s).
- (ii) It was argued on 28.10.2022 that had PSPCL not billed monthly consumption from March, 2018 onwards on the basis of reduced CD and had the bill reflected fixed charges on the basis of erroneous combined CD mentioned in the Draft Cluster Agreement, then consumers would have been made aware about the said irregularity of non amendment of Draft Cluster Agreement. Had the bills been correctly issued, the disputed amount would have been very small i.e ₹ 82,600/-(as per the statement submitted now by PSPCL), the consumer(s) would have sought amendment in the Draft Cluster Agreement

immediately, as has been done by Appellant in the month of November, 2021.

- (iii) This Court had directed authorized representative of PSPCL on 28.10.2022 to explain the reasons for issuance of wrong monthly consumption bills to both members of 66 kV Cluster Sub-station. Though verbally he tried to explain that the mistake occurred because of software problem, however he was given time to explain the same.
- (iv) The Respondent had placed on record the Statement, Agreements on record, however, on the most vital aspect of above issue nothing has been placed on record. The Appellant was not even the leader of the Cluster Sub Station and the Contract Demand was not got reduced by him. Concededly for no mistake of its own, the consumer was being charged hefty amount of ₹ 1,11,46,114/- under challenge. The Respondent be directed to bring on record reasons, circumstances and the consequences/ effect of such mistake of not following 'Supply Code' while issuing bills every month to the Appellant and other member of 66 kV Cluster Sub-station for so many years.
- (v) It was prayed to bring on record the reasons for billing monthly consumption bills having been raised to Appellant as well as M/s. Vardhman Industries Ltd. on the basis of individual CDs

right from 2015-16 till 08/2021 including March, 2018 onwards even after reduction of CD of M/s. Vardhman Industries Ltd. in the interest of justice.

(c) Further submissions:

The Appellant vide its application dated 07.11.2022 made the following submissions for consideration of this Court: -

- (i) The demand notice dated 20.08.2021 whereby Respondent had levied ₹ 1,11,46,114/- as alleged arrears for the period of more than 3 years on the basis of alleged irregularity of non submissions of revised Cluster Draft Agreement by the consumer(s) which came to light upon Half Margin Audit which took place after more than 3½ years.
- (ii) Overhauling was being done by Audit Party from time to time well before reduction in CD of the Cluster Sub Station in January, 2018. Had there been Audit at regular intervals say quarterly, half yearly or yearly, the disputed period would have been drastically less than the present scenario.
- (iii) The Authorized Representative of PSPCL be directed to bring on record the information regarding the time intervals of Audit and record of all the audit(s), if any, done upon the present Appellant.

(d) Submission during hearing

During hearing on different dates, the Appellant's Counsel (AC) reiterated the submissions made in the Appeal as well in Additional and Further submissions and prayed for acceptance of the Appeal.

(B) Submissions of the Respondent

(a) Submissions in written reply

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

- (i) Regulation 4.3.3 of Supply Code 2014 clearly states that the Fixed Charges are to be levied on the basis of Sanctioned Contract Demand of the Cluster Sub Station and not on the basis of sanctioned CD of Constituent Members of the Group. Therefore, the order already passed by the Forum needs not to be set aside.
- (ii) The total CD of Cluster Sub Station remained 9500 kVA. However, total CD of Constituent Members was 7000 kVA and 600 kVA i.e. 7600 kVA. There remained a difference of 1900 kVA.
- (iii) It was the CD of Constituent Members that was reduced from 9500 kVA to 7600 kVA. Thus, as per Regulation 4.3.3 of

Supply Code, 2014; the Fixed Charges are to be levied on the basis of Sanctioned Contract Demand of the Cluster Sub Station and not on the basis of sanctioned CD of Constituent Members of the Group.

- (iv) Regulation 4.3.7 of Supply Code, 2014 provides that separate bills shall be issued to each constituent member of the Cluster Sub Station.
- (v) Any surcharge on excess demand of any constituent member was a separate matter and can be dealt separately. A representation regarding the same may be given to the Sub Divisional office.
- (vi) Memo No. 944 dated 28.06.2021 was issued by the CE/ Commercial, Patiala which clearly stated that Regulation 4.3.3 of Supply Code, 2014 was very much clear in itself. Accordingly, Fixed Charges were to be levied on the basis of Sanctioned Contract Demand of constituent members of the Group. It was relevant to state here that the agreement serves as the fundamental document containing all the parameters/terms and conditions as per which electricity was to be supplied to the Cluster Sub Station consumers, therefore, the Sanctioned Contract Demand of the Cluster Sub Station mentioned in the duly valid agreement had to be used for

billing purpose i.e. 9500 kVA. Accordingly, the Fixed Charges were calculated on the basis of Sanctioned Contract demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group.

