

**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. 57/2022

Date of Registration : 18.10.2022
**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. Vardhman Industries Limited,
Village Bapraur, Rajpura.
Contract Account Number: 3003351711(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-076/2022, deciding that:

“Amount of Rs. 955381/- charged as per Reg. 4.3.3 of Supply Code-2014, to petitioner vide notice no. 1749 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 period of thirty days of receipt of the decision dated 15.09.2022 of the CCGRF, Ludhiana in Case No. CF-076/2022 and the same was received by the Appellant through e-mail on 21.09.2022. The Appellant had deposited the requisite 40% of the disputed amount vide receipt no. 168006612 dated 10.11.2021 for ₹ 1,91,077/- and vide receipt no. 187032666 dated 03.10.2022 for ₹ 1,91,077/-. Therefore, the Appeal was registered on 18.10.2022 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 Corporate CGRF, Ludhiana under intimation to the Appellant vide letter nos. 1136-38/OEP/A-57/2022 dated 18.10.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 28.10.2022 at 12.00 Noon and intimation to this effect was sent to both the parties vide letter nos. 1143-44/OEP/A-57/2022 dated 19.10.2022. As scheduled, the hearing was held in this Court and copy of proceeding dated 28.10.2022 was sent to both the parties vide letter nos. 1186-87/OEP/A-57/2022 dated 28.10.2022. The next date of hearing was fixed for 02.11.2022 at 12.30 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 hearing was fixed for 07.11.2022 at 12.30 PM. Copies of proceedings dated 02.11.2022 were sent to both parties vide letter nos. 1217-1218 / OEP/ A-57 / 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. 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 Representative and the Respondent alongwith material brought on record by both the parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

The Appellant made the following submissions in its Appeal for consideration of this Court:-

- (i) The Appeal was filed by the Appellant for setting aside the impugned order dated 15.09.2022 passed by Corporate Consumer Grievance Redressal Forum, Ludhiana in Case No. CF-076/2022 by virtue of which the Corporate Forum had dismissed the Petition filed by the Appellant against the demand notice of ₹ 9,55,381/- vide Memo No. 1749 dated 20.08.2021, which was against the law and facts of the case. The order under appeal is liable to be set aside.
- (ii) The brief facts of the case were that Appellant was a consumer having A/c No. 3003351711 in the name of M/s. Vardhman Industries Ltd. having LS connection with sanctioned Load/CD of 1299.87 kW/ 600 kVA under DS Division, Rajpura.
- (iii) In 2011, an agreement was signed by the Appellant 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 4799.687 kW/4500 kVA & 7500 kW/

5000 kVA respectively i.e. for a total Load/CD of 12299.687kW/9500 kVA with M/s Vardhman Industries as leader of the Cluster.

- (iv) 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. 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.
- (v) 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 its 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.
- (vi) 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 M/s. Vallabh Tinplate Ltd. was duly reflected as 600 kVA and 7000 kVA respectively.

- (vii) It would be most material to state here 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.
- (viii) In the meantime, M/s. Vardhman Industries Ltd. had gone in insolvency proceedings before Hon'ble National Company Law Tribunal, New Delhi. Vide order dated 16.11.2017, the CIRP process commenced and moratorium u/s 14 of the Insolvency and Bankruptcy Code, 2016 was imposed by the Competent Authority. Subsequently, Resolution Plan of M/s. JSW Steel Ltd. was accepted by a detailed order. Needless to mention that dues if any, towards PSPCL payable by M/s. Vardhman Industries Ltd. (Corporate Debtor) was treated as 'Operational Creditor' and therefore whatever was provided for in the resolution plan, nothing more remained payable from the date of approval i.e.19.12.2018. The Hon'ble National Company Law Tribunal, however imposed certain limitations in respect of "undecided claims" which were fastened upon resolution applicant.
- (ix) That aggrieved against such conditions of undecided claims, the resolution applicant filed Company Appeal (AT) (Insolvency) no.467 of 2019 before NCLAT. The said Appeal

was allowed vide order dated 04.12.2019 and it was held that resolution applicant cannot be burdened with any such undecided claims subsequently.

- (x) Keeping in view the order of NCLAT, a letter dated 09.07.2020 was sent by M/s. Vardhman Industries being subsidiary of JSW Steels to SDO/ Commercial Sub Divn., Rajpura regarding extinguishment of liabilities of M/s. Vardhman Industries Ltd. as per the abovementioned orders of NCLT/ NCLAT.
- (xi) The PSPCL had been levying and recovering surcharges for excess demand against the constituent member 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/-.
- (xii) On 28.06.2021, CE/ Commercial had issued letter 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 says that billing w.r.t. levying fixed charges was to be carried out on the basis of sanctioned contract demand of the Cluster Sub Station.

