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

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

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

 **APPEAL NO. 52/2018**

**Date of Registration : 20.08.2018**

**Date of Hearing : 04.12.2018, 18.12.2018,**

**15.01.2019, 30.05.2019 and 20.06.2019**

**Date of Order : 14.11.2019**

**Before:**

**Er.Virinder Singh, Lokpal (Ombudsman), Electricity, Punjab**

**In the Matter of :**

 Nahar Industrial Enterprises Ltd.,

 Vill. Khumna,Khanna Road,

Amloh.

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Division ,

PSPCL, Amloh

 ...Respondent

**Present For:**

Petitioner : 1. Sh.H,N.Singhal,

 Petitioner.

 2. Sh.R.S.Dhiman,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Punardeep Singh Brar,

 S.E/Sales-1, PSPCL

 2. Er. Devinder Kumar,

 Sr. Executive Engineer/Sale-2, PSPCL

 3. Er. Sumel Singh,

 Sr. Executive Engineer, DS Division, Amloh

 4. Sh. Jaswinder Singh,

 Circle Assistant

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 18.07.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-224 of 2018 deciding that:

 *“ After going through the reply to the Petition submitted by the Respondent and oral discussion during the hearing, Forum noted that the consumer has filed a Civil Appeal No.3530-31 of 2009 in the Hon’ble Supreme Court of India, New Delhi regarding the ACD/Security Deposit. Hon’ble Supreme Court of India, vide its interim order dated 14.05.2009, directed the Petitioner to deposit ACD within a period of two weeks. As per the directions of the Hon’ble Supreme Court, the pending amount of Rs 84,53,340/-, in addition to Rs 41,79,160/- already deposited by the Petitioner, was duly deposited by the Petitioner. The last date of the hearing in the said case was 30.04.2014 and the case has not been listed further till date. The cognizance of the said amount, on which interest is being sought by the Petitioner, has already been taken by Hon’ble Supreme Court of India. So, it will be pre-mature for this Forum to make any comments on the nature of the said amount and to pass any orders regarding payment of interest to the Petitioner for the same.*

 *In view of above, Forum unanimously decided that petition/case is not maintainable in the Forum and accordingly, the case is hereby closed as dismissed”.*

**2*.* Facts of the Case*:***

 The relevant facts of the case are that:-

1. The Petitioner was having a Large Supply Category connection,

bearing Account No.K61-LS02-00040 with sanctioned load of 700 kW and contract demand (CD) as 750 kVA at 11 kV Supply voltage.

1. The Petitioner submitted an Affidavit on 24.11.1994 to the Respondent for the purpose of obtaining permission for setting up Turbo Generation (TG) by giving the following undertakings:
2. The Petitioner would run Turbo Generator Sets load in isolation and interflow of PSEB supply and Turbo Generator shall not be allowed in any circumstances and that the Petitioner would not use any changeover switch for that purpose.
3. In case the Petitioner is found to have deployed Change Over Switch Arrangements/Bus coupler for using PSEB supply for T.G Set loads, the Petitioner will be bound to pay load surcharge as per instruction of PSEB.
4. The Petitioner was granted permission for installation of Two No.

Turbo Generator (TG) Sets of capacity 3125 kVA each and two Diesel Generator (DG) Sets of capacity 300 kVA and 320 kVA by the Chief Engineer/Commercial of the erstwhile PSEB (now PSPCL), vide Memo No.108124/27 dated 22.12.1994 with the following conditions:

1. T.G. Sets shall run in isolation with PSEB ( now

PSPCL) supply system and no interflow of PSEB supply and TG Generation shall be permitted.

1. No Change Over Switch/ arrangement/Bus Coupler

 for flow of Power shall be allowed.

1. In case of detection of Change Over Switch arrangement/ Bus Coupler for using PSEB supply for TG Sets load, Load Surcharge shall be charged on entire load fed from TG Sets.
2. Permission fee @ Rs 1/- per kVA shall be recovered

 for TG Sets capacity.

1. The Petitioner again applied for permission to install Additional two

no. TG Sets of 3 & 6 MW. In response, the Chief Engineer/Commercial, PSEB, allowed installation, vide memo no.46932/33 dated 12.09.2002, subject to payment of the following amounts as provided in Commercial Circular No. 26/2002 dated 04.12.2002:

1. Permission fee @ Rs 50/- per kVA.
2. **Advance Consumption Deposit (ACD) for load**

**Connected to TG over and above the load already sanctioned and released from PSEB system.**

1. Parallel Operation Charges @ Rs 200/- per kVA on

 7.5% of the installed capacity of TG Set in kVA.

1. The Petitioner deposited the Permission Fee of Rs 5,62,500/- on

09.10.2002 but did not deposit other charges i.e. Parallel Operation Charges & ACD.

**(vi)** The Petitioner made a detailed representation dated 18.11.2002 to the Respondent stating that CC No.26/2002 was not applicable to it as the erstwhile PSEB had already granted permission to it in the year 1994 and further that TG sets were not synchronized with erstwhile PSEB supply.

1. The Petitioner filed a Petition No.08/2003 dated 01.07.2003 followed by Revised Petition dated 15.09.2003 before Hon’ble PSERC to challenge the conditions laid, while granting permission by the CE/Commercial, Patiala, vide memo no.46932/33 dated 12.09.2002. Hon’ble PSERC, vide its order dated 23.04.2004, directed to conduct joint inspection of the Petitioner’s premises where the connection was installad. Accordingly, the connection of the Petitioner was checked on 05/06.05.2004 and 06.05.2004 vide ECR No.28 to 31/3068 where by, the Enforcement reported as under:

“*Consumer has installed 11 kV/440V T/F of 750 kVA Capacity from which 700 kW load as per test report submitted, is connected. Consumer has also installed 2 no. DG Sets (320 kVA and 300 kVA) of 620 kVA Capacity. A change over switch has been provided between the PSEB supply and DG Set supply. Further consumer has also installed 3 no.TG Sets (2.50 MW, 3.00 MW and 3.00 MW) of 8.50 MW capacity for feeding load to Sugar Plant and Induction furnace load of 5 ton capacity. There is another change over switch provided between DG supply and TG supply for feeding Station load of turbines through a Bus Coupler on 1st floor. Link through change over switch also exists between PSEB supply and TG supply for turbine auxiliary panel i.e. lighting, workshop, welding sets, mills, cranes, demineralization and effluent treatment plant etc. None of the changeover switch has been sealed by PSEB authorities.”*

The observations made in the Checking Report which reads as under:

“*When PSEB supply was switched on and by providing special loop to change over switch (TG & PSEB supply), the supply reached the control panel interconnecting the TG bus and the auxiliary but on putting the load on the TG bus, the reverse power relay existing on the interconnecting panel operated and switched of the supply. Then the supply could not reach the TG load. Interconnecting of the breaker could be switched on when it was tried to inject supply from TG side but the said breaker could not be closed and supply was available from PSEB side”.*

(viii) Hon’ble PSERC, then, decided the Petition vide order dated 23.07.2004 and held that the Circulars No.26/2002 and 60/2002 along with Sales Regulation were in order, so, the charges levied by the Distribution Licensee were recoverable.

(ix) Subsequently, AEE/DS Sub-division, Amloh issued memo no.1491

dated 05.08.2004to the Petitioner to deposit the Load Surcharge of Rs 82,63,928/- and Advance Consumption Deposit (ACD), amounting to Rs 1,26,32,500/-.

1. Dissatisfied with the order of the Hon’ble PSERC, the Petitioner

filed an Appeal before the Hon’ble Punjab and Haryana High Court who, vide order dated 08.11.2004, allowed the Appeal and set aside the order dated 23.07.2004 of Hon’ble PSERC with the direction to pass a fresh order after looking into all aspects of the matter.