- (vii) As per Regulation 4.3.3 of Supply Code, 2014; the Fixed Charges were to be levied on the basis of Sanctioned Contract demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group. Accordingly, the matter of billing of Cluster Sub Station was taken up by the higher officials of PSPCL and the same was assigned to the Audit Party to check the billing of cluster accounts. Accordingly, the fact was established that Fixed Charges were to be collected based on Sanctioned CD of Cluster Sub Station (i.e. on 9500 kVA) and not on sanctioned CD of constituent members of group.
- (viii) It was pertinent to mention here that CD of constituent members of Group decreased. However, the CD of Cluster Sub Station continued to remain at 9500 kVA. Accordingly, Fixed Charges were to be calculated on 9500 kVA.
- (ix) The amount was charged as per Regulation 4.3.3 of Supply Code, 2014 and clarification received vide Memo No. 944 dated 28.06.2021 from the Chief Engineer/Commercial, Patiala

which clearly stated that the Fixed Charges were to be levied on the basis of Sanctioned Contract demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the group. There was no violation of any prevailing law. Apart from the monthly bills, the Consumer had been regularly paying the charges relating to overhauling of account for difference of units between Cluster Sub Station and constituent member. This overhauling was being done by the Audit Party from time to time.

- (x) The Supply Code, 2014 contained Regulations and the amount had been charged keeping in view Regulation 4.3.3 of Supply Code, 2014 which clearly stated that the Fixed Charges are to be levied on the basis of sanctioned contract demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group.
- (xi) The Regulations of Supply Code, 2014 have an over-riding effect and therefore, the tariff orders cannot over-ride the Regulations. Accordingly, charges were levied as per Regulation 4.3.3 of Supply Code, 2014 which stated that CD of Cluster Sub Station was to be considered for levying Fixed Charges.

- (xii) It is specifically mentioned in Regulation 4.3.7 of Supply Code, 2014 that separate bills shall be issued to each constituent member of the Cluster Sub Station. It is pertinent to mention here that apart from the monthly bills, the consumer had been regularly paying the charges relating to overhauling of account for difference of units between Cluster Sub Station and constituent member.
- (xiii) Any surcharge on excess demand of any constituent member was a separate matter and can be dealt separately. A representation regarding the same may be given to the Sub Divisional Office.
- (xiv) In the year 2015, when CD was increased/ decreased by constituent members, in totality CD was in line with the sanctioned CD of Cluster Sub Station, Fixed Charges were being recovered in tune with 9500 kVA. Later, when M/s Vardhman Industries reduced CD from 2500 kVA to 600 kVA, the total CD of the constituent members reduced from 9500kVA to 7600 kVA but CD of Cluster Sub Station continued at 9500 kVA and as per Regulation 4.3.3 of Supply code, 2014; the Fixed Charges were to be levied on the basis of sanctioned contract demand of the Cluster Sub Station and not

on the basis of sanctioned CD of constituent members of the Group.

- (xv) The Consumer was governed with Cluster Sub Station Scheme where the cluster agreement serves as the fundamental document containing all the parameters/ terms and conditions as per which electricity was to be supplied to the Cluster Sub Station consumers. Therefore, the sanctioned contract demand of the Cluster Sub Station mentioned in the duly valid agreement had been used for billing purpose. Accordingly, the Fixed Charges were calculated on the basis of sanctioned contract demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group.
- (xvi) The Consumer had not reduced the overall CD of cluster Sub Station and as per Regulation 4.3.3 of Supply Code, 2014; the Fixed Charges were to be levied on the basis of sanctioned Contract Demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group. Accordingly, the amount was calculated. Further, in the Year 2021, M/s. JSW Vallabh Tinplate Pvt. Ltd. had increased sanctioned CD from 7000 kVA to 10000 kVA, taking total CD of all the members to 10600 kVA. The Consumer had revised

A&A of Cluster Sub Station, increasing CD from 9500 kVA to 10600 kVA.