- (xiii) In a most surprising manner, apparently without looking into the records of the PSPCL itself, on 20.08.2021, the Assistant Executive Engineer notified M/s. Vardhman Industries Ltd. demanding ₹ 9,55,381/- which was to be deposited within 15 days.
- (xiv) On 02.09.2021, M/s. JSW Vallabh Tinsplate Pvt. Ltd. replied to the notice to SDO/ Commercial, Rajpura dated 20.08.2021 submitting that the CD of the Cluster Sub Station was decreased from 9500 kVA 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.
- (xv) On 21.09.2021, again notice was sent by the Assistant Executive Engineer to the Appellant relying upon a letter Memo No. 944 dated 28.06.2021 issued by the Chief Engineer/

Commercial and stating 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 stated that the fixed charges were 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 however was not supplied to Appellant.

- (xvi) On 11.10.2021, M/s. JSW Vallabh Tinplate requested through a representation to the Chief Engineer/ DS (South) to look into the matter and on 18.10.2021, 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 Higher Authorities for consideration.
- (xvii) On 18.10.2021, again a notice was issued by the Assistant Executive Engineer to 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.
- (xviii) 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. Chief Engineer/ DS (South), Patiala alongwith Memo No.9196/97.

(xix) On 10.11.2021, M/s. Vardhman Industries Ltd. informed the SDO/ PSPCL that the demand of ₹ 9,55,381/- was to be challenged before the CGRF, Patiala and to that respect twenty percent of the disputed amount was to be deposited. On 10.11.2021, twenty percent amount of ₹ 1,91,077/- was deposited in case of M/s. Vardhman Industries Ltd. and thereafter complaint was filed on 17.12.2021.

(xx) The Corporate Consumer Grievance Redressal Forum, Ludhiana dismissed the complaint filed by the Appellant vide communication dated 21.09.2022. Not satisfied with the decision of the CCGRF and to file a representation before this Court further twenty percent of the disputed amount had been deposited. On 29.09.2021, twenty percent amount i.e. ₹ 1,91,077/- was deposited in case of M/s. Vardhman Industries Ltd.

(xxi) The Corporate Consumers Grievances Redressal Forum, Ludhiana 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 provision of the Electricity Act, 2003, violates the Regulations framed by the PSERC and also various instructions issued in this regard. The impugned order of the CCGRF was liable to be set aside inter alia on the following grounds:-

(xxii) The order of the CCGRF was in complete violation of the provisions of Insolvency Bankruptcy Code, 2016 and in contradiction with the NCLT order approving resolution plan, NCLAT & Hon'ble Supreme Court.

(xxiii) It was submitted that Vardhaman Industries Ltd. ("VIL") was referred to Corporate Insolvency resolution process ("CIRP") under the IBC vide an order of the Hon'ble National Company Law Tribunal ("NCLT") dated 16th November 2017. Pursuant to the same and after following the due process of law, resolution plan submitted by JSW Steel Limited was approved by NCLT vide order dated 19th December, 2018 ("NCLT Order"), followed by another order of the Hon'ble National Company Law Appellate Tribunal ("NCLAT") order dated 4th December, 2019 ("NCLAT Order").

(xxiv) It was submitted that in terms of the Resolution Plan, any and all claims or demands in connection with or against the Company and all liabilities or obligations of the Company (including any demand for any losses and damages) by any

stake holder and all enquiries, investigations or proceedings in relation to the foregoing whether civil or criminal in relation to any period prior to the NCLT approval date will be written off in full and shall be deemed to be permanently extinguished. No amount was due since the order of the NCLT had attained finality and since original amount stand settled by the NCLT in terms of resolution plan. Further all liabilities and obligations in relation to any previous agreement shall stand to be permanently extinguished.

(xxv) Therefore, the Code provides that no claims for recovery of dues or liabilities can be made after the National Company Law Tribunal (hereinafter referred to as “NCLT”/ “Adjudicating Authority”) had approved the resolution plan. This ensures that the resolution plan will have a binding force not only on the Corporate Debtor but also on its stakeholders including the government and local authorities.

