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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 01/2018**

**Date of Registration : 03.01.2018**

**Date of Hearing : 02.07.2018**

**Date of Order : 06.07.2018**

**Before:**

**Er. Virinder Singh, Lok Pal (Ombudsman) Electricity**

**In the Matter of :**

KSM Spinning Mills Ltd,

Village- Mandiala Kalan,

Post Office- Bija,

Khanna,

Distt.Ludhiana.

...Petitioner

Versus

Additional Superintending Engineer,

DS Division,

PSPCL,

Khanna.

...Respondent

**Present For:**

Petitioner : Sh.Mayank Malhotra, Advocate,

Petitioner’s Counsel (PC).

Respondent : 1. Er. Ravinder Singh

Addl. Superintending Engineer.

2. Er.Ashish,

Assistant Engineer.

3. Sh.Sanjeev Kumar,

Revenue Accountant

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 14.11.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. CG-179 of 2017 deciding that :

*“No interest /surcharge as claimed by the petitioner on advance is payable. Further, amount of Rs.6,37,985/- yet to be recovered from the Petitioner for billing month of 05/2017 to be recovered with interest charges as per instructions of the PSPCL.”*

2. **Facts of the Case:**

The relevant facts of the case are that:-

1. The Petitioner was having a Large Supply Category connection with Sanctioned Load of 6250 kW and Contract Demand (CD) as 4995 kVA, bearing Account No. K32-LS01-00001.
2. The Petitioner received the bill for the period from 02.05.2017

to 01.06.2017 amounting to Rs.1,74,93,245/-. The due date of the bill was 19.06.2017.

**(iii)** The Petitioner did not agree with the amount raised in the bill andfiled a Petition in the Forum, who after hearing, passed order dated 14.11.2017 (Reference: Page 2, Para-1).

**(iv)** Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court to set aside the decision of the Forum and issuing direction to the Respondent to pay 5% surcharge and 1.5% interest per month on advance/excess payments made by the Petitioner apart from refunding the amount of Rs.57,82,387/- (charged illegally on due amount of Rs.4,58,39,858/- at the time of reconnection) against the decision dated 11.4.2016 of the Whole Time Directors (WTDs) to whom, the representation of the Petitioner was referred for settlement.

**3**. **Submissions made by the Petitioner and the Respondent:**

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representative of the Petitioner and the Respondents alongwith material brought on record by both the sides.

1. **Submissions of the Petitioner**:

The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was having an electric connection under Large Supply Category, bearing Account No.K32-LS01-00001, with Sanctioned Load of 6250 kW and Contract Demand (CD) of 4995 kVA.
2. The connection of the Petitioner was running since long and the electricity bills, issued by the Respondent on “O” code (O.K) from time to time were being paid regularly and nothing was due against the Petitioner except a very small part of the disputed bill issued on 08.06.2017 amounting to Rs.1,74,93,245/-.
3. The connection of the Petitioner was disconnected vide

Temporary Disconnection Order (TDCO) No.148/55526 dated 24.08.2015 and Permanent Disconnection Order (PDCO) No.127/54077 dated 04.09.2015. The Petitioner approached higher authorities for reconnection of electric connection. The Whole Time Directors (WTDs) of the PSPCL, in their meeting dated 11.04.2016, while allowing instalments of defaulting amount of Rs.4,58,39,858/-, decided as under:

*“Resolved that approval is hereby accorded as a special case to allow the firm to deposit the defaulting amount and MMC in instalments starting with first instalment of Rs.50 Lakh on 02.05.2016 and next instalment of Rs.50 Lakh after 10 days i.e. on 12.05.2016 and thereafter monthly payment of Rs.30 Lakh starting from 12.06.2016 allowing reconnection by paying 15 Lakh and to make payment of outstanding amount in 15 monthly instalments to M/S KSM Spinning Mills Limited, as per the following conditions, to be ratified by the BoD:*

1. *The consumer will deposit Rs.15 Lakh before reconnection.*
2. *The consumer shall deposit first instalment of Rs.50 Lakh on 02.05.2016 and next instalment of Rs.50 Lakh after 10 days i.e. on 12.05.2016 and thereafter, monthly payment of Rs.30 Lakh starting from 12.06.2016.*
3. *Further, at any stage, if the consumer defaults in making 2nd instalment, the connection will be disconnected again and then the supply will only be restored after the recovery of total outstanding amount.*
4. *An undertaking of the consumer in this regard be taken before allowing reconnection.*
5. *Compliance of the conditions given at para 34.2(a) of the Supply Code-2014 and late payment surcharge****,*** *as given in Annexure-1, Clause No.21 of CC No.13/2015 shall also be ensured by the field office.*
6. *The consumer shall submit Post Dated Cheques for the payments towards instalments and weekly advance.”*

