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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 49/2020**

**Date of Registration : 13.10.2020**

**Dates of Hearings : 06.11.2020, 23.11.2020 and 02.12.2020**

**Date of Order : 07.12.2020**

**Before:**

**Er. Gurinder Jit Singh,**

**Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of:**

 M/s. Bansal Rice Mills (Unit-I),

Phul Road,

Rampura Phul-151103.

**Contract Account Number: 3002309367**

 ...Appellant

Versus

Senior Executive Engineer,

DS Division,

PSPCL, Rampura Phul.

 ...Respondent

**Present For:**

 Appellant : 1. Sh. Bhushan Bansal,

 Appellant.

2. Sh. S.R. Jindal,

 Appellant’s Representative (AR).

Respondent : Er. Sudhir Kumar,

Senior Executive Engineer,

DS Division,

 PSPCL, Rampura Phul.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 31.08.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-120 of 2020, deciding that:

 *“The claim of the petitioner for refund of Rs. 43,727/- in 07/2016 & Rs. 48,250/- in 08/2016 as peak load exemption charges is not justified being time barred in view of clause No. 2.25 of PSERC (Forum and Ombudsman) Regulation,2016.*

 *Interest on ACD/ security on amount of Rs. 39,270/- for the period 01.01.2008 to 31.10.2013 and interest on amount of Rs. 2,90,298/- for the period 04/2015 to 03/2016 be paid to the petitioner without penal interest as per Clause 17.1 of Supply Code, 2014.*

 *The benefit if any under OTS scheme is not admissible and justified. The late payment surcharge/interest charges and RCO Fee be levied as per clause 31.9 & 34.2 of Supply Code, 2014.*

*The calculations made as per above be got pre-audited & account of the petitioner be overhauled for recovering/ refunding the net amount to the petitioner accordingly.”*

**2*.* Registration of the Appeal**

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 13.10.2020 i.e. within one month of receipt of the decision dated 31.08.2020 of the CGRF, Patiala in Case No. CGP-120 of 2020. The above decision, sent by the Forum vide Memo No. 1815/CGP-120/2020 dated 31.08.20020, was delivered by the Postal Department to the Appellant on 15.09.2020 as per photocopy of status of delivery annexed with the Appeal. The Appeal of the Appellant relates to excess billing, refund of surcharge/interest charged thereon during the disputed period and payment of penal interest on Securities deposited by it. As such, the Appellant was not required to deposit any amount with the Respondent, for filing the Appeal in this Court. Accordingly, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/DS Division, PSPCL, Rampura Phul for sending written reply/parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letters bearing nos. 972-74/OEP/A-49/2020 dated 14.10.2020.

**3.** **Proceedings**

1. With a view to adjudicate the dispute, a hearing was fixed in this Court on 06.11.2020 at 12.00 Noon and intimation to this effect was sent to both the sides vide letters bearing nos. 1038-39/OEP/A-49/2020 dated 29.10.2020. As scheduled, the hearing was held on 06.11.2020 in this Court. Copies of the minutes of the proceedings were sent to the Appellant and the Respondent vide letter nos. 1077-78/OEP/A-49/2020 dated 09.11.2020. In the said letter, both the parties were directed to mutually review and reconcile three (out of five) disputed issues by holding a meeting in the Divisional Office on 18.11.2020 and thereafter attend this Court on 23.11.2020 at 11.30 AM.
2. In the hearing held on 23.11.2020, the representatives of both the sides attended this Court and apprised about the outcome of their meeting. The Court was apprised that the Appellant had still some reservations on two out of three disputed issues with the Respondent. Accordingly, both the sides were directed to hold another meeting in the Divisional Office on 26.11.2020 at 2.00 PM and thereafter attend this Court on 02.12.2020 at 11.30 AM. Copies of minutes of proceedings were sent to both the sides vide letter nos. 1130-31/OEP/A-49/2020 dated 23.11.2020.
3. As decided during last hearing, both the sides attended this Court on 02.12.2020. Deliberations were held whereafter, copies of minutes of the same were sent to both parties vide letters bearing nos. 1150-51/OEP/A-49/2020 dated 02.12.2020.

**4. Submissions made by the Appellant and the Respondent**

With a view to adjudicate the dispute, it is necessary to go through written submissions made in the Appeal by the Appellant and reply of the Respondent as well as oral submissions made by their respective representatives along with material brought on record by both the sides.