- (xvii) There can't be any imaginary CD. The point involved was that whether Fixed Charges were calculated on the basis of Sanctioned CD of Cluster Sub Station even though sum total of sanctioned CD of all members was less than sanctioned CD of Cluster, charges will be calculated as per Regulation 4.3.3 of Supply Code, 2014.
- (xviii) The amount was levied complying with Regulation 4.3.3 of the Supply Code, 2014. Regulation 4.3.3 of Supply Code, 2014 clearly defines how Fixed Charges were to be calculated and same was duly complied with. Charges were levied as per prevailing regulations amended from time to time. The Fixed Charges were to be calculated based on sanctioned CD of Cluster Sub Station. For apportioning, a base was required and sanctioned CD of individual members was considered which was fair enough and most relevant one.
- (xix) The question involved was sanctioned CD of Cluster Sub-Station. The same continued to be 9500 kVA and accordingly the Fixed Charges were levied as per Regulation 4.3.3 of Supply Code, 2014. The Forum had rightly decided the case on the basis of record produced by both parties.

(b) Additional submissions:

The Respondent vide Memo No. 7490 dated 04.11.2022 made the following submissions for consideration of this Court:-

- (i) It was stated that before October, 2021, monthly bills were being issued to each constituent member of Cluster group based on the readings at their individual meters i.e solely their consumption was billed. At periodic intervals, the account of constituent members of the Cluster groups was overhauled by Audit Party. Under this, the consumption at 66 kV and total billed consumption of all constituent members was compared. Any difference between the consumption was distributed amongst the constituent members.
- (ii) From October, 2021 onwards, the billing system of Cluster changed, whereby the constituent members were billed on the basis of consumption of Cluster Sub Station proportioned between them in the ratio of their consumption. Also Fixed Charges were calculated on the basis of MDI or 80% sanctioned CD (whichever is higher) of the Cluster Sub Station. The charges so calculated were apportioned in the ratio of Sanctioned CD of constituent member. Also billing of Cluster Sub Stations was being undertaken by CBC, Patiala. The issuance of monthly consumption bills to both constituent

member of Cluster group was being done as per clause 4.3.7 of Supply Code, 2014.

(c) Submission during hearing

During hearings on different dates, the Respondent reiterated the submissions made in the written reply to the Appeal as well as through Memo No. 7490 dated 04.11.2022 and prayed for dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of amount of ₹ 1,11,46,114/- charged to the Appellant vide Notice No. 1748 dated 20.08.2021 as arrears of fixed charges for 9500 kVA Contract Demand of the Cluster Sub- Station.

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 Forum had passed the impugned order dated 15.09.2022 without considering the evidence and pleadings of the Appellant. The said order was totally arbitrary, discriminatory apart from violating the fundamental provisions of law, mandatory provisions of Electricity Act, 2003 and violated the regulations framed by the

PSERC and also various instructions issued in this regard. The impugned order of the Forum was liable to be set aside. The Forum had failed to consider the fact that the Consumer had already paid the electricity bills in accordance with the General Conditions of Tariff. The monthly consumption bills from the month of February, 2018 to August, 2021 consisting of both parts i.e. Fixed Charges and SOP concededly were issued by the PSPCL and not by the Consumer of its own. It was not a case that bills issued to the Consumer were against law or were violating any of the mandatory provisions. The Forum had failed to consider the fact that a simple letter by the CE/ Commercial cannot override the mandatory provisions of the Electricity Act, 2003. Charges can only be recovered from a consumer in accordance with the Tariff Orders and Regulations framed under the Act by the PSERC. There is neither any provision in the Act nor any provision in any of the Regulations (including Supply Code) laying down that Fixed Charges are to be levied on the basis of Contract Demand mentioned in the draft cluster agreement. Accordingly, the Fixed Charges can be recovered only on the basis of individual sanctioned Contract Demand and not beyond it. He pleaded that right from inception in the year 2011, when the cluster agreement came