*For weekly advance, consumer shall pay one week’s advance energy bill till his defaulting amount is fully deposited. If, in case, there is increase in weekly consumption of the consumer, he will be asked to deposit in excess consumption bill immediately”.*

1. The connection of the Petitioner remained disconnected from 24.08.2015 to 12.04.2016 and was reconnected on 13.04.2016.
2. The Petitioner deposited the full amount with the Respondent as decided by the Whole Time Directors (WTDs). But, the Respondent added an illegal amount of Rs.57,82,387/- on account of interest/surcharge in the defaulting amount of Rs.4,58,39,858/- after submission of the Agenda for consideration of the Whole Time Directors (WTDs). This was despite the fact that although Whole Time Directors (WTDs) of the Respondent, vide their decision dated 11.04.2016, authorized PSPCL to charge late payment surcharge, but did not authorize the PSPCL to charge interest on defaulting amount of Rs.4,58,39,858/-. This intention of Whole Time Directors (WTDs) was very much clear from their decision.
3. The Respondent continued to issue bills by adding surcharge/interest in bills inspite of the fact that the Petitioner had deposited full defaulting amount without any default. The Petitioner also deposited advance payments of bills issued by the Corporation on weekly basis. The disputed bill dated 08.06.2017 amounting to Rs.1,74,93,245/- was against instructions of General Conditions of Tariff of the Tariff Order issued by the Hon’ble PSERC.
4. The Respondent issued the disputed bill dated 08.06.2017 and included illegal amounts as sundry charges and arrear of current year without supplying any details of the amount charged. These amounts had been included in the bill illegally only to harass the Petitioner, since, it had already paid all the pending dues and bills issued by the Respondent for the energy consumption recorded upto 30.05.2017. The amount of current bill issued on 08.06.2017 was Rs. 51,11,144/- only. But, the Respondent and the Forum calculated this amount as Rs.53,27,280/-, which was not correct.
5. The Petitioner paid the amount of bills raised, on weekly basis, by the Respondent as per details given below during May and June 2017:

S.No. Amount paid Receipt No. Date

(In INR)

1 20,00,000/- 86 09.05.2017

2. 20,00,000/- 02 17.05.2017

3. 28,39,858/- 01 31.05.2017

4. 17,00,000/- 02 31.05.2017

5. 50,00,000/- 38 13.06.2017

The Petitioner made above payments which were in excess than that of the amounts of current bills issued for the period of bill i.e. from 02.05.2017 to 01.06.2017. The Petitioner was, thus, entitled to surcharge/interest on these payments as well as on excess payments made earlier.

1. The Respondent had not supplied any details of sundry charges, arrear of current year and other charges included in the amount of Rs.1,74,93,245/-, issued on 08.06.2017. The Respondent created lot of confusion in the bills issued and exact amount of each and every bill was never reconciled keeping in view the parameters (Sale of Power, Electricity Duty, Meter Rent etc.) mentioned in the bill. The Respondent was requested to reconcile the details of Rs.1,74,93,245/- shown in bill, which was issued on 08.06.2017. The officers of the Respondent were not sincere towards high end user consumer contributing revenue of Rs. 1.5 to 2 Crore per month to the PSPCL. The doubts raised by the Petitioner regarding amount shown in the bill were never redressed and Petitioner was forced to deposit illegal excess amount to avoid disconnection of the electric connection. This attitude was against the instructions of the Distribution Licensee.
2. The Respondent admitted in the minutes of meeting of the officers of PSPCL and representatives of the Petitioner held on 01.08.2017 and 02.08.2017 that correct surcharge/interest was not being calculated in the bills issued to the Petitioner due to fault in the billing software. The Respondent further admitted that at present, an amount of Rs.6,37,985/- was recoverable from the Petitioner. It clearly showed that the amount deposited by the Petitioner was not being credited to its account and illegal surcharge/interest was charged.
3. The Respondent had been charging late payment surcharge/interest on delayed payments. On the same analogy, the Respondent was bound to pay surcharge/interest to the Petitioner on advance/excess payments made to the PSPCL from time to time. The Petitioner was entitled to at least 5% surcharge and 1.5% interest per month on advance/excess payments made to the Respondent. Besides, the Petitioner was also entitled to the payment of refund of the amount of Rs.57,82,387/- (charged illegally on due amount of Rs.4,58,39,858/- at the time of reconnection) against the decision of the Whole Time Directors(WTDs).
4. **Submissions of the Respondent**:

The Respondent, in its defence, submitted the following for consideration of this Court:

**(i)** The Petitioner was having a Large Supply Category connection, bearing Account No.K32-LS01-0001, with Sanctioned Load of 6250 kW and Contract Demand as 4995 kVA.