1. Aggrieved with the order ibid passed by the Hon’ble High Court, the

erstwhile PSEB(now PSPCL) filed a Special Leave Petition No.26490/2004 before the Hon’ble Supreme Court of India, who, vide its order dated 09.10.2006, set aside the order of the Hon’ble Punjab and Haryana High Court and directed the parties to approach the Appellate Tribunal of Electricity (APTEL) with the appropriate application. In compliance to the said order passed by the Hon’ble Supreme Court of India, an Appeal No.07/2007 was filed by the Petitioner before the Hon’ble Appellate Tribunal of Electricity, who disposed of the same on 26.07.2007 directing the Hon’ble PSERC to determine/consider the applicability of the Circulars in the case and also to take a view after hearing the parties. Accordingly, Hon’ble PSERC heard the parties and dismissed the Petition vide its order dated 01.04.2008 with the direction that the Petitioner shall deposit ACD as per Sales Regulations prevailing then. Hon’ble PSERC concluded that there was no impact of the Inspection Report, based on the Inspection dated 05/06.05.2004, on the levy/deposit of Advance Consumption Deposit (ACD), Parallel Operation charges and Permission Fee because these were as per the then prevailing Sales Regulations of the erstwhile PSEB (now PSPCL), which were made a pre-condition while granting permission vide memo no.46932/33 dated 12.09.2002.

1. Based on the above order dated 01.04.2008, a demand of Rs 2,36,89,652/-(Rs 1,26,32,500/- ACD + Rs 82,63,928/- load surcharge + 27,93,224/- interest) was raised by the Respondent, vide letter no.452/454 dated 21.09.2008 with the direction to deposit the same within 10 days.
2. Aggrieved with the order ibid dated 01.04.2008, the Petitioner filed

an Appeal No.83 of 2008 before Hon’ble Appellate Tribunal of Electricity, who dismissed the same, vide its order dated 06.03.2009, deciding that the decision of the Hon’ble PSERC did not warrant any interference.

1. Not satisfied with the order dated 06.03.2009 of the Hon’ble

Appellate Tribunal of Electricity, the Petitioner filed a Civil Appeal no.3530-31 of 2009 before the Hon’ble Supreme Court of India, with the prayer to set aside the above order of Hon’ble APTEL and allow the Civil Appeal. The aforesaid Civil Appeal was registered vide diary no.14479/2009 dated 08.05.2009. Thereafter, an interim order dated 14.05.2009 was passed by the Apex Court as under:-

*“In the meantime, Petitioner is directed to pay “Advance Consumption Deposit” within a period of two weeks under protest and without prejudice to their rights and contentions. If the amount is deposited, Respondent will not take any coercive steps. If the amount is not deposited within two weeks, Respondent is free to recover the disputed amount in accordance with law.”*

In compliance, the Petitioner deposited the balance ACD amount of Rs 84,53,340/- on 27.05.2009 with the Respondent-PSPCL.

(xv) As no interest was paid by the Respondents on the said amount of Advance Consumption Deposit (ACD), the Petitioner filed a Petition dated 18.07.2018 in the CGRF, Patiala who dismissed the case as not maintainable in terms of Regulation 2.28(e) of PSERC (Forum and Ombudsman) Regulation-2016 by observing that the dispute was pending adjudication in the Hon’ble Supreme Court of India.

(xvi) Hon’ble Supreme Court of India heard the case on 30.04.2014 and

 passed the following order:

*“Ld. Counsel for the Respondent No.1 and Ld. Counsel for the Respondent No.3 & 4 are present. What gets revealed from the perusal of the office report is that the original record has been received from the High Court and is available in this Registry for reference of the Hon’ble Court. The office Report further is that the appellant and Respondent Nos. 3 & 4 have already filed the statement of case, but the Respondent No.1 has not filed the same although by order dated 06.09.2013 of the Hon’ble Judge-in-Chambers, four weeks time was given to him on that count. Viewed in that context, the matter shall be processed for listing before the Hon’ble Court under the rules.”*

1. The Petitioner had deposited the amount of Load Surcharge under protest and filed Appeal No. 16/2011 in the Court of Ombudsman, Electricity, Punjab who decided on 13.09.2011 that the amount charged on account of Load Surcharge was not recoverable**.**
2. The decision ibid of the Court of Ombudsman was challenged by the

PSPCL by filing CWP No.3670 of 2012 in the Hon’ble Punjab and Haryana High Court. After hearing the matter, Hon’ble Mr Justice Rajiv Narain Raina dismissed the said Writ Petition vide order dated 01.07.2013. The operative part of the decision was as under:

*“Lastly, even assuming that the Respondent had been using its entire electric consumption from the T.G. Sets what was wrong with that, what loss was caused to PSPCL? To my mind, none. So what is the brouhaha about and pressed so vehemently by Mr Chaudhary, though he argued well. No ground is made out warranting interference with the order of the Ombudsman. This Court in proceedings under Articles 226 or 227 does not sit in Appeal over the decision of quasi judicial or administrative authorities. It is the decision making process, which would come under scrutiny of this Court and not the decision itself. In the instant case, there is not even a semblance of an averment raised that the decision making process is vitiated by error.*

*For the foregoing reasons, this Petition is devoid of merit and is dismissed leaving the parties to bear their own costs”.*

The PSPCL did not challenge the aforesaid decision of Hon’ble Punjab and Haryana High Court and refunded the load surcharge as decided by this Court.

1. As no interest was paid by the Respondents on the said amount of Advance Consumption Deposit (ACD), the Petitioner filed a Petition dated 18.07.2018 in the CGRF, Patiala who dismissed the case as not maintainable in terms of Regulation 2.28(e) of PSERC (Forum and Ombudsman) Regulation-2016, by observing that the dispute was pending adjudication in the Hon’ble Supreme Court of India (Reference: Para 1 above).
2. Not satisfied with the decision of the Forum, the Petitioner filed an

Appeal dated 20.08.2018 in the Court of Lokpal (Ombudsman) and prayed that orders may be passed for payment of interest on ACD amounting to Rs 1,26,32,500/- in accordance with the provisions contained in Section 47 of the Electricity Act-2003 and also as per Supply Code Regulation 2007 and 2014.

1. In the Civil Appeal No.3530-31 dated 08.05.2009 pending before the Hon’ble Supreme Court, a notice(Dasti) was issued to Hon’ble PSERC(Respondent No.1), on dated 04.05.2019 returnable on 01.07.2019 for filing the reply.

**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 running a Sugar Mill, having a Large Supply

 Category connection, bearing Account No.K61-LS2-00040, with

sanctioned load of 700 kW and contract demand (CD) as 750 kVA

at 11 kV Supply Voltage.

1. For running the Main Plant, the Petitioner had installed two TG

sets of capacity 3125 kVA each and two DG Sets of capacity 320 kVA and 300 kVA, totaling 6870 kVA with the due approval of the erstwhile PSEB (now PSPCL).

1. In the year 2002, the Petitioner sought the approval of the

Distribution Licensee for installation of 6MW TG Set which was granted by the Chief Engineer/Commercial, PSEB, Patiala subject to condition that for the entire load fed from TG Sets, the Petitioner would deposit Advance Consumption Deposit (ACD) and also to pay Parallel Operation charges @ Rs 200/- per kVA of 7.5% of the installed capacity of TG Sets.

1. The Petitioner represented to the erstwhile PSEB authorities that

instructions regarding Advance Consumption Deposit (ACD) were not applicable to it since the PSEB had already granted permission to the Petitioner in 1994 and Commercial Circular (CC) No.26/2002 was not applicable in the Petitioner’s case. The Petitioner also informed the Respondent that Parallel Operation charges were not payable by it **since the TG load was not synchronized with erstwhile PSEB system.**

1. Having failed to get any response, the Petitioner filed a Petition

dated 01.07.2003 before the Hon’ble PSERC against the undue demand of Respondent-PSEB.

1. The connection was checked on 05/06.05.2004 by the Enforcement

Wing of the Respondent on the directions of PSERC which observed that entire load was running on TG Sets and that a Changeover Switch was installed for interflow of PSEB supply and TG generation, thus, the Petitioner had violated the conditions prescribed in the letter dated 22.12.1994 granting necessary permission.