into existence, the PSPCL had been sending separate electricity bills to the constituent members. Such, bills were always on the basis of individual sanctioned Contract Demand and not on the basis of draft cluster agreement. This practice continued even when dual tariff system came into existence and Fixed Charges as well as variable charges were being billed. All of a sudden, on the basis of 28.06.2021 letter, Fixed Charges on the basis of Contract Demand mentioned on the draft cluster agreement had been imposed retrospectively that too for a long period of more than 3 years w.e.f. February, 2018. The PSPCL had not adopted the system of imposing Fixed Charges and billing on the basis of Draft Cluster Agreement. The bill for July, 2021, whereby M/s. JSW Vallabh Tinplate Private Industries (constituent member) having CD limit of 7000 kVA out of the cluster CD limit was surcharged for excess demand to the extent of 1739 kVA amounting to ₹ 13,04,250/-. This bill was paid in July, 2021. On 28.06.2021, CE/ Commercial had issued letter vide Memo No. 944 purportedly clarifying clause 4.3.3 of the Supply Code, 2014 amended up to date. The said letter impinges upon tariff issues and by misreading and misinterpreting 'Annexure-6 of ESIM 2018' holds that draft agreement can be valid only for the parameters/ conditions

mentioned therein (i.e. CD of the Cluster Sub Station, CD of each member, applicability of various charges, etc.). The letter further stated that billing w.r.t. levying Fixed Charges is to be carried out on the basis of Sanctioned Contract Demand of the Cluster Sub Station. The Assistant Executive Engineer notified M/s. JSW Vallabh Tinplate Pvt. Ltd. demand of ₹ 1,11,46,114/- which was to be deposited within 15 days. The Appellant contended that CD of the cluster sub-station was decreased from 9500 kVA to 7600 kVA effective from Jan, 2018 and the same was modified vide Memo No. 2039/41 dated 23.02.2018. Also, A&A form was duly executed and accepted by the PSPCL. Still further, it was replied that both units have been running their operation within the sanctioned revised Contract Demand. The bills were raised as per the tariff orders and payments were made. AC pleaded that had this system of billing introduced immediately after January/ February, 2018 then the Appellant would have got the Cluster Agreement revised and this dispute may have been avoided.

- (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 Regulation 4.3.3 of Supply Code, 2014 clearly

states that the Fixed Charges are to be levied on the basis of Sanctioned Contract Demand of the Cluster Sub Station and not on the basis of sanctioned CD of Constituent Members of the Group. Therefore, the order already passed by the Forum was legal and valid and was liable to be upheld. The Respondent further stated that the total CD of Cluster Sub Station remained 9500 kVA. However, total CD of Constituent Members was 7000 kVA and 600 kVA i.e. 7600 kVA. There remained a difference of 1900 kVA. It was the CD of Constituent Members that has reduced from 9500 kVA to 7600 kVA. Thus, as per Regulation 4.3.3 of Supply Code, 2014; the Fixed Charges were to be levied on the basis of Sanctioned Contract Demand of the Cluster Sub Station and not on the basis of sanctioned CD of Constituent Members of the Group. Further, Regulation 4.3.7 of Supply Code, 2014 provides that separate bills shall be issued to each constituent member of the Cluster Sub Station. Any surcharge on excess demand of any constituent member was a separate matter and can be dealt separately. Memo No. 944 dated 28.06.2021 issued by the CE/ Commercial, Patiala clearly stated that Regulation 4.3.3 of Supply Code, 2014 was very much clear in itself. Accordingly, Fixed Charges were to be levied on the basis of Sanctioned Contract Demand of

constituent members of the Group. It was relevant to state here that the agreement serves as the fundamental document containing all the parameters/ terms and conditions as per which electricity was to be supplied to the Cluster Sub Station consumers, therefore, the Sanctioned Contract Demand of the Cluster Sub Station mentioned in the duly valid agreement had to be used for billing purpose i.e. 9500 kVA. Accordingly, the Fixed Charges were calculated on the basis of Sanctioned Contract demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group. There was no violation of any prevailing law. Apart from the monthly bills, the Consumer had been regularly paying the charges relating to overhauling of account for difference of units between Cluster Sub Station and constituent members. This overhauling was being done by the Audit Party from time to time. The Regulations of Supply Code, 2014 have an overriding effect and therefore, the tariff orders cannot over-ride the Regulations. Accordingly, charges were levied as per Regulation 4.3.3 of Supply Code, 2014 which stated that CD of Cluster Sub Station was to be considered for levying Fixed Charges. In the year 2015, when CD was increased/ decreased by constituent members, since in totality CD was in line with

the sanctioned CD of cluster Sub Station, Fixed Charges were being recovered in tune with 9500 kVA. Later, when M/s. Vardhman Industries reduced CD from 2500 kVA to 600 kVA, the total CD of the constituent members reduced from 9500 kVA to 7600 kVA but CD of Cluster Sub Station continued at 9500 kVA and as per Regulation 4.3.3 of Supply Code, 2014; the Fixed Charges were to be levied on the basis of sanctioned contract demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group. The Consumer had not reduced the overall CD of Cluster Sub Station and as such, the Fixed Charges were to be levied on the basis of sanctioned Contract Demand of the Cluster Sub Station and not on the basis of sanctioned CD of constituent members of the Group.