**(ii)** The Petitioner’s bill dated 08.06.2017 (payable by 19.06.2017) amounting to Rs.1,74,93,245/-, which, apart from current charges, included outstanding arrears of previous years and sundries.

1. It was incorrect on the part of the Petitioner to state

that it had paid all the bills issued by the Respondent-PSPCL. Some cheques issued during 05/2016 to 09/2016 by the Petitioner for payment of its electricity bill were dishonoured, on being presented in the Bank.

1. Although, the connection of the Petitioner was

reconnected, whereafter, as per the decision of the Whole Time Directors (WTDs), the Petitioner did not comply with the condition of the order of the Whole Time Directors (WTDs) as mentioned in para-5 of their order. The Petitioner defaulted in making payment of the bills and amount of instalments regularly. The Petitioner deposited the instalments of Rs. 4,58,39,858/-. But, no amount on account of interest

was deposited by the Petitioner in compliance to the order of the Whole Time Directors (WTDs).

**(v)** The Petitioner incorrectly stated that it had deposited the whole defaulting amount.

**(vi)** On a representation from the Petitioner for reconciling the figures of the disputed payments, the Chief Engineer/Commercial, PSPCL, vide Memo No.79 dated 28.07.2017, constituted a Committee comprising the Deputy Chief Accounts Officer/ Central Zone, Ludhiana, Addl. Superintending Engineer/DS, PSPCL Khanna, Senior Executive Engineer, Centralized Billing Cell (CBC), PSPCL, Ludhiana, SDO/DS Sub Division, Chawa, Revenue Accountant (RA) O/O Sub Division, Chawa, Accounts Officer/Field, Ropar and Assistant Accounts Officer/Audit, apart from representatives of the Petitioner, to re-work the outstanding amount against the Petitioner. Accordingly, the bill of the Petitioner for the month of 05/2017 was examined in depth on 01.08.2017 and 02.08.2017 by the said Committee which reported the following details in this regard:

Consolidated kVAh for the : 807115 Units

month of 05/2017

As per recalculation total payable : Rs.5,33,72,80/-

bill (including other charges such

as Meter Rent, ED,IDF, TOD

Rebate etc.)

Balance payable amount : Rs.39,39,651/-

Excess payment made : Rs.13,97,629/-

during 04/2017

Late Payment surcharge : Rs.1,96,983/-

Net Payable : Rs.4,13,66,34/-

Consumer made payment as per : Rs.34,98,649/-

CGRF order ( 20% of disputed

amount Rs.1,74,93,250/- )

Amount yet to be recovered : Rs.6,37,985/-

**(vii)** As per the rules and regulations of the PSPCL, there was no provision for allowing the interest on the excess payment, if any, paid by the consumer. However, as per record, the Petitioner did not pay any amount more than that due.

**(viii)** Duringoral discussion on 02.07.2018**,** the Respondent placed on record a copy of order dated 17.04.2018 dismissing the Civil Writ Petition No.260 of 2018 filed by the Petitioner on 06.01.2018 in the Hon’ble Punjab and Haryana High Court, Chandigarh, against the order dated 17.11.2017 of the Respondent.

**(ix)** It was clear from the decision of the Whole Time Director’s (WTDs) that 1.5 % interest was chargeable from the Petitioner on the outstanding amount as per Commercial Circular (CC) No.13/2015 which was issued with the approval of Hon’ble PSERC.

In view of the above, the Respondent prayed to dismiss the Appeal.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the claim of interest/surcharge on the advance/excess payment statedly deposited by the Petitioner and recovery of outstanding dues for the billing month of 05/2017 from the Petitioner.