1. **Submissions of the Appellant**
2. **Submissions made in the Appeal**

The Appellant made the following submissions in the Appeal, received in this Court on 13.10.2020, for consideration:

1. The Appellant was having a Large Supply category electricity connection, bearing account No. 3002309367, with sanctioned load of 169.99 kW/CD-180 kVA in its name running under DS Division, PSPCL, Rampura Phul. The copy of the decision was dispatched by the Forum on 31.08.2020 and received by the Appellant on 15.09.2020 and thus the appeal was filed within limitation period as prescribed under regulations.
2. The excess billing refund case on account of ToD rebate/ wrong charges of PLEC/interest on security deposit/review of account under OTS and charges of surcharge/interest during the disputed period was filed by hand on 24.12.2019. The case was registered as T/409 of 2019 and date of first hearing was fixed as 17.01.2020, on which, the Respondent submitted the parawise reply to the petition. The Respondent, during the said proceedings, requested more time to calculate actual amount payable/refundable, hence, case was adjourned for 18.02.2020 acceding to the request of the Respondent.
3. On 18.02.2020, the Forum had directed the Appellant to deposit ₹ 07 lac on account of outstanding balance within 15 days without proceeding further in the case. In compliance of the proceeding dated 18.02.2020, the Appellant had deposited the outstanding amount as desired by the Forum in full and requested for registration of the case through letter dated 10.03.2020 for further action.
4. The Forum registered the case as CGP-120/2020 and heard it on 26.06.2020, 13.07.2020 and finally closed the same on 04.08.2020 for passing the speaking orders. The Forum had made biased decision beyond rules on flimsy grounds by making frivolous, vexatious, malafide observations without any sufficient cause which caused primafacie loss to the Appellant.
5. The claim for refund was lodged before the Forum on 24.12.2019 and decision was pronounced on 31.08.2020 (actual date 10.09.2020), which was beyond rules of PSERC (Forum and Ombudsman) Regulations, 2016. The Forum incorrectly showed institution of case on 28.05.2020 and closed on 04.08.2020 for speaking order and pronounced the decision on 31.08.2020 in back date (actual date 10.09.2020).
6. The foremost duty of the Forum was to award some relief as claimed by the Petitioner/Appellant in its petition, which had been ignored. For example, in case of refund of PLE charges wrongly charged by the Respondent in the bills issued in 06/2016 and 07/2016 were protested by the Appellant on 05.08.2016 and the Respondent in its reply agreed to refund the same as wrongly billed but the Appellant was insisting for the withdrawal of surcharge + interest charged from 06/2016 and 07/2016 till date. The point was discussed before the Forum on 04.08.2020, when the Technical Member of the Forum openly spoke the version in favour of the Appellant that what was the harm in returning the disputed amount alongwith surcharge/ interest charged for the period of wrong charges. The Respondent had also shown its consent for the same and raised no objection to clear the disputed amount pending since long. The other Members of the Forum remained mum on the issue but the Appellant was surprised to read the decision of the Forum as per which, the claim of PLEC charges was rejected on flimsy ground under clause 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016. This point was never objected during the discussion from 24.12.2019 to 04.08.2020. The Respondent never raised the issue in its reply nor the point was raised by the Forum before the registration of the case. When the case was accepted and registered, the point raised by the Forum in the decision was biased.
7. A case, bearing CGP No. 343 of 2019, filed before the Forum after two years was accepted and decided on 13.01.2020 in view of clause 2.25 in which the claim of threshold rebate for 2015/16 of ₹ 2,67,824/- was allowed without any condonation of delay period because no request from the petitioner side was ever made in its petition.
8. In another case, a Petition against the decision dated 12.09.2019 of ZLDSC Bathinda, was accepted by the Forum for registration after 5 months on 12.02.2020 whereas the limitation period was 2 months as per Regulation 2.25 of PSERC (Forum & Ombudsman) Regulations, 2016. The case was registered as CGP-81 of 2020 and was decided in favour of the Appellant without any request for condonation of delay from the Petitioner in violation of the rules of PSERC. The Appellant can produce number of cases in which the Forum had ignored the time period as per Regulations of PSERC. When the issue was neither discussed nor the objection was raised by the Respondent, then, why the case was rejected by the Forum.
9. The objection made by the Forum at its own on flimsy ground be condoned in the interest of justice because the Appellant requested to withdraw the amount of excess billing in the month of 06/2016 and 07/2016 vide letter dated 05.08.2016 and Respondent had failed to produce the relevant record (Diary register) for the period 01.08.2016 to 31.12.2016. The Respondent stated before the Forum that the letter was never received by it as per record.
10. The rejection of the case applied under OTS Scheme as per CC No. 35/2018 had no ground because the Respondent had failed to serve demand notice within 30 days from the date of deposit of processing fee of Rs. 2000/- on 16.08.2018.
11. The claim of fictitious surcharge/ interest/ RCO fees had been raised through petition in detail. The decision of the Forum is vague/ false/ illegal and far from facts be set aside and appeal be accepted in the interest of justice.
12. The Respondent, in its reply, had agreed that PLE charges of ₹ 43,727/- and ₹ 48,250/- had been wrongly charged in the bills for the months of 06/2016 and 07/2016 respectively. The Appellant had represented the issue before the Sub Division vide letter dated 05.08.2016 but in vain. The Respondent charged surcharge + interest @ 18% per annum on outstanding amount till date, which was adjustable in view of Regulation 35.1.3 of Supply Code-2014 as under: -
13. Excess amount bill ₹ 43,727/- + ₹ 48,250/- = 91,977.00
14. Surcharge @ 5% levied = 4,599.00
15. Interest on above @ 18% per annum = 91,816.00