- (iii) The Corporate Forum in its order dated 15.09.2022 observed as under:-

“Forum observed that An agreement was signed by the petitioner for supply of electricity through a Cluster Sub-Station of M/s Vardhman Industries Ltd. & JSW Vallabh Tinplate Pvt. Ltd. having sanctioned Load/CD of 4799.687KW/4500KVA & 7500KW/ 5000KVA respectively i.e., for a total Load/CD of 12299.687KW/9500KVA with Vardhman Industries as leader of the cluster. On 01.09.2015, Vallabh Tinplate Ltd. vide letter no. 13305 requested for extension of their CD from 5000 KVA to 7000 KVA and Vardhman Industries Ltd. requested for reduction of their CD from 4500 KVA to 2500 KVA as a result of which total CD

of the cluster remained same i.e. 9500 KVA and revised A&A forms were approved accordingly. Thereafter, M/s Vardhman Industries Ltd. submitted a request for reduction of their CD from 2500 KVA to 600 KVA vide A&A Form no. 11664-A depositing Rs. 2500/- on 29.12.2017. CE/DS, South Zone, Patiala approved Revised A&A forms for reduced CD vide his office Memo No. 1482/LS-356-PTA dated 08.02.2018. Audit Party checked the account of the petitioner and raised Half Margin no. 30 dated 12.08.2021 pointing out that billing of the cluster consumers is to be done on the basis of the readings of the cluster sub-station and the fixed charges should be charged on the basis of the sanctioned CD of the cluster as per Regulation 4.3.3 of Supply Code and the Cluster Agreement and accordingly proposed to charge an amount of Rs. 11146114/- to the petitioner. AEE/Sub-Division Rajpura issued notice to the petitioner vide memo no. 1748 dated 20.08.2021 stating that: -

“ਆਪ ਦਾ ਖਾਤਾ ਆਡਿਟ ਪਾਰਟੀ ਵੱਲੋਂ ਘੋਖਿਆ ਗਿਆ। ਘੋਖਣ ਉਪਰੰਤ ਇਹ ਪਾਇਆ ਗਿਆ ਕਿ ਆਪ ਵੱਲੋਂ **Cluster Scheme** ਅਧੀਨ ਚਲ ਰਹੇ ਖਾਤਿਆਂ ਦਾ ਲੋਡ ਮਿਤੀ **26.02.18** ਨੂੰ **9500 KVA** ਤੋਂ ਲੋਡ ਘਟਾ ਕੇ **7600 KVA** ਕਰਵਾਇਆ ਗਿਆ ਸੀ। ਆਪ ਦੁਆਰਾ **Load Reduction** ਕਰਵਾਉਣ ਸਮੇਂ ਪਾਵਰਕਾਮ ਨਾਲ ਕਲਸਟਰ ਸਕੀਮ ਸਬੰਧੀ ਐਗਰੀਮੈਂਟ ਰਿਵਾਇਜ਼ ਨਹੀਂ ਕੀਤਾ ਗਿਆ ਸੀ। ਇੱਥੇ ਇਹ ਵੀ ਦੱਸਣਯੋਗ ਹੈ ਕਿ ਉਕਤ ਖਾਤੇ ਦੀ ਬਿਲਿੰਗ ਕਲਸਟਰ ਦੀ ਬਜਾਏ **Individual** ਲੋਡ ਅਤੇ ਸੀ ਡੀ ਮੁਤਾਬਕ ਹੋ ਰਹੀ ਸੀ ਜਦੋਂ ਕਿ ਪਾਵਰਕਾਮ ਦੀਆਂ ਹਦਾਇਤਾਂ ਮੁਤਾਬਕ ਕਲਸਟਰ ਦੇ ਲੋਡ ਮੁਤਾਬਕ ਬਿਲਿੰਗ ਕਰਨੀ ਬਣਦੀ ਸੀ। ਇਸ ਲਈ ਤੁਹਾਡੇ ਖਾਤੇ ਨੂੰ ਸੋਧਣ ਉਪਰੰਤ ਪਾਵਰਕਾਮ ਦੀਆਂ ਹਦਾਇਤਾਂ ਅਨੁਸਾਰ **Cluster Sub Station** ਦੀ **9500 KVA Contract Demand** ਦੇ ਫਿਕਸ ਚਾਰਜਿਜ ਦੀ **11146114/-** ਰੁ: ਦੀ ਰਕਮ ਚਾਰਜ ਕਰਨਯੋਗ ਹੈ। ਇਹ ਰਕਮ **15** ਦਿਨਾਂ ਦੇ ਅੰਦਰ ਅੰਦਰ ਜਮਾ ਕਰਵਾਈ ਜਾਵੇ, ਰਕਮ ਜਮਾ ਨਾ ਕਰਵਾਉਣ ਦੀ ਸੂਰਤ ਵਿੱਚ ਪਾਵਰਕਾਮ ਦੀਆਂ ਹਦਾਇਤਾਂ ਮੁਤਾਬਕ ਬਣਦੀ ਕਾਰਵਾਈ ਕੀਤੀ ਜਾਵੇਗੀ।”