1. On the basis of said checking report, AEE, DS Sub-division, Amloh

asked the Petitioner to deposit load Surcharge and ACD vide memo no.1491 dated 05.08.2004, as detailed below:

**Load Surcharge**

Connected load of Sugar Mill 11,717.73 kW

Sanctioned load 700 kW

Load Surcharge 11017.73 kW x Rs 750/- Rs 82,63,298/-

**Advance Consumption Deposit (ACD)**

Sugar Mill connected load on TG Set 8491.640 kW

Sanctioned load (supplied by PSEB) 700.000 kW

Excess load 7791.640 kW

 Say 7792.000x1000

 ACD= Rs 77,92,000/-

Load of Induction Furnace connected with 3226.099 x 1500

TG Sets = 48,40,500

 = 1,26,32,500

 Total Amount Rs 2,08,95,798/-

1. A Petition was filed by the Petitioner regarding non applicability of

ACD and Load Surcharge before the Hon’ble PSERC, which dismissed the same whereafter, the Petitioner preferred an Appeal before the Hon’ble Appellate Tribunal of Electricity who, upheld the order of the Hon’ble PSERC on ACD and observed, on the issue of load surcharge, that it had been levied by PSPCL after the decision of the Petition by PSERC which was in the nature of a grievance and that there was a special mechanism for the redressal of grievances in respect of charges levied by the erstwhile PSEB (now PSPCL) and the Petitioner was free to seek redressal of its grievance through this specifically laid down procedure. Hon’ble Commission, in these circumstances, did not pass any order with regard to levy of load surcharge.

1. Pursuant to the order of Hon’ble Tribunal and Hon’ble PSERC on

ACD, the Petitioner filed a Special Leave Petition (SLP) in the Hon’ble Supreme Court of India for applicability of the Advance Consumption Deposit (ACD) on the load connected with TG set isolated and the matter was still pending before the Hon’ble Supreme Court of India for further hearing. In the meantime, the Hon’ble Apex Court vide its order dated 14.05.2009, directed the Petitioner to deposit the demanded amount of ACD within two weeks.

1. In compliance to the order of Hon’ble Supreme Court of India, the

Petitioner deposited a sum of Rs 84,53,340/- within the stipulated period on 27.05.2009. A sum of Rs 41,79,160/- had already been deposited by the Petitioner vide receipt dated 06.04.2005. Thus, a total sum of Rs 1,26,32,500/- stood deposited with the Respondent-PSPCL on ACD.

1. The Petitioner filed its Appeal No. CG-19 of 2011 regarding load

Surcharge in the Forum who decided it on 03.05.2011. Finally the Appeal was filed in this Court on 08.06.2011 who, after hearing, decided on 13.09.2011 in Appeal No.16/2011 that there was no violation of the conditions in the letter granting the permission letter warranting a conclusion that there was arrangement for using PSEB supply for TG set load which technically was impossible. Accordingly, it was held that there was no violation of conditions mentioned in the said permission letter on the basis of which, load surcharge was levied and considering the fact that due to limited transformer capacity for PSEB supply, the flow of PSEB supply for TG set was technically impossible. Therefore, the levy of load surcharge was held to be not recoverable and the Respondent-PSPCL was directed that the amount excess/short, if any, may be recovered/refunded from/to the Petitioner with interest under the provisions of ESR-147.

1. The order ibid of this Court was challenged before the Hon’ble

High Court by the PSPCL through a CWP No.3670 of 2012 which was dismissed by the Hon’ble High Court vide order dated 01.07.2013. Thereafter, the PSPCL refunded to Petitioner the total amount of Load Surcharge with interest.

1. After the compliance by the Petitioner of the order passed by the

Hon’ble Apex Court, no interest was paid by the Respondent on the deposited amount of Advance Consumption Deposit (ACD) amounting to Rs 1,26,32,500/- since the date of deposit ( i.e. dated 06.4.2005 and 21.05.2009).

1. Having failed to receive any response from the Respondent-PSPCL

regarding payment of interest, the Petitioner filed a Petition in the Forum who, after hearing, dismissed the same on 18.07.2018 as not maintainable citing Regulation 2.28(e) of PSERC (Forum & Ombudsman) Regulation-2016.

1. Not satisfied with the decision of the Forum, the Petitioner

preferred an Appeal in this Court and prayed that orders may be passed for payment of interest on ACD amounting to Rs 1,26,32,500/- in accordance with the provisions of Section 47 of the Electricity Act 2003 and Supply Code Regulations 2007 and 2014.

1. In view of the submissions made above, the Appeal may be allowed.

**( b ) Submissions of the Respondent:**

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

1. Chief Engineer/ Commercial, PSEB, Patiala vide Memo

No.108124/27 dated 22.12.1994, granted permission for installation of 2 No. Turbo Generator (TG) Set of capacity 3125 kVA each and two Diesel Generator (DG) Sets of capacity 300 kVA & 320 kVA on the following conditions:

1. T.G. Sets shall run in isolation with PSEB ( now PSPCL)

Supply system and no interflow of PSEB supply and TG Generation shall be permitted.

1. No Change Or Switch Over / arrangement/Bus Coupler for

interflow of Power shall be allowed.

1. In case of detection of Change Over Switch/arrangement/ Bus

Coupler for using PSEB supply for TG Sets load, Load Surcharge shall be charged on entire load fed from TG Sets.

1. Permission fee @ Rs 1/- per kVA shall be recovered for TG

 Sets capacity.

1. Subsequently, Chief Engineer/Commercial, PSEB, Patiala, allowed

the request of the Petitioner to install two additional TG Sets of 3MW and 6 MW vide memo no.46932/33 dated 12.09.2002 subject to the following conditions:

* 1. Permission fee @ Rs 50/- per kVA.
	2. Advance Consumption Deposit (ACD) for load connected to

TG over and above the load already sanctioned and released from PSEB system.

* 1. Parallel Operation Charges @ Rs 200/- per kVA of 7.5% of

he installed capacity of TG Set in kVA.

1. The Petitioner challenged the conditions laid in the permission

letter issued by the Chief Engineer/Commercial, PSEB, Patiala, vide memo no.46932/33 dated 12.09.2002, before the Hon’ble Punjab State Electricity Regulatory Commission, who, vide its order dated 23.04.2004 directed to check the connection of the Petitioner.

1. The Petitioner deposited the Permission Fee of Rs 5,62,500/- on

09.10.2002, but did not deposit other charges i.e. Parallel Operation charges and ACD.

**(v)** The Petitioner filed a Petition No.08/2003 before Hon’ble Punjab State Electricity Regulatory Commission, Chandigarh to challenge the condition laid in permission letter issued vide CE/Commercial, Patiala Memo No.46932/33 dated 12.09.2002. Thereafter, Hon’ble PSERC vide, its order dated 23.04.2004, directed to check the connection of the Petitioner.

1. The connection of the Petitioner was checked on 05/06.05.2004

 vide ECR No.28 to 31/3068.

1. Hon’ble PSERC decided the Petition No.08/2003, vide order

dated 23.07.2004, and held that the Circulars No.26/2002 and 60/2002 along with the Sale Regulation were in order, so, the charges levied by the erstwhile PSEB (now PSPCL) were recoverable.

1. Dissatisfied with the said decision of Hon’ble PSERC, the

Petitioner filed an Appeal before the Punjab and Haryana High Court, which, vide order dated 08.11.2004, allowed the same and set aside the order dated 23.07.2004 of Hon’ble PSERC with the direction to pass a fresh order after looking into all aspects of the matter.

1. Aggrieved with the order passed by the Hon’ble High Court, the

erstwhile PSEB(now PSPCL), filed a Special Leave Petition No.26490/2004 before the Hon’ble Supreme Court of India, who, vide order dated 09.10.2006, set aside the order of the Hon’ble High Court and directed the parties to approach the Hon’ble Appellate Tribunal of Electricity (APTEL) with the appropriate application. In compliance to the order ibid passed by the Hon’ble Supreme Court of India, an Appeal No.07/2007 was filed by the Petitioner before the Hon’ble Appellate Tribunal of Electricity who disposed off Appeal No.07/2007 directing the Hon’ble PSERC to determine/consider the applicability of the Circulars in the case after hearing the parties. Accordingly, Hon’ble PSERC heard both the parties and dismissed the Petition vide order dated 14.02.2008 with the direction to the Petitioner to deposit ACD as per Sales Regulations prevailing at that time. Hon’ble PSERC, in its order dated 01.04.2008 concluded that there was no impact of the Inspection Report of Enforcement dated 05/06.05.2004 on the levy/deposit of Advance Consumption Deposit (ACD), Parallel Operation charges and permission fee because these were as per the then prevailing Sales Regulations of the Board, which were made a pre-condition while granting permission vide memo no.46932/33 dated 12.09.2002.

1. The Petitioner was not satisfied with the aforesaid order dated

01.04.2008 and filed an Appeal No.83 of 2008 before the Hon’ble Appellate Tribunal for Electricity who dismissed the same vide its order dated 06.03.2009 and decided not to interfere with the decision of the Hon’ble PSERC.