*The points emerged are analysed and deliberated as under****:***

(i) Petitioner’s Counsel (PC) contended thatthe dispute in the present case arose when due to non deposit of the bills by the Petitioner for the months of 05/2015, 06/2015 and 07/2015, the Respondent issued Temporary Disconnection Order (TDCO) No. 148/55526 dated 24.08.2015 and permanently disconnected the electricity connection vide Permanent Disconnection Order(PDCO) No. 127/54077 dated 04.09.2015 and removed the Metering Equipment from the site. Aggrieved, the Petitioner met the Chairman and Managing Direcor (C.M.D,), PSPCL, Patiala, whereafter, the Chief Engineer/ Commercial, PSPCL, Patiala placed the Memorandum before the Whole Time Directors (WTDs), who in their 180th Meeting held on 11.04.2016, decided as under:

*“Resolved that approval is hereby accorded as a special case to allow the firm to deposit the defaulting amount and MMC in instalments starting with first instalment of Rs.50 Lakh on 02.05.2016 and next instalment of Rs.50 Lakh after 10 days i.e. on 12.05.2016 and thereafter monthly payment of Rs.30 Lakh starting from 12.06.2016 allowing reconnection by paying 15 Lakh and to make payment of outstanding amount in 15 monthly instalments to M/S KSM Spinning Mills Limited, as per the following conditions, to be ratified by the BoD:*

1. *The consumer will deposit Rs.15 Lakh before*

*reconnection.*

1. *The consumer shall deposit first instalment of Rs.50 Lakh on 02.05.2016 and next instalment of Rs.50 Lakh after 10 days i.e. on 12.05.2016 and thereafter, monthly payment of Rs.30 Lakh starting from 12.06.2016.*
2. *Further, at any stage, if the consumer defaults in making 2nd instalment, the connection will be disconnected again and then the supply will only be restored after the recovery of total outstanding amount.*
3. *An undertaking of the consumer in this regard be taken before allowing reconnection.*
4. *Compliance of the conditions given at para 34.2(a) of the Supply Code-2014 and late payment surcharge****,*** *as given in Annexure-1, Clause No.21 of CC No.13/2015 shall also be ensured by the field office.*
5. *The consumer shall submit Post Dated Cheques for the payments towards instalments and weekly advance.*

*For weekly advance, consumer shall pay one week’s advance energy bill till his defaulting amount is fully deposited. If, in case, there is increase in weekly consumption of the consumer, he will be asked to deposit in excess consumption bill immediately”.*

Petitioner’s Counsel (PC) submitted that in compliance to the said decision dated 11.04.2016 of the Whole Time Directors (WTDs), the connection of the Petitioner, which remained disconnected from 24.08.2015 to 12.04.2016, was reconnected on 13.04.2016. The Petitioner deposited full amount with the Respondent as decided by the Whole Time Directors (WTDs). But, the Respondent added an illegal amount of Rs.57,82,387/- on account of interest/surcharge in the defaulting amount of Rs.4,58,39,858/- after submission of the Agenda for consideration of the Whole Time Directors (WTDs). This was despite the fact that although, Whole Time Directors (WTDs) of the PSPCL, vide their decision dated 11.04.2016, authorized PSPCL to charge late payment surcharge, but they did not authorize the PSPCL to charge interest on the defaulting amount of Rs.4,58,39,858/-. The Respondent issued the disputed bill dated 08.06.2017 and included illegal amounts as sundry charges and arrear of current year without supplying any details of the amount charged. These amounts had been included in the bill illegally only to harass the Petitioner, since, it had already paid all the pending dues and bills issued by the Respondent for the energy consumption recorded upto 30.05.2017. The amount of current bill issued on 08.06.2017 was Rs. 51,11,144/- only. But, the Respondent and the Forum calculated this amount as Rs.53,27,280/-, which was not correct. The Petitioner paid the amount of bills raised, on weekly basis, by the Respondent as per details given below during May and June 2017:

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4. 17,00,000/- 02 31.05.2017

5. 50,00,000/- 38 13.06.2017

The Petitioner made above payments which were in excess to that of the amounts of current bills issued for the period of bill i.e. from 02.05.2017 to 01.06.2017. The Petitioner was, thus, entitled to surcharge/interest on these payments as well as on excess payments made earlier.

The Respondent, in its defence, submitted in its written reply and also during the course of oral submissions that on 24.08.2015, the connection of the Petitioner was disconnected due to non deposit of bills, whereafter, though the connection was reconnected/restored on 13.04.2016, as per the decision dated 11.04.2016 of the Whole Time Directors (WTDs), the Petitioner did not comply with the order of the Whole Time Directors (WTDs) as mentioned in para-5 of the order ibid. The Petitioner defaulted in making payments regularly of the bills and amount of instalments regularly. The Petitioner deposited Rs.4,58,39,858/- in instalments. But, no amount on account of interest was deposited by the Petitioner as required in the order dated 11.04.2016 of the Whole Time Directors (WTDs). The Respondent further submitted that as per record, the Petitioner did not pay any amount more than due. However, an amount of Rs.6,37,985/- was yet to be recovered from the Petitioner.