Not satisfied with the amount charged by the Respondent, petitioner filed his case in Corporate CGRF, Ludhiana. Forum observed that a cluster agreement was signed by the petitioner with PSPCL for supply of electricity through a

Cluster Sub-Station of M/s Vardhman Industries Ltd. & JSW Vallabh Tinplate Pvt. Ltd. for a total Load/CD of 12299.687KW/9500KVA in which Vardhman Industries is leader of the cluster. Further M/s Vardhman Industries Ltd. as one constituent consumer of the cluster sub-station got reduced his load/ CD from 3299.687KW/2500KVA to 1299.687KW/600KVA and the Revised A&A forms for the same were approved by CE/DS South Zone, Patiala vide his Memo No. 1482/LS-356-PTA dated 08.02.2018. This reduction by constituent member resulted in reduction in CD of the individual constituent member, but the cluster agreement which was for a total Load/CD of 12299.687KW/9500KVA, was not got revised by the petitioner. Thus, as per Regulation 4.3.3 of the Supply Code-2014, billing was required to be done on the basis of sanctioned CD of the cluster.

Petitioner in his petition contended that the memo no. 944 dated 28.06.2021 issued by the Chief Engineer/Commercial, cannot be made applicable in the present case, where separate bills were raised even much prior to year 2018. The said letter assuming to be legal and valid will only have a prospective effect and under no circumstances can be made applicable from an anterior date.

In this regard, Forum observed that the said letter is just a clarification regarding billing of cluster sub-station based upon the Regulation 4.3.3 of the Supply Code-2014, which reads as under: -

“The supply on the basis of consumption recorded at 33 kV or higher voltage shall be billed for electricity charges including MMC along with electricity duty, octroi, fuel surcharge and shall be apportioned to the individual consumers in proportion to the consumption recorded by the meter installed on the 11 kV feeders of each consumer at the cluster sub-station. The licensee shall install, seal & maintain all the meters including 11 kV meters as per regulation 21 of Supply Code.”

Further clause no. XIV of the Cluster Agreement signed by the petitioner reads as under: -

“For issues not covered by this agreement, the cluster consumers shall be governed by the terms and conditions as contained in the

Supply Code Regulations, Conditions of Supply, General Conditions of Tariff and Schedule of General Charges.”

Keeping in view the above facts/discussion, Regulation 4.3.3 of Supply Code and stipulations in the Cluster Agreement Forum is of the view that amount of Rs. 11146114/- charged vide Notice No. 1748 dated 20.08.2021 seems justified.

Further contention of the petitioner that they are not liable to accept the liability of M/s Vardhman Industries as conveyed to SDO (Commercial)/Sub-Division, PSPCL, Rajpura vide letter dated 28.09.2021 which reads as under: -

“M/s JSW Tinplate acquired M/s Vardhman Industries Limited in Jan/2020 only from NCLT, as the unit was under insolvency. Accordingly, any lapse in executing the cluster agreement in 2018 is not binding on us, for not being in presence, at that point of time. When Vardhman Industries Ltd was acquired by JSW, its information was given to the local office.”