1. Aggrieved with the order dated 06.03.2009 of the Hon’ble

Appellate Tribunal of Electricity, the Petitioner filed a Civil Appeal no.3530-31 of 2009 before the Hon’ble Supreme Court of India, regarding the ACD in Dispute, which was admitted by the Apex Court vide order dated 31.08.2009 and pending for disposal on merits. In this case, last date of hearing was 30.04.2014. Next date of hearing in this case had not been fixed yet.

1. The amount of Rs 1,26,32,500/- as Advance Consumption Deposit

(ACD) was recovered from the Petitioner for load fed from TG/DG sets as per instructions incorporated in CC No.26/2002 and 60/2002.

1. The Petitioner deposited the amount of Rs 1,26,32,500/- in two

installments i.e. Rs 41,79,160/- on dated 06.04.2005 and Rs 84,53,340/- on dated 27.05.2009.

1. The Petitioner, in its present Appeal, pleaded that it had fully complied with the Notice issued vide no.1491 dated 05.08.2004 on the basis of checking report of the Enforcement Wing, Patiala on 05/06.05.2004. The Enforcement Wing checked the connection, installed at the premises of the Petitioner, on 05/06.05.2004 and gave its report which reproduced as under:-

“*Consumer has installed on 11 KV/ 440V T/F of 750 kVA Capacity from which 700 KW load as per test report submitted, is connected. Consumer has also installed 2 no. DG Sets (320 kVA and 300 kVA) of 620 kVA Capacity. A change over switch has been provided between the PSEB supply and DG Set supply. Further consumer has also installed 3 no.TG Sets (2.50 MW, 3.00 MW and 3.00 MW) of 8.50 MW capacity for feeding load to Sugar Plant and Induction furnace load of 5 ton capacity. There is another change over switch provided between DG supply and TG supply for feeding Grinding Station load of turbines through a Bus Coupler on 1st floor. Link through change over switch also exists between PSEB supply and TG supply for turbine auxiliary panel i.e. lighting, workshop, welding sets, mills, cranes, demineralization and effluent treatment plant etc. None of the change over switch has been sealed by PSEB authorities.”*

1. On the basis of said report of the Enforcement, AEE, DS Sub-

division, Amloh issued memo no.1491 dated 05.08.2004 to the Petitioner to deposit the Load Surcharge of Rs 82,63,928/- and Advance Consumption Deposit (ACD), amounting to Rs 1,26,32,500/- as penalty of violation of conditions laid in the Chief Engineer/Commercial, Patiala’s Memo No.108124/27 dated 22.12.1994.

1. The Petitioner deposited the amount of Load Surcharge under

protest but filed Appeal No.16 of 2011 in this Court who vide order dated 13.09.2011 decided that amount charged on account of Load Surcharge was not recoverable from the Petitioner**.**

1. The decision ibid of the Court of Ombudsman was challenged by the

PSPCL by filing CWP No.3670 of 2012 in the Hon’ble Punjab and Haryana High Court. After hearing the matter, Hon’ble Mr Justice Rajiv Narain Raina dismissed the said Writ Petition vide order dated 01.07.2013. In view of this decision, the load surcharge was refunded to the Petitioner.

1. As no interest was allowed on the ACD amounting to Rs 1,26,32,500/- deposited by the Petitioner, it filed a Petition before the CGRF, Patiala who, vide order dated 18.07.2018, dismissed the same as not maintainable as the matter was pending before the Hon’ble Supreme Court of India.
2. Not satisfied with the decision of the Forum, the Petitioner filed an

Appeal in this court and prayed that orders may be passed for payment of interest on ACD amounting to Rs 1,26,32,500/- in accordance with the provisions of Section 47 of Electricity Act-2003 and Supply Code Regulation 2007 and 2014.

1. The Petitioner was claiming interest on Security (Consumption)

under Section 47 of the Electricity Act-2003 and Regulation 17.1 of the Supply Code 2007 and 2014.

1. The claim of the Petitioner to award interest on Rs 1,26,32,500/- was

not maintainable because the matter was subjudice in the Apex Court.

1. In view of the submissions made above, the Appeal may be

dismissed.

**4. Proceedings of the Case**

 Hearing in this case were held on 04.12.2018, 18.12.2018, 15.01.2019, 30.05.2019 and 20.06.2019. The issues emerged were deliberated at length and the information/documents/clarifications were sought, from both the sides. Briefs of the proceedings held and details of information/clarifications gathered are as under:

1. The very first hearing was held on 04.12.2018 when it was

considered necessary to have the following information from the Petitioner and the Respondent. Accordingly directions were issued orally and also vide Memo No. 1759/OEP/A-52/2018 dated.04.12.2018, to both the sides to send the same:

1. Single Line Diagram of the connection (old and existing) showing the Power System of the Petitioner and the Respondent and the changeover switches.
2. Head of Account under which the amount of ACD was deposited by the Petitioner and credited by the Respondent on the directions of the Hon’ble Supreme Court of India.
3. Copy of decision of Appellate Tribunal for Electricity in Appeal No.07/2007, decided on 26.07.2007.
4. Copies of letters written by the Petitioner to Chief Engineer/Commercial and other authorities of the Respondent requesting for paying interest on ACD and replies of the Respondent.
5. In the next hearing held on 18.12.2018, the Petitioner and the

Respondent submitted the requisite documents, asked for vide this Court letter no.1759/OEP/A-52/2018 dated 04.12.2018 and also deliberated the matter further. While making oral submissions, it transpired that the Petitioner had, in response to a communication from the Respondent, given a copy of instructions issued by the Engineer-in-Chief/Commercial, PSPCL, Patiala vide letter No.390/393/Indl-191/Khn./Vol.2 dated 30.07.2018 addressed to the Petitioner stating as under:

“.... the matter has been considered by the higher authorities and it has been decided that neither your request for refund of ACD of Rs 1,26,32,500/- is maintainable nor the interest thereon is payable”.

This Court, then, directed that the Chief Engineer/Commercial, PSPCL, Patiala shall attend this Court or depute its authorised representative (not below the rank of Superintending Engineer) on 07.01.2019 at 12:00 Noon or and bring the relevant record, in original, (including the notings on the file) in support of the decision ibid and also submit the advance copies thereof by 2nd January 2019 positively. The Respondent’s Representative (Sr.XEN, DS Division, Amloh) was also directed to pursue the matter with the Chief Engineer/Commercial, PSPCL, Patiala with a view to ensure timely compliance of the aforesaid directions of the this Court.

This Court also directed that the Respondent shall indicate the precise Head of Account to which the ACD deposited by the Petitioner had been credited in the account of the distribution licensee.

A copy of proceedings were sent to the Chief Engineer/Commercial, PSPCL, Patiala and Senior Executive Engineer, DS Division, PSPCL, Amloh vide Memo No.1813-14/OEP/A-52/2018 dt.18.12.2018. with a Copy to the Petitioner vide endst.no.1815/OEP/A-52/2018 dated 18.12.2018.

1. During the course of hearing, Respondent’s Representative

Er.Punardeep Singh Brar, SE/Sales-1, PSPCL, Patiala stated that the Advance Consumption Deposit (ACD) on TG sets was not eligible for interest as per Commercial Circular No.26/2002, which was later on withdrawn. On this, the Court asked Er.Punardeep Singh Brar to intimate and certify that:

1. The interest on the said Advance Consumption Deposit (ACD) given by the Petitioner to the Respondent was not claimed through Annual Revenue Requirement of the respective Financial Years;

and

1. If it was claimed, rules/regulations as per which, the payment of interest on this Advance Consumption Deposit (ACD) was denied to the Petitioner.

In response, the aforesaid Officer Representative of the Respondent stated that the information will be submitted after having the same from the Accounts Wing of the PSPCL.