(xxvi) The claims which pertained to the period prior to the approval of the resolution plan were settled in accordance with the Resolution Plan. Any such claim shall not be considered and the right of such claimants to recover dues or any payment from the Corporate Debtor get extinguished once the NCLT had given its approval for the implementation of the resolution

plan. The issue of the treatment of dues and claims after the approval of the resolution plan by the NCLT was dealt with by various Tribunals, Courts including the Hon'ble Supreme Court of India.

(xxvii) From Section 238 of the Insolvency and Bankruptcy Code, 2016, it was obvious that the Code will override anything inconsistently contained in any other enactment. The main objective behind the enactment of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"/ "Code") was to resolve the insolvency of the Corporate Debtor by way of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") and to make it to stand back on its feet with the help of resolution applicants. Moreover, it was also important to ensure that the successful resolution applicant enjoys and conducts the affairs of the Corporate Debtor independently and afresh.

(xxviii) In the case of *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*, the Hon'ble Supreme Court addressed the issue as to whether a creditor including Central Government, State Government, or any local authority is entitled to recover any unclaimed dues after the approval of the resolution plan by the Hon'ble

Adjudicating Authority. The Hon'ble Court answered in negative and held that as such when the resolution plan was approved by NCLT, the claims, which were not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the Petition were the proceedings, which related to the claims of the Respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.

(xxix) It needs special mention here that neither any objection or appeal in respect of liability/ dues of Vardhman Industries Ltd was raised by PSPCL before NCLT/ NCLAT nor any such objections/ reply to the letter dated 09.07.2020 whereby consumer informed Respondent/PSPCL about the Orders of NCLT/ NCLAT and exhaustion of liability of the old consumer was given, meaning thereby the extinguishment of liability, if any, uptill the final order passed by the NCLAT was accepted by the Distribution Licensee/ PSPCL. So far, as the orders of Hon'ble NCLT, New Delhi and NCLAT, New Delhi were concerned, Respondent reported that the amount was liability

of the new consumer to own all previous liabilities of the old consumer.

(xxx) The Corporate Forum didn't dwell on this issue and left it completely undecided. The Corporate Forum simply made an observation by saying that it was of the view that the Respondent must have considered the legal aspect before issuing Notice No. 1749 dated 20.08.2021 and responsibility regarding the same would lie with the Respondent. The impugned order of the Corporate Forum was not in conformity and in conflict with several judgments of Hon'ble Supreme Court and therefore the same is required to be struck down and invalidated.

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

(i) The Corporate Consumers Grievances Redressal Forum, Ludhiana had failed to consider the fact that consumer has 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 the case of the PSPCL that bills issued to the consumer were against law or were violating any of the mandatory provisions.

- (ii) The Corporate Consumers Grievances Redressal Forum, Ludhiana had failed to consider the fact that a simple letter by the CE/ Commercial cannot override the mandatory provisions of Electricity Act, 2003. The charges can only be recovered from an Appellant in accordance with the Tariff Orders and regulations framed under the Act. Section 45 of the Electricity Act, 2003 is extracted below for ready reference:-

"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 clearly reveals that PSPCL being Distribution Licensee can only charge tariff determined by the PSERC and not even a penny more than that. The fixed charges so calculable on the basis of CD had already been billed and recovered through the monthly consumption bills. There was 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 basics of contract demand mentioned in the draft cluster agreement.

- (iii) That 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) had been clearly and categorically specified, which can be levied on the sanctioned contract demand. The monthly bills raised against the complainant are strictly as per the Tariffs fixed from time to time, keeping in view the CD of the complainant. There was no provision in either the tariff orders 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 orders issued from time to time. No officer of 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 tariffs/ charges are concerned can 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 a 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 have 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. 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 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/-. Had combined CD mentioned on the cluster agreement be the guiding factor, then uptill 9500 kVA 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 has been adhered to/ followed, if yes what would be the effect.

- (i) That as far as procedure prescribed for reduction of load (Contract Demand), the same is 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 your kind perusal:-

"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 the Complainant.
- (iii) Similarly, Para 25 of 'Conditions of Supply' also prescribes only submission of A&A form as prescribed by the PSPCL. The 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 attributed to the consumer for not amending the cluster agreement. It's pertinent to mention here that no one had even informed the consumer at that point of time and even for a longer period the requirement of amending the Cluster Agreement. In fact, there was no such provision in law which required the amendment in the Cluster Agreement. Moreover, whether it's Cluster agreement or A&A Form, both these agreements were entered with PSPCL and in terms of common

law jurisprudence the later agreement shall always prevail over the previous one.