compounding from 08/2016 to 07/2020

Total refundable amount = 1,88,382.00

1. The interest payable had not been calculated correctly and fairly as per the rules of the PSPCL. The Respondent, inspite of repeated instructions issued by the PSPCL from time to time, had failed to update the security of the petitioner. Now, the interest on security had not been calculated in view of Regulation 17.3 of Supply Code, which was calculated as under on ₹ 39,270/- not updated: -
2. 01.01.2008 to 31.03.2010 = 27 M x 12.25% = 10,824.00
3. 01.04.2010 to 31.03.2011 = 12 M x 11.75% = 4,614.00
4. 01.04.2011 to 31.03.2012 = 12 M x 10.25% = 4,025.00
5. 01.04.2012 to 31.03.2013 = 12 M x 12.00% = 4,712.00
6. 01.04.2013 to 31.10.2013 = 7 M x 11.70% = 2,680.00
7. 01.04.2015 to 31.03.2016 = 12 M x 11.3% = 32,804.00

(on amount of 2,90,298.00) = 59,659.00

+ Penal interest/ delayed period interest = 65,000.00

Grand Total = 1,24,659.00

1. The Respondent did not submit any comments on the issue of case applied under OTS on 16.08.2018 in view of CC No. 35/2018 dated 24.05.2018. As the amount of processing fee was deposited ₹ 2,000/- on 16.08.2018 with the Respondent and case as per instructions was to be reviewed within 30 days by the Sr. Xen/ AO/ Field Committee, which had not been reviewed so far. Now the Respondent had given reply as ‘got audited from Local IA’ was not correct because he was not competent to give any directions without the approval of the Committee constituted by the PSPCL. IA can forward his comment to the AO/ Field under whom he was working. Hence, the due relief had not been calculated as per the provision of CC No. 35/2018 to allow due relief in surcharge/ interest of ₹ 1,94,438/- be given without any further delay in the matter. It was also prayed that the officer/ officials should be recommended for necessary action for delay in the matter.
2. The Respondent had charged surcharge/ interest on the outstanding amount of the bills, whereas the bills were not served accurately due to the reasons given above. The prime duty of the Respondent was to serve accurate billing to the consumer, whereas the Respondent had totally failed to comply with the instructions of the PSPCL. Hence, the charges should be waived off during the disputed period as the billing was not served accurately in the case of CGP No. 426/2018.
3. The claim of PLE charges wrongly debited, was admitted by the Respondent in the bills for 06/2016 and 07/2016 had already been discussed in detail and refund alongwith surcharge plus interest charged from 2016 till date had been calculated as ₹ 1,88,382/- required to be adjusted. This issue required no arguments being self-explanatory and was refundable to the Appellant alongwith interest in view of Regulation 35.1.3 (relates to excess billing) of Supply Code. The Forum did not allow the same being time barred which was wrong and denied because the issue was never discussed during the proceedings of the case by the Respondent. The same be allowed and delay be condoned.
4. The claim of interest on securities in view of Regulation 17 of Supply Code for the delayed period was due amounting to ₹ 1,24,659/- and the Respondent, on this issue, had agreed that it had failed to allow interest on securities regularly on full amount due to the change in SAP system and mistake lies on the part of Respondent itself. Hence, the claim was genuine and justified.