Senior Executive Engineer/DS Division, PSPCL, Amloh, representing the Respondent-PSPCL, was also directed by this Court to submit the annual Energy Consumption Data and Energy Charges paid by the Nahar Industrial Enterprises, Amloh as well as that of Nahar Group of Companies duly authenticated for the previous three years after collecting it from the Petitioner/Respondent in the format given below:

|  |  |  |
| --- | --- | --- |
| Year | Consumption (kVAh) | Energy Charges paid to PSPCL (Cr.Rs) |
| NIE Amloh | Nahar Group of Companies | NIE Amloh | Nahar Group of Companies |
| 2018-19 (upto Dec.2018) |  |  |  |  |
| 2017-18 |  |  |  |  |
| 2016-17 |  |  |  |  |

Accordingly, directions were issued to both the representatives of the Respondent viz Superintending Engineer/Sales-1, PSPCL, Patiala and Senior Executive Engineer, DS Division, Amloh to provide the aforesaid information to this Court through e-mail (oep.mohali@gmail.com) by 25.01.2019 positively. Sr. Xen/DS Division, Amloh, representing the Respondent-PSPCL, was also directed to remain in touch/ keep a liaison with the office of the Chief Engineer/Commercial, PSPCL, Patiala, other officers of the Respondent and also the Petitioner for ensuring submission of the requisite information by 25.01.2019.

Copies of Proceedings ibid were sent, vide this office letter no.54-55/OEP/A-52/2018 dated 15.01.2019, to the Chief Engineer/Commercial, PSPCL, and Senior XEN/DS, Amloh and also to the Petitioner vide endst. no.56/OEP/A-52/2018 dated 15.01.2019.

1. Senior Executive Engineer, DS Division, PSPCL, Amloh, vide

e-mail dated 25.01.2019, forwarded a copy of Memo No.39-40/Indl./191/KHN/V-II dated 17.01.2019 (addressed to Senior XEN/DS Amloh) from Superintending Engineer/Sales-1, PSPCL, Patiala stating as under:

*“The said information does not relate to this office and not available with this office. Apparently the same may be available in the O/o Chief Engineer/ARR, PSPCL, Patiala or in the O/o Financial Advisor, PSPCL, Patiala. It is therefore advised that the same may be sought from their office. Any delay in submission of information in the court of Lokpal (Ombudsman) Electricity, Punjab shall be attributed to your office. It is also advised that in future, any correspondence with O/o Chief Engineer/Commercial shall be routed atleast through the concerned DS Circle office. Any direct correspondence to O/o Chief Engineer/Commercial shall not be entertained.*

 *This issues with the approval of CE/Commercial.”*

In addition, Senior XEN/DS Division, Amloh also forwarded a copy of Memo No.123/ARR/Dy.CAO/254 dated 24.01.2019, intimating as follows:

 *“It is intimated that this office claims interest on consumer security deposit based on Audited Annual Accounts of PSEB/PSPCL as a whole. No consumer-wise detail is available in this office. The same would be available in your office.*

 *As far as the matter that whether PSPCL has claimed interest on ACD of Rs 1,26,32,500/- of the subject cited consumer is concerned, the same can be checked from the accounts of your division for the relevant years submitted to the A&R wing of the PSPCL.*

 *This is for your information, please.”*

1. Senior Executive Engineer, DS Division, PSPCL, Amloh was

Informed vide this office Memo No.128/OEP/A-52/2018 dated 28.01.2019 that the information sent by it vide e-mail dated 25.01.2019 did not serve the purpose, being incomplete. A copy of this office letter ibid was endorsed to the Chief Engineer/Commercial, PSPCL, Patiala, vide endst No.128/OEP/A-52/2018 dated 28.01.2019 with the request to extend all possible cooperation to Sr.XEN/DS Division, Amloh in providing the requisite information.

1. Senior Executive Engineer, DS Division, PSPCL, Amloh, vide

e-mail dated 05.02.2019, sent information relating to Consumption and Energy charges paid to PSPCL during the years 2016-17, 2017-18, and 2018-19 (upto 31.12.2018) relating to Nahar Group of Companies and NIEL, Amloh.

In response, the said Sr.Executive Engineer was directed to intimate the Head of Account to which the amount of interest on ACD was credited (as already asked for in the minutes of proceedings dated 15.01.2019 referred to above) and also intimate by 18.02.2019 as to whether the aforesaid interest on ACD had been claimed in the ARR for relevant financial year.

Subsequently, Sr. Executive Engineer/DS, PSPCL, Amloh requested, vide Memo No.954 dated 18.02.2019, to grant extension upto 31.03.2019 for providing the requisite information which was voluminous and time consuming.

1. Senior Executive Engineer, DS Division, PSPCL, Amloh, after

obtaining information from the concerned quarters, submitted, vide Memo No. 1682 dated 05.04.2019, as under:

 *“The office of CE/ARR & TR vide his office Memo No 123/ARR/Dy.CAO/Z54/Deficiency Dated 24-01-19 stating that the interest on ACD of Rs 1,26,32,500/- of subject cited consumer can be checked from the accounts of your division for the relevant years submitted to the ARR wing of the PSPCL. Further it is also intimated that the office of CE/Commercial has written a letter vide memo no 67/lndl"191/Kt1N/V-2 dated 05.02.19 to CE/ARR & TR that please elaborate the procedure how the interest paid on ACD is claimed in the ARR. lf the PSPCL has not paid any interest on the ACD whether any cognizance/claim of such amount (of which interest is not paid to the firm) is being taken while filing ARR. The office of CEIARR &TR vide his office Memo No 194,ARR/Dy.CAO/254/Vol-ll Dated 06.02.19 stating to Chief Financial Officer, PSPCL Patiala that if the PSPCL has not paid any interest on the ACD, whether any cognizance/ claim of such amount (of which interest is not paid to the firm) is being taken while filing ARR and copy of the above sent to SE/Sales-1, PSPCL Patiala vide memo no 195 dated 06.02.19. SE/Sales-1, PSPCL Patiala vide Memo no 71/lndl-191/KHN/ V-2 Dated 07.02.19 stating to Chief Financial Officer, PSPCL Patiala to provide the necessary information, sought vide memo no Memo No 194,ARR/Dy.CAO/254lVol-ll Dated 06.02.19. Further Dy. CAO /A&R, PSPCL Patiala stating to SE/Sales-l PSPCL Patiala and this office Vide memo no 64/65 dated 15.02.19 that this office sends the information for filing ARR Claims to CE/ARR & TR regarding interest consumer security depositing by compiling the figures of monthly accounts submitted by accounting units.*

 *Figures received from the office of CBC Cell, Ludhiana are duly matched with the figures of Trial balance of this office. So it is clear that while claiming Interest, the amount Rs 1,26,32,500/- does not include in the total figures.*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Year | Security amount Under Head 48.100 & 48.120 Col 'A' | RATE OF INTEREST Col 'B' | Interest amount Col 'C' | Interest amount booked under Head 78.601 Col ‘D’ | Interest Figure Received From O/o Sr. XEN/CBC Col 'E' |
| 2012-13 | 208611403 | 12 | 25033368 | 12663280 | 10737082 |
| 2013-14 | 225739762 | 11.7 | 26411552 | 13676342 | 13970242 |
| 2014-15 | 249133181 | 11.97 | 29821242 | 17257385 | 15728398 |
| 2015-16 | 312954094 | 12 | 37554491 | 18120255 | 18153452 |
| 2016-17 | 312685131 | 11.3 FOR 83 DYS AND 7.75 FOR 282 DAYS | 26757281 | 19703723 | 22269144 |
| 2017-18 | 324622170 | 6.25 | 20288886 | 21497288 | 18606209 |
| 2018-19 | 328997359 |  |  |  |  |

*Above table clearly depicts security amount with the division in Col 'A' and rate of interest given by PSPCL annually is given in Col 'B' and Col 'C' shows the interest amount to be given as per security in the respective year, Where Col 'D' Shows the interest amount booked by division under the Head 78.601 and Col ‘E’ Shows the interest figure received from the Sr. Xen/CBC Ludhiana where billing of the above 100 kW consumers take place. It is clear that from the above table that if we compare the from year 2012-13 to 2015-16 interest amount booked is nearly equal to the CBC interest figure, hence interest on the Security of the consumer has not been taken into consideration for the finalization of the yearly data. In the year 2016-17 interest booked in books of account is less than figure provided by the CBC, Hence it clear that interest on security of the consumer is not been taken into consideration. Interest figure are received from the office of Sr.Xen, CBC Ludhiana, Interest figures for consumer below 1 kW are still pending from Xen Computer cell Chandigarh which further clarify that interest on security for CPP has not been considered for accounting under the head 78.601.*

|  |
| --- |
| Nahar Industrial Enterprises LTD |
| Year | Security Amount in Rs | Amount of Interest in Rs | Tax (TDS) in Rs |
| 2008-09 | 366000 | 44835 | 5080 |
| 2009-10 | 366000 | 44835 | 8967 |
| 2010-11 | 366000 | 43005 | 4601 |
| 2011-12 | 366000 | 37515 | 3752 |
| 2012-13 | 545081 | 67498 | 6750 |
| 2013-14 | 680227 | 79587 | 7959 |
| 2014-15 | 680227 | 81404 | 8140 |
| 2015-16 | 680227 | 81851 | 8186 |
| 2016-17 | 680227 | 52818 | 5272 |
| 2017-18 | 680227 | 44215 | 4422 |