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

- (i) That 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 has been put forward nor any mandate of the submission of new/ afresh draft agreement for cluster as regard to reduction of CD has been specified to be entered into between the parties. The draft agreement did not talk of requirement of the submission of new/ afresh draft agreement in case the CD is reduced.
- (ii) That Reg.4.3 of the Supply Code, 2014 is relevant to billing of Cluster Sub Station. Regulation 4.3 is reproduced herein below for your kind 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 [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 [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.

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 Sub Station will also be deemed to be reduced, otherwise how second part of Clause 4.3.3 will 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 needed answer was as to whether still PSPCL will raise its bills on the basis of lesser CD?

- (iii) That CE/ Commercial had issued letter Memo No. 944 dated 28.06.2021 with subject 'Billing for Cluster Sub Station' stating that the fixed charges are to be levied upon contract demand mentioned in the cluster agreement irrespective of accepted reduction/ increase of load thereafter and therefore contrary to the various legal provisions of the Electricity Act, 2003, Regulations framed there under and even contrary to Manual of Instructions.
- (iv) 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, the letter being without jurisdiction was liable to be ignored all together.
- (v) The 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 forms 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 may be only required for ancillary purposes but not for raising bills.

(E) Whether the impugned demand/ memo no. 1748 dated 20.08.2021 was 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 consumers.

(F) Whether Distribution Licensee was stopped from raising supplementary demand by principle of 'Estoppel' 'Acquiescence' 'waiver'

(i) The Corporate 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, as per Chief Engineer/ DS (South), Patiala) letter No. 2039/41 Dt. 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.
- (iii) 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) 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 Corporate Forum dismissed the complaint filed by the Appellant against the illegal demand notice of ₹ 9,55,381/- vide Memo No. 1749 dated 20.08.2021, may kindly be set aside and the Appeal may kindly be allowed with costs throughout, in the interest of justice.

(b) Submission during hearing

During hearing on different dates, the Appellant reiterated the submissions made in the Appeal and prayed to allow the same.

(A) 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) The amount was charged to the Appellant Post Resolution Plan as per Half Margin No. 30 dated 12.08.2021 of the Audit Party. 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 the Cluster Sub-Station and not on the basis of sanctioned CD of the 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 officers 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 members. This overhauling was being done by Audit Party from time to time. The amount was established Post Resolution Plan as per Half Margin No. 30 dated 12.08.2021 of the Audit Party.
- (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 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.

- (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 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.
- (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 Forum had rightly decided the case on the basis of record produced by the Respondent.

(b) Additional submissions:

The Respondent made the following additional submissions vide its Memo No. 7396 dated 01.11.2022 for consideration of this Court:-

- (i) The liability of the Appellant was amounting to ₹ 9,55,381/- and accordingly prior to Resolution Plan by NCLT on 19.12.2018 was ₹ 2,63,711/- and post Resolution Plan was ₹ 6,91,670/-.
- (ii) The Respondent had not taken any action on letter dated 09.07.2020 as the disputed amount was not established at that time and the same was established on 12.08.2021 as per Audit Party Half Margin.
- (iii) So far as the orders/ judgments referred by the Appellant in its Appeal are concerned, it had been replied that liability was established at a later date whereas the Resolution Plan had

already been approved. Since the Appellant was availing all the benefits of Cluster Sub Station Schemes, therefore the same was liable to pay the amount raised by the Audit Party.

- (iv) With reference to the quarry raised by this Court regarding change of name of the Appellant, it was replied that there was no necessity of Change of name as only internal Management of the Company was changed and further the Consumer did not approach the Respondent for effecting change of name. The Company continued to avail the benefits of Cluster Sub Station with title M/s. Vardhman Industries Ltd.

(c) Further 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.

(d) Submission during hearing

During hearing on 28.10.2022/02.11.2022/ 07.11.2022, the Respondent reiterated the submissions made in the written reply to the Appeal as well as in Additional and Further submissions and prayed for dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the amount of ₹ 9,55,381/- charged to the Appellant vide Notice No. 1749 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 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. 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 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. Further, the Appellant had gone in Insolvency Proceedings before the Hon'ble National Company Law Tribunal and whatever was provided for in the Resolution Plan, nothing more remained payable from the date of approval i.e. 19.12.2018. Feeling aggrieved against such conditions of undecided claims, the Resolution Applicant had filed Company Appeal No. 467 of 2019 before NCLAT. The said Appeal was allowed vide order dated 04.12.2019 and it was held that Resolution Applicant cannot be burdened with any such undecided claims subsequently so the demand of the Respondent after that proceedings is not tenable at this stage. Further, 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/-. 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. The Appellant contended that CD of the Cluster Sub Station was decreased from 2500 kVA to 600 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 tariffs and payments were made.