*I observe that the Petitioner represented to the Chairman-cum-Managing Director (CMD), PSPCL, Patiala who referred the matter to the Chief Engineer/Commercial, PSPCL, who further placed the memorandum to the Whole Time Directors (WTDs). I am of the view that the decision dated 11.04.2016 of the Whole Time Directors (WTDs) should have been accepted and complied with by the Petitioner in all sincerity and in toto instead of staking inadmissible/undue claim to payment of interest /surcharge on payments made in advance but not in excess, which were neither covered in terms of the decision dated 11.04.2016 of the Whole Time Directors (WTDs) nor under the extant regulations of the PSPCL.*

*I agree with the Respondent that interest/surcharge on delayed payments of electricity dues by the consumer was leviable and recoverable as per applicable rules/regulations..*

*I have gone through the order dated 11.04.2016 of the Whole Time Directors (WTDs) of the PSPCL who decided that consumer shall pay one week’s advance energy bill till his defaulting amount is fully deposited. Hence, the Petitioner had deposited advance payment in compliance to the Whole Time Directors (WTDs) decision and there was no clause to pay interest on this advance payment.*

**(ii)** I find that the Respondent, during the course of oral submissions, brought on record a copy of order dated 17.04.2018 passed by the Hon’ble Punjab and Haryana High Court in CWP No.260 of 2018 dated 06.01.2018 filed by the Petitioner praying for quashing the order dated 17.11.2017 of the Respondent, in this particular dispute, vide which the Petitioner had been asked to pay Rs.1,22,81,145/-, as calculated upto 31.05.2017, to which further interest had been added raising the demand to Rs.1,34,28,736/-. I would like to reproduce here the findings and decision of the Hon’ble High Court in the said CWP as under:-

*“.......After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no merit in the contention of the petitioner who has relied only upon the decision of the WTD to contend that the respondents are liable to pay the amount of Rs.4,58,39,858/- and not to the additional amount of surcharge and interest which has been calculated to the tune of Rs.1,34,28,736/- vide the impugned order/letter dated 17.11.2017, which has been passed after due deliberations in the meeting held between 01.08.2017 to 02.08.2017. Moreover, in clause 5 of the resolution passed by the WTD, it has been specifically mentioned that the compliance has to be made to the conditions given at para 34.2(a) of the Supply Code-2014 and the late payment surcharge and interest shall also be recovered/ensured by the Field Office in terms of Clause 21 of the CC-13/2015, which has already been referred to in the earlier part of this order, in which it has been categorically provided that the petitioner would be liable to pay the surcharge as well as the interest, which has been demanded by the respondents because the petitioner has failed to comply with the conditions of payment resolved by the WTD, on which the petitioner has placed the sole reliance.*

*In view of the aforesaid discussion, I do not find any merit in the present petition for the purpose of interference by this Court and hence,* ***the same is hereby dismissed,*** *though without any order as to costs****.***

*April17,2018 Sd/-*

*(Rakesh Kumar Jain)*

*Judge*

(iii) There is no denying the fact that the Petitioner was within its right to prefer an Appeal in this Court on 03.01.2018 against the order dated 14.11.2017 of the Forum in Case No.CG-179 of 2017 in terms of provisions of Section.42(5 ) of The Electricity Act-2003/ Regulation 3.16 of the PSERC (Forum and Ombudsman) Regulations- 2016. But, subsequent filing of CWP No.260 of 2018 on 06.01.2018 in the Hon’ble Punjab and Haryana High Court was ultravires of the provisions ibid. Surprisingly, the fact of dismissal of the aforesaid Civil Writ Petition, vide order dated 17.04.2018 of the Hon’ble High Court, was not brought to the notice of this Court by the Petitioner. However, the Respondent did mention the fact of filing of the said Civil Writ Petition in its written reply and about the dismissal/decision of the same during the course of oral submissions in the presence of the Petitioner’s Counsel.

From the above discussions, it is concluded that the Petitioner is liable to pay balance amount of Rs.6,37,985/- as calculated by the Respondent (which are the Consumption Charges for the billing month 05/2017), with surcharge and interest as per Tariff

Order issued by the Hon’ble PSERC and no interest/surcharge is payable to the Petitioner on advance payment of weekly energy bill which was made in compliance to the decision dated 11.04.2016 Whole Time Directors (WTDs).

**5. Decision:**

**As a sequel of above discussions, the order dated 14.11.2017 of the Forum, in Case No. CG- 179 of 2017, is upheld.**

**6.**  The Appeal is dismissed.

(VIRINDER SINGH)

July 06, 2018 LokPal (Ombudsman)

S.A.S. Nagar (Mohali) Electricity, Punjab