*Annual Energy Consumption data for the previous three years*

|  |  |  |
| --- | --- | --- |
| Year | Consumption (kVAh) | Energy Charges paid to PSPCL (Cr.Rs) |
| NIE Amloh | Nahar Group of Co | NIE Amloh | Nahar Group of Co |
| 2018-19 (upto Dec 2018) | 732824 | 29021220 | 5125580 | 179312585 |
| 2017-18 | 594452 | 41780354 | 4677330 | 211902679 |
| 2016-17 | 544404 | 24890817 | 3237910 | 127437881 |

*From the table shows the Security Deposited by the Consumer and interest on the security paid on the security deposited annually. From the above it is stated that interest has been paid only on the amount of Advance Consumption Deposit and same has been booked under the head 78.601. Security deposited by the Consumer on account of Captive Power Plant has been taken under the Head 48.100 but interest on security has not been paid to the consumer not it has been taken into consideration for the finalization of the yearly data.*

 *This is for your information and further necessary action.”*

1. Thereafter, a reference was made to the Senior Executive Engineer,

DS Division, PSPCL, Amloh, vide Memo No.477/OEP/A-52/2018 dated 12.04.2019, directing to intimate by 16.05.2019 as to why the Advance Consumption Deposit (ACD) was not got updated in the bills and the Petitioner was denied the interest as the Advance Consumption Deposit deposited by it had been taken under Security Head as intimated by it. The aforesaid Sr.Xen was also asked to intimate as to where the said amount was utilized by the PSPCL and why the interest on it was not taken in ARR while determining the Tariff of various categories of the consumers, as the amount of interest on ACD was statedly passed(100%) to the consumer. Sr.XEN, DS Division, Amloh was also directed that necessary evidence in the form of copies of relevant monthly account documents/cash book showing that the credit in question was afforded to ‘Security’ may also be sent to this Court.

 Copy of the above reference were sent for information of the Chief Engineer/Commercial, Financial Advisor, Chief Engineer/Central Zone and Dy. Chief Engineer, DS Circle, Khanna.

1. In response to the above directions dated 12.04.2019, Senior

Executive Engineer/DS, PSPCL, Amloh, vide Memo No.2424 dated 16.05.2019, stated as under:

 *“As directed by Hon’ble Ombudsman Court a fresh consultation was sought from the office of Chief Engineer/Commercial, PSPCL, Patiala and office of Chief Financial Officer, PSPCL, Patiala.*

 *The Chief Engineer/Commercial, PSPCL, Patiala vide Office Memo no. 223/Indl-191/Khn./vol-2 dated 14.05.2019 (copy attached) has advised as under:-*

*‘the matter has been already been clarified vide their Office Memo no.390/393/Indl-191/Khn./vol-2 dated 30.07.18 addressed to the firm with a copy to CE/DS Central Zone Ludhiana, DY.CE/DS Circle Khanna and Sr. Xen/DS divn. Amloh that on the basis of information/report received from CE/DS Central Zone Ludhiana and in the light of Civil Appeal No. 3530-31 of 2009 pending in the Hon’ble Supreme Court of India, New Delhi, the matter has been considered by the higher authorities, and it has been decided that neither refund of ACD of Rs 1,26,32,500/- is maintainable nor the interest thereon is payable.’*

 *Further*, *The Chief Financial Officer, PSPCL, Patiala vide Office Memo no.2902/WM&G/CAC-37 Vol.16 dated 16.05.2019 advised as under:-*

***‘the amount of Rs 1,26,32,500/- recovered from the consumer as ACD for load fed from TG/DG Sets as per instructions incorporated in Commercial Circular No.26/2002 may be accounted for under Account Head 48.100 & (Security Deposits From Consumers).’***

*As per advices issued by above Offices, the amount of consumer is adjusted under the Account Head 48.100 & the interest on this amount is not payable.*

*It is further intimated, Appellant has a connection bearing the Account No.K61LS0200040 under DS Subdivision, Amloh with Sanctioned Load/CD=700kW/kVA with deposited Rs 680227/- as Security (Consumption). The PSPCL is already claiming the interest against this amount for ARR petition and same is being passed (100%) to the consumer without fail. So, there is no violation as per the section 47(4) of the Electricity Act, 2003.*

*The attested copy of monthly Account of 05/2009 submitted elaborating amount deposited by consumer against ACD for load fed TG sets accounted for in Account Head 48.100 is attached.*

 *The amount of the ACD for load fed from TG sets was deposited by the consumer under protest, on the directions issued by Hon’ble Supreme Court in Civil Appeal 3530-31 of 2009, and it is a disputed amount. So, as per the advice issued by the CE/Commercial, interest on this Amount cannot be provided as case for this amount is already pending with Hon’ble Supreme Court.*

 *This is for your kind consideration, please.”*

1. The Chief Engineer/Commercial, PSPCL, Patiala was, then,

apprised vide Memo No. 561-62/OEP/A-52/2018 dated 17.06.2019 with a copy to DS Division, Amloh, about a contradiction in the advice given to its Presenting Officer regarding spirit and application of provisions of Section 47 of the Electricity Act-2003 alongwith the request to convey the final view of the PSPCL for discussion in the Court on 30.05.2019.

1. In reply to this office Memo ibid (dated 17.05.2019), Sr. Executive

Engineer, DS Division, PSPCL, Amloh intimated, vide Memo No.2674 dated 29.05.2019, as under:

*“There is no Contradiction in the advices of both the offices. Further, neither there were nor there are any instructions regarding the interest payable on the fixed ACD(One Time Deposit) against load fed from TG/DG set.*

 *This is for your kind consideration, please.”*

1. During the course of hearing on 30.05.2019, attended by the

Representative’s of both the sides, the copy of the clarification given by The Chief Engineer/Commercial, PSPCL, Patiala was given to the Petitioner’s Representative who sought some time to study the same and thereafter then come up for discussion on next date of hearing. Accordingly, next date of hearing was fixed for 20.06.2019 and the Petitioner was advised to submit its comments, if any, by 13.06.2019, Minutes of proceedings dated 30.05.2019 were sent to both the Petitioner and the Respondent vide Memo No.606-07/OEP/A-52/2018 dated 30.05.2019.

1. The Petitioner, vide its application dated 12.06.2019, submitted that

Hon’ble Supreme Court of India had directed vide order dated 14.05.2019, the Petitioner to pay ‘Advance Consumption Deposit’ within a period of two weeks. The Petitioner complied with this order in toto. The words Advance Consumption Deposit appearing in the ibid order were clear and unambiguous. Neither CE/Commercial nor Chief Financial Officer of PSPCL had any power to change the nomenclature of this deposit ordered by the Hon’ble Supreme Court. The Petitioner stated that the plea of keeping the said deposit under this head or that was just a ploy to weaken the Apex Court’s order ibid and deny payment of interest to the Petitioner under the garb of accounting heads.

 The Petitioner added that in compliance to the provisions of the Electricity Act 2003, Hon’ble PSERC notified the Supply Code 2007 which became effective on 01.01.2008. Last Para of the Regulation 16.1 of the Supply Code 2007 read as under:-

 *“For existing consumers, the Licensee will undertake the first such review of Security (Consumption) (earlier called Advance Consumption Deposit), within twelve months after revision of tariff subsequent to the date of enforcement of the Supply Code.”*

The Petitioner contended that it was clear from the above that Advance Consumption Deposit wherever available in the account of the consumer was to be necessarily renamed as Security (Consumption) to be reviewed within 12 months of Tariff Order of 2008-09. The Tariff Order for 2008-09 was issued on 03.07.2008 and accordingly, ACD amounts of all the consumers were to be treated and reviewed as Security (Consumption) w.e.f 03.07.2009. The Petitioner had deposited the ACD on 27.05.2009. Thus the amount had to be treated as Security (Consumption) w.e.f 03.07.2009 as per the provisions of Supply Code-2007 and PSPCL’s action and submissions that the amount was ACD and continued as ACD was wrong and in contravention to the Regulations and orders of Hon’ble Commission. Once it became and was treated as Security (Consumption), the Petitioner became entitled to interest on Security (Consumption) as per provisions of the applicable Supply Code.