- (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. He further argued that the amount has been charged Post Resolution Plan as per Half Margin No. 30 dated 12.08.2021 of the Audit Party. 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 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. 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 CD . 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 Load/CD of 4799.687KW/4500KVA & 7500KW/ 5000KVA respectively i.e., for a total Load/CD of 12299.687KW/9500KVA in which Vardhman Industries is leader of the cluster. On 01.09.2015, JSW 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 making total CD

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. Later, CE/ DS, South Zone wrote to ASE/ CBC, Patiala vide his probable memo No. 2038 dated 23.02.2018 that keeping in view the representation of the consumer, the date of sanction of load (reduction in load/ CD from 3299.687 KW/ 2500 KVA to 2000 KW/ 1900 KVA) should be considered 17.01.2018 for billing purpose. 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 levied 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 charged an amount of Rs. 955381/-. AEE/Sub-Division Rajpura issued notice to the petitioner vide memo no. 1749 dated 20.08.2021 stating that: -

“ਆਪਦਾ 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 ਸੀਡੀ 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 ਚਾਰਜਿਜ਼ ਦੀ **955381/-** 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 the petitioner 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 12299.687 KW/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.”

So far, the order of the Hon’ble NCLT, New Delhi and NCLAT, New Delhi are concerned, Respondent reported that the amount is liability of the new consumer to own all previous liabilities of the old consumer. These orders had been conveyed to the Respondent by the Petitioner on 09.07.2020 and the notice No. 1749 dated 20.08.2021 was issued by the Respondent on 28.08.2021 after a period of about 1 year, hence, Forum is of the view that the Respondent must have considered the legal aspect before issuing notice No. 1749 dated 20.08.2021 and responsibility regarding the same would still lie with the Respondent.

Keeping in view the above facts/discussion, as per stipulations in the Cluster Agreement and Regulation 4.3.3 of Supply Code Forum is of the view that constituent members of the Cluster are required to be billed as per Regulation 4.3.3 of Supply Code, 2014 and amount of Rs. 955381/- charged vide Notice No. 1749 dated 20.08.2021 is justified.”

- (iv) I have gone through the written submissions made by the Appellant in the Appeal, written reply/ additional submissions and further submissions of the Respondent as well as oral arguments of both the parties during the hearings on 28.10.2022/02.11.2022 and 07.11.2022. It is observed that the

Appellant alongwith M/s JSW Vallabh Tinplate Pvt. 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 also 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. 1749 dated 20.08.2021 is as per above mentioned regulations. 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 were 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) The Appellant i.e. M/s Vardhman Industries Ltd., the constituent member of the Cluster Sub Station had got reduced its load 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 the CE/ Commercial cannot override the mandatory provisions of the Electricity Act, 2003 and charges could be recovered only in accordance with the Tariff Order 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) 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.

(xvi) 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-076of 2022. The amount of ₹ 9,55,381/- charged to the Appellant vide Notice No. 1749 dated 20.08.2021 as arrears of fixed charges for 9500 kVA Contract Demand of the Cluster Sub Station is correct and justified. The demand was raised as per the Electricity Act,2003 and regulations framed there under and hence cannot be termed as illegal.

(xvii) So far as the orders of the Hon'ble NCLT and NCLAT, New Delhi as pleaded by the Appellant during arguments are concerned, the Respondent must have considered this legal

aspect before issuing the notice under dispute and the responsibility regarding the same would still lie with the Respondent as ordered by the Forum also. The Respondent may take legal opinion about the applicability of NCLT/ NCLAT orders/ judgments enclosed with the Appeal on the recovery of the demand raised vide Memo No. 1749 dated 20.08.2021 & recover the same as per law after examining legal advice/ opinion.

(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 un-necessary 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.

6. Decision

As a sequel of above discussions, the order dated 15.09.2022 of the CCGRF, Ludhiana in Case No. CF-076 of 2022 is hereby upheld. The amount in dispute may be recovered by the Respondent as per Law after taking the legal advice/ opinion. NCLT/ NCLAT orders enclosed with the Appeal may also be kept in view while issuing recovery notices.

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.