Respondent replied to this contention of the petitioner that new consumer has to own all previous liabilities of the old consumer.

Forum observed further that petitioner in point no. 1 of his petition has stated as under: -

“That presently, Vardhman Industries ltd and JSW Vallabh Tinplate Pvt Ltd. are sister companies which are subsidiaries of JSW Steel Limited.”

Hence, Forum is of the opinion that the present occupier/owner/user has to accept all liabilities of the previous consumer in view of clause no. 30.2 of ESIM.

Keeping in view above facts, Forum is of the opinion that amount of Rs. 11146114/- charged to petitioner vide Notice No. 1748 dated 20.08.2021 is justified correct & recoverable.”

(iv) I have gone through the written submissions made by the

Appellant in the Appeal and Additional submissions, written

reply of the Respondent as well as oral arguments of both the

parties during the hearing on 28.10.2022/02.11.2022/

07.11.2022. It is observed that the Appellant alongwith M/s

Vardhman Industries Ltd. entered into Cluster Agreement with the PSPCL for a total Load/CD of the Cluster Sub Station as 12299.687 kW/9500 kVA.

- (v) The Electricity Act, 2003 has empowered the State Commissions to make regulations under Section 181. Accordingly, Punjab State Electricity Regulatory Commission (PSERC) had framed Electricity Supply Code & Related Matters Regulations, 2014 after following the procedure laid down in the Act. These regulations have been notified in the State Gazette and are in the public domain. These regulations are available on the websites of PSERC & PSPCL. Regulation 4.3 of Supply Code, 2014 deals with Cluster Sub-Stations and the Appellant being a constituent member of the Cluster Sub-Station is governed by these regulations for billing purposes and other related matters. The rates are to be charged as per Tariff Orders issued by PSERC from time to time.
- (vi) Each Consumer being fed from the Cluster Sub-station is deemed to be connected at the voltage at which the supply is catered to the Cluster Sub-Station as per Regulation 4.3.7 of Supply Code, 2014. As such, the deemed supply voltage in this case is 66 kV and the billing is required to be done at 66 kV as per Regulation 4.3.3 of Supply Code, 2014. It has been

observed that the demand raised by the Respondent vide Notice No. 1748 dated 20.08.2021 is as per above mentioned regulations & tariff orders issued by the Commission from time to time. The demand relates to the period February, 2018 to June, 2021. It is total failure of the Licensee to issue arrear bill in August, 2021 which should have been raised in monthly bills beginning from February, 2018. The bills were issued on the basis of individual sanctioned contract demands instead of contract demand of the Cluster Sub-Station which was incorrect & violated the regulations. The regulations are very clear but implementation of the same was not done by the officials/officers of the Licensee.

- (vii) As per Regulation 4.3.7 of Supply Code, 2014: separate bills were to be issued to each constituent member of the Cluster Sub- Station. There are two constituent members in this case and they were served separate bills but the same were not in line with regulations.
- (viii) To treat the contract demand of the Cluster Sub-Station (as per Cluster Agreement) as Sanctioned Demand of the Cluster Sub-station for billing purpose is not wrong.
- (ix) The complete procedure of raising electricity bills in respect of Cluster Sub-Stations and apportionment of the same to the

individual consumers is given in Regulation 4.3.3 of Supply Code, 2014. The issues raised by the Appellant in this regard are of no relevance.

- (x) M/s. Vardhman Industries Ltd., the constituent member of the Cluster Sub Station got its load reduced from 3299.687 kW/ 2500 kVA to 1299.687 kW/ 600kVA which was approved by the Chief Engineer/ DS South Zone, Patiala vide Memo No. 1482/LS-356-PTA dated 08.02.2018. This resulted in reduction in CD of the individual constituent member, but the Appellant and the other constituent member did not enter into fresh Cluster Agreement for reduced load of Cluster Sub-stations as notified in Regulation 4.3.2 of Supply Code-2014, which is reproduced as under:-

“4.3.2 [The Licensee shall sanction the contract demand of the cluster sub-station and individual consumers connected to the cluster sub-station provided the contract demand of the cluster shall not be less than sum total of sanctioned contract demands of constituent members of the group.]”