The Petitioner also submitted that prior to notification of Supply Code 2007, the distribution licensee was following Sales Regulations wherein the consumer was required to deposit Security for prospective monthly bills referred to in Sales Regulations as ACD or AACD or Security. Uptill 31.12.2007, no interest was payable on ACD/Security as per Sales Regulations. However, from 01.01.2008, interest was payable on Security (Consumption) and as such, ACD in the accounts of the erstwhile PSEB was converted into Security (Consumption). The amount deposited by the Petitioner had to be treated as per the Regulations and there could not be any exception to the same. The Respondents may keep deposit under any account head but interest was payable on it since the Hon’ble Supreme Court had defined the Petitioner’s deposit as ACD as per prevalent nomenclature at the time of order passing dated 14.05.2009 and ACD became Security (Consumption) by virtue of express and explicit provision of Regulation 16.1 of Supply Code 2007 w.e.f. 01.01.2008/03.07.2009.

**The Petitioner also contended that there was no type of ACD in PSPCL which was exempt from payment of interest.** As per Regulation 17.1 of Supply Code 2007 and Supply Code 2014 formulated by The PSERC under the relevant provisions of the Electricity Act 2003, interest was payable on the Petitioner’s ACD [renamed as Security (Consumption)] by virtue of Regulation 16.1 of The Supply Code 2007) at the rates prescribed in these Regulations. Even otherwise, the Electricity Act 2003 also provided for interest on such deposits under Section 47(4) w.e.f. its notification/date of deposit already decided by the Hon’ble Punjab and Haryana High Court in *CWP No.16261 of 2011 and 16262 of 2011 titled “Induction Furnace Association, Ludhiana Versus PSPCL and others” and “Ranjeev Alloys Ltd. and Others Versus PSPCL.”*

The Petitioner submitted that it was noteworthy that vide CC 51/2006, the erstwhile PSEB (now PSPCL) had already withdrawn instructions to recover ACD from the consumers who were running some of their load exclusively from their Co Generation Plants. The Petitioner’s case fell in this category, especially after the decision of this Court in Appeal no. 16 of 2011 wherein it was held that the Petitioner’s load, was running on its TG sets, had no interconnectivity with the Supply system of the PSPCL. As such, the demand of ACD should not have been pressed by the Respondents. Rather, the ACD already deposited by the Petitioner should have been refunded immediately in accordance with the spirit of CC No. 51/2006. It was strange that on the one hand, the Respondents were fighting for ACD which was no longer required after the issue of CC 51/2006, on the other side, they were refusing to pay even the statutory interest on the ACD paid by the Petitioner on the interim order of the Hon’ble Supreme Court. This was patent high handedness. The Petitioner requested that the misleading clarification given by the Respondents may be ignored and rejected, and orders be passed to allow rightful interest on the ACD paid by it under orders of Hon’ble Supreme Court. Besides, the Respondent may be asked to provide the indexation benefit on the interest to the Petitioner as per calculation chart annexed with its application.

1. In the hearing held on 20.06.2019, attended by the

Representative’s of both the sides, the Petitioner stated that Security (Consumption) of about Rs 1.26 Crore was deposited with the Respondent, like any other Security/ACD, by the Petitioner and was placed under the Head of Account 48.100 by the Respondent and thus eligible for interest as per Regulation 17 of the Supply Code-2007. Accordingly, the Respondent was supposed to intimate any other Security Deposit/ACD deposited under Head of Account 48.100 on which, interest had not been allowed to the consumers concerned.

 Besides, the Court directed the Respondent to intimate as to whether the amount ibid was lying under Fixed Deposit (FD) or credited to Revenue/Capital Head of Account and utilized by the Respondent-PSPCL, Senior Executive Engineer, DS Division, Amloh was directed to submit the aforesaid information by e-mail (oep.mohali@gmail.com) latest by 27.06.2019. Minutes of the said proceedings were sent to the Sr. XEN/DS, PSPCL, Amloh vide Memo No. 656/OEP/A-52/2018 dated 21.06.2019.

1. In response to this office Memo No.656/OEP/A-52/2018 dated

21.06.2019, the Sr. Executive Engineer, DS Division, Amloh stated, vide Memo No. 3751 dated 25.07.2019, as under:

*“Dy.CAO/A&R, PSPCL, Patiala vide his Office Memo No.356/A&R/A-44/18-19 dated 25.06.2019 intimated as under:*

 *This office only compiles the monthly accounts submitted by accounting units of PSPCL. The interest on security deposit is provided for the concerned Division in March Accounts as per the prevailing practice in PSPCL. As such consumer wise detail, regarding interest on security deposit is not available in monthly accounts.’*

*As per above feedback, monthly accounts of Amloh Division were checked to verify data relating to query. It is found that only Security (Consumption) is being updated in Head of Account 48.100 except this particular case i.e. ACD for load fed from TG set. Further, as per discussion held in the O/o Chief Financial Officer, the deposits/security that are kept under Head 48.100 are further governed by the rules & regulations under which they are got deposited from the consumer. If any deposits/security warrants payments of interest as per applicable rules and regulations at the time of deposit, interest is paid and otherwise no interest is payable. In this particular case, at the time of receipt of ACD for load fed from installed capacity of TG/DG set, no interest was payable.*

*How the amount of M/s Nahar Industrial Enterprises has been utilized by PSEB (now PSPCL):-*

*Regarding the utilization of the amount deposited by M/s Nahar Industrial Enterprises, it is submitted that the O/o jt. Financial Advisor/Bond, PSPCL, Patiala intimated procedure of collection and remittance of all amounts deposited in PSPCL accounts as under:*

 *‘The amount deposited by consumer/parties with concerned offices of PSPCL is credited to the related A/C codes by the concerned Offices at their own level and amount so collected is remitted to Head Office along with other collection of revenue by field offices under GH 24.5. As such, no separate detail is available in this office regarding security deposited by consumers/parties. The amount remitted by field Offices/Offices of CAO/Revenue to bank accounts of this office is again transferred to the offices of PSPCL for the purchase of power/coal, contractor payments, payment of salary/pension and carrying out day-to-day works. Whenever payment by field offices is required, they demand funds through online funds management information system i.e. FMIS and this office releases funds to all the DDO’s as per availability of funds.’*

***It is submitted that amount deposited by M/s Nahar Industrial Enterprises was credited in PSEB (now PSPCL) account and same might have been used for day to day working of the department. This amount is not kept under any fixed deposit.*** *Further, as per policy laid in Supply Code by PSERC, PSPCL is liable to issue refund of ACD to any consumer, as and when such condition arises.”*

 *This is for your kind consideration, please.*

1. Subsequently, Senior Executive Engineer, DS Division, PSPCL,

Amloh was directed, vide this office letter no.817/OEP/A-52 dated 16.08.2019, to intimate the date on which, Head of Account 48.100 to account for Security (Meter) and Security (Consumption) was created and also send the copy of letter of the PSPCL directing the DS Division, Amloh to credit the said securities to this Head to this Court by e-mail by 19.08.2019.

 **( r)** Secretary, PSERC, Chandigarh was also apprised, vide this office

Memo No.827/A-52/2018 dated 20.08.2019, that decision in the present dispute was pending for want of information regarding date of creation of Head of Account 48.100 and date from which securities were allowed to be credited to this Head. PSERC was also requested vide letter ibid that a copy of letter vide which, directions were issued by the Hon’ble PSERC to the PSPCL for creation of a separate Head of Account, to account for receipts/payments relating to Security (Consumption) and Security (Meter) and compliance report of PSPCL in this respect may be supplied on priority to enable this Court to decide the case which is pending only for want of aforesaid information.

1. In response to the aforesaid letter dated 16.08.2019, Sr.Xen, DS

Division, PSPCL, Amloh intimated vide e-mail dated 29.08.2019 as under:

*“ On consideration of recommendations/model manuals made by the consultants and comments furnished by various SEBs thereon, the Govt. of India, Ministry of Energy (Department of Power) has framed rules called the Electricity (Supply) (Annual Accounts) Rules 1985 under Section 69 read with Section 78(f) of Electricity (Supply) Act 1948. These rules prescribed new form in which Annual Accounting of Board shall be prepared, a new Chart of Account and basic accounting principles and policies and have become effective from April 1985.*

 *The Head 48 described as under:*

|  |  |
| --- | --- |
| *Head 48* | *Security Deposit from Consumers* |
| *48.100* | ***Security Deposit from Consumers-Cash:****The amount of security received against meters & other apparatus shall be credited to this Account Head.* *This Account will reflect the amount received from consumers as security deposits. It shall be cleared on the payment of the deposit or on adjustment thereof against pending dues.* |
| *48.101* | *This Account Code will be operated only to the account for the additional Security deposits recovered from the consumers in respect of additional load detected by the Board’s Officers or declared by the consumers under the schemes announced by the Board. However, additional changes on account of security deposits payable by the consumers for normal extension of load applied by the consumers will be accounted for under the Normal Head Code 48.100.* |
| *48.120* | ***Advance Consumption Deposit from consumers****:* *The amount of Advance Consumption Deposit / additional Advance Consumption Deposit from the consumers shall be credited to this Account Head.* |
| *48.121* | *Refer guidelines of 48.101- Additional Advance Consumption Deposit from consumers.* |
| *48.200* | ***Security Deposit from Consumers- Other than Cash****:**All the bank guarantees, fixed deposits receipt etc. received from consumers as a Security against receivables shall be recovered in this Account. Corresponding debit shall be given to securities from consumers A/C Code 28.932.* |

**4. ANALYSIS:**

The issue requiring adjudication is the legitimacy of payment of interest on ACD renamed as Security (Consumption) on CPP, amounting to Rs1,26,32,500/- comprising Rs 41,79,160/- and Rs 84,53,340/- deposited on 06.04.2005 and 27.05.2009 respectively.

Written submissions made by the Petitioner in the Appeal, reply given by the Respondent, oral submissions made by the Representatives of both the sides alongwith material/evidence brought on record of this Court have been gone through.

In the present dispute, the Petitioner has claimed interest on the amount of Advance Consumption Deposit of Rs 1,26,32,500/- [treated as Security (Consumption) w.e.f 03.07.2009 in terms of provisions of Regulation 17.1 of Supply Code-2007] citing the provisions of the Electricity Act-2003 and Supply Code-2007 (applicable from 01.01.2008) amended as Supply Code-2014 (effective from 01.01.2015). The Petitioner contended that it had complied with the interim order dated 14.05.2009 of the Hon’ble Supreme Court of India and had deposited the amount of ACD (Rs. 84,53,340/-) demanded by the Respondent on 21.05.2009.The Petitioner submitted that with the change of nomenclature of the ACD as Security (Consumption) as per provisions of Regulation 17.1 of the Supply Code-2007, the amounts of ACD of all the consumers (including the Petitioner) were to be treated as Security (Consumption) w.e.f 03.07.2009. The Petitioner added that the plea of keeping the ACD under one or the other accounting Head by the Licensee was just a ploy to weaken its genuine claim for payment of interest on the huge amount of Rs 1,26,32,500/- deposited since long. The Petitioner also referred to the provisions of Sales Regulation (in force upto 31.12.2007 prior to notification of Supply Code-2007 w.e.f. 01.01.2008) and stated that ACD as per Sales Regulations existing upto31.12.2007 in the accounts of the erstwhile PSEB automatically got converted into Security (Consumption) in terms of Regulation 17.1 of Supply Code-2007.

Thus, there is merit in the contention of the Petitioner that the amount of ACD deposited by it was renamed and treated as Security (Consumption) w.e.f. 03.07.2009 i.e. one year after the notification dated 03.07.2008 of the Tariff Order FY 2008-09.

**I find that ACD was deposited by the Petitioner in compliance of the Provisions of Commercial Circular No.26/2002 of distribution licensee as a safeguard the recovery of electricity charges of the electricity consumed by a consumer and to ensure that the load could not flow from the system of distribution licensee in event of any emergency due to breakdown of CPP. The requirement of deposit of ACD was withdrawn by the licensee vide CC No.51/2006 in cases where the CPP system was not synchronised with the system of licensee. I also find that the CPP system (of the Petitioner) was not synchronised with the system of licensee as per decision of this Court in Appeal No.16/2011 and upheld by the Hon’ble Punjab and Haryana High Court in CWP No.3670 of 2012 decided on 01.07.2013.**

I observe that the matter regarding legitimacy of the prayer of the Petitioner for non deposit/refund of ACD on the load connected with the CPP is pending adjudication with the Hon’ble Supreme Court. So far as the present prayer of the Petitioner in this Court for payment of interest on the said ACD deposited by it is concerned, I have also gone through the Section 47(4) of the Electricity Act-2003 which reads as under:

*“The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.”*

I am of the view that it will not be just and fair to deny the legitimate claim of the Petitioner group company (which is a leading Industrial house of Punjab paying large amounts of Energy Bills to the PSPCL) for payment of interest, on the ACD/Security(Consumption) deposited by it amounting to Rs 1,26,32,500/- in terms of provisions of Regulation 17.1 of Supply Code-2007 amended vide Supply Code-2014 which are consistent with the provisions of Section 47 of the Electricity Act, 2003, I would like to reproduce Regulation 17.1 of Supply Code-2007 and 2014 as under:

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

At the same time, creation of a separate Head of Account by the PSPCL, on being so directed by the Hon’ble PSERC during 2011-12 is also, in a way, intended to serve the purpose of specific reflection/depiction of such amounts in the Accounts, and also take appropriate action/ decision for deposits/investments in the financial institutions or utilisation elsewhere in public interest.

 I observe that the Forum erred in dismissing the Petition dated 18.07.2018 filed by the Petitioner as not maintainable on the plea that Civil Appeal No.3530-31 of 2009, filed by the Petitioner before the Hon’ble Supreme Court of India, was pending adjudication. I am of the view that the issue before the Apex Court is not of payment of interest on the ACD deposited by the Petitioner. I, therefore, agree with the contention of the Petitioner that the present Appeal preferred by it seeking appropriate remedy against the action of the distribution licensee regarding non payment of interest on ACD deposited is maintainable.

5. **Conclusion:**

From the above analysis, it is concluded that the Respondent has failed to bring on record of this Court any tangible evidence to deny the claim of the Petitioner for payment of interest on the ACD/renamed Security (Consumption) amount of Rs 1,26,32,500/- deposited with the distribution licensee. As a result, the Petitioner is legitimately entitled to be allowed interest on the amount of ACD deposited by it in terms of provisions of Regulation 17.1 of Supply Code-2007 and 2014 as per instruction of the PSERC/distribution licensee while, the Respondent-PSPCL is at liberty to claim the same through Annual Revenue Requirement (ARR) for FY 2020-21 to be filed by it before Hon’ble PSERC, if not claimed earlier.

**6. Decision**:

As a sequel of above discussions, the order dated 18.07.2018 of the CGRF, Patiala in Case No.CG-224 of 2018, dismissing the Petition dated 18.07.2018 of the Petitioner as not maintainable, is set aside. The legitimacy of the maintainability of the present Appeal stems from the fact that the issue of payment of interest on ACD/renamed as Security (Consumption) is not under scrutiny/adjudication of the Hon’ble Supreme Court of India who is to give its judgment on the legitimacy of deposit of ACD/renamed as Security (Consumption) in line with the provisions contained in Electricity Act-2003. It is held that the Petitioner shall be allowed interest on the amount of ACD deposited for the load connected on Captive Power Plant (CPP) supply by it (which does not synchronise with the distribution licensee system) as per Regulation 17.1 of the Supply Code-2007 amended vide Supply Code-2014. Accordingly, the Respondent is directed to calculate the interest payable on the ACD deposited by the Petitioner as per instructions of PSERC/distribution licensee and adjust the same in the future energy bills.

**7**. The Appeal is disposed off accordingly.

**8.** In case, the Petitioner 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 14, 2019 (VIRINDER SINGH)

S.A.S. Nagar (Mohali) Lokpal ( Ombudsman)

Electricity, Punjab.