So, I agree with the observation of the Corporate Forum that the billing was required to be done on the basis of load agreed upon by the parties of the Cluster Agreement including the Appellant as per Regulation 4.3.3 of the Supply Code-2014, which is reproduced as under:-

“4.3.3 [The Fixed Charges shall be levied on the basis of sanctioned contract demand of the cluster sub-station in

accordance with the General Conditions of Tariff approved by the Commission for the relevant year. The Energy Charges shall be levied on the consumption recorded by the HT/EHT meter installed at the cluster sub-station. The total bill amount including fixed, energy and other applicable charges shall be apportioned to the individual consumers as under:

The Fixed Charges shall be apportioned to individual consumers in proportion to the sanctioned contract demand. The energy & other applicable charges shall be apportioned in proportion to the consumption recorded by the meter installed on the 11 kV feeder of each consumer at the cluster substation. The licensee shall install, seal & maintain all the meters including 11 kV meters as per regulation 21 of Supply Code, 2014, as amended from time to time.]”

- (xi) The Appellant contended in its Appeal that a simple letter by CE/ Commercial cannot override the mandatory provisions of the Electricity Act, 2003 and charges could be recovered only in accordance with the Tariff Orders and Regulations framed under the Act. In this regard, I am of the opinion that the letter issued by the CE/ Commercial, PSPCL, Patiala was only clarificatory in nature and did not violate any Act/ regulations. The demand raised is as per Supply Code Regulations, 2014 and Tariff orders of PSERC.
- (xii) Regulation 8.5 of Supply Code, 2014 is not relevant in the present dispute/ appeal case which is to be settled as per Regulation 4.3 of Supply Code, 2014 and tariff orders issued by PSERC from time to time.

- (xiii) It is not mandatory to amend Cluster Agreement as long as it does not violate Regulation 4.3 of Supply Code, 2014 & any other provisions of the Act/ regulations.
- (xiv) The Appellant had quoted the various provisions of “Conditions of Supply” to justify its case. “Conditions of Supply” stands repealed with effect from 01.01.2015.
- (xv) The demand raised in this Appeal Case relates to Account No. 3003351710 in the name of M/S JSW Vallabh Tinplate Pvt. Ltd. and another constituent member (Vardhman Industries Ltd.) had gone in insolvency. Any orders/ judgments passed under the provisions of Insolvency Bankruptcy Code, 2016 relating to Vardhman Industries Ltd. cannot be made applicable to the above mentioned demand relating to the Appellant. The demand raised is justified and it is not illegal.
- (xvi) As regards the contention of the Appellant that the amount demanded cannot date back for a period more than 2 years due to limitation of 2 years as prescribed under Section 56 (2) of the Electricity Act, 2003 is concerned, the judgment dated 05.10.2021 of the Hon’ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s. Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. &Ors. is very illustrative and clear in this

regard. The 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 the Hon'ble Supreme Court of India, it is very clear that the Respondent can recover the amount short billed due to negligence on the part of Licensee even after two years.

(xvii) In view of the above, this Court is not inclined to differ with the decision dated 15.09.2022 of the Corporate Forum in Case No.

CF-077 of 2022. The amount of ₹ 1,11,46,114/- charged to the Appellant vide Notice No. 1748 dated 20.08.2021 as arrears of fixed charges for 9500 kVA Contract Demand of the Cluster Sub Station is correct and fully recoverable from the Appellant.

(xviii) The Licensee may take action against officials /officers who had failed to issue electricity bills as per provisions made in Supply Code, 2014 relating to Cluster Sub-Stations. Negligence on the part of these officials/officers resulted into this dispute and unnecessary harassment to the Appellant.

(xix) During hearing on 07.11.2022, the Appellant's Representative stressed that had there been Audit at regular intervals, the disputed period would have been drastically less than the present scenario. There is no doubt that had the Audit Wing pointed out the discrepancies in the billing of Cluster Sub Station consumer's well in time then the disputed amount may have been very less. There is a violation of Supply Code, 2014 regulations in this case. The Licensee is required to take appropriate action to avoid such litigations in the future.

(xx) The Appellant had pleaded that ₹ 13,04,250/- were excess charged in the bill for July, 2021. The Respondent had agreed to look into this case although the Appellant had not challenged

the bill for July, 2021. The Respondent may look into this issue and take corrective action as per law.

6. Decision

As a sequel of above discussions, the order dated 15.09.2022 of the CCGRF, Ludhiana in Case No. CF-077 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.

November 07, 2022
S.A.S. Nagar (Mohali)

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