5. The Appellant, in view of CC No. 35/2018 dated 24.05.2018, had applied for review of account under OTS Scheme and deposited the processing fee of ₹ 2,000/- on 16.08.2018. It was the duty of the Respondent to raise revised demand within 30 days from the date of deposit as the relief in interest was given in the said circular by the PSPCL from 18% to 12%. Secondly, OTS interest was only chargeable on the SOP and the other charges were reimbursed to the concerned Department as and when the same were recovered. The Appellant just calculated relief of ₹ 1,58,725/- (difference in interest + surcharge) be approved and allowed in view of the provision of the circular. The Respondent had not pursued the case before the Competent Authority and no meeting between AO/ Field and Sr. Xen was ever held to finalize the case in view of CC No. 35/2018 dated 24.05.2018 within stipulated period of 30 days. The Appellant, to start its season of the Factory, had deposited ₹ 3,61,500/- as part payment so that Factory work may not suffer. The Respondent did not care to clear the case applied under OTS on 16.08.2018, hence, the claim amount plus interest which works out as ₹ 1,94,438/- be allowed in the interest of justice.
6. The charges on account of surcharge + interest of ₹ 6,84,582/- during the disputed period were reviewed as the billing during the period was not made accurately and the Appellant became defaulter. Thereafter, by now allowing rebate on account of OTS and excess billing of 06/2016 and 07/2016, the amount of bills went on accumulating in lacs. Further, SAP system kept on charging surcharge/ interest of double amount. This clearly showed that the SAP system had been unnecessarily raising debits in the chronology list checked by the Appellant. The billing of the Respondent in this connection was not fair as ₹ 250/- on account of RCO fee was only chargeable if the supply of the connection was actually restored after disconnection. But, the SAP system monthly and repeatedly charged RCO fees to the account. The decision of the Forum in this regard was biased because the amount shown as recoverable under Regulation 3.19 and 34.2 of Supply Code, 2014 had no relevancy. In case No. CGL/2010 of 2020, the CGRF, Ludhiana had given its opinion differently as the Forum ordered monthly charges of RCO fees beyond rules and allowed refund of excess charges.
7. If the case of the Appellant was time barred, then the approval of the Competent Authority could have been obtained and it would have been reviewed by the Forum. The Respondent, during the period 24.12.2019 to 04.08.2020, had never raised any objection on the issue but confirmed its mistake of wrong charging in the bills was refundable alongwith interest plus surcharge.
8. The amount of surcharge plus interest charged during the disputed period may be waived off.
9. **Submissions during Hearing**
10. During hearing on 06.11.2020, the Appellant’s Representative reiterated the submissions already made in the Appeal. Both the Appellant and the Respondent, on being directed, agreed to sort out/ resolve mutually the issues relating to benefit under OTS scheme, charging of surcharge/ interest and refund of excess RCO fee charged/ recovered by holding a meeting in the Divisional Office on 18.11.2020 at 10.00 AM. They were asked to apprise this Court about the outcome and deliberate the matter on 23.11.2020.
11. In the hearing held on 23.11.2020, the Appellant’s representative apprised the Court that it had reservations on two out of three issues after the meeting with the Respondent on 19.11.2020. Accordingly, the Court asked both the sides to meet on 26.11.2020 in the Divisional Office to sort out the differences and apprise the Court thereafter on 02.12.2020 for further consideration.
12. In the hearing held on 02.12.2020, the Respondent apprised the Court about the deliberations in their joint meeting dated 27.11.2020 and submitted a copy of minutes of proceedings duly signed by the Appellant’s Representative who still prayed the Court to give relief.
13. **Submissions of the Respondent**
14. **Submissions made in the Written Reply**

The Respondent, in its written replysent vide Memo No. 7676 dated 28.10.2020, made the following submissions for consideration of the Court:

1. The Respondent had admitted the filing of the case before the CGRF, Patiala and then Appeal before this Court. The Forum had decided the case according to rules after considering all the facts and regulations.
2. The Appellant had not given any application regarding excess billing in the month of 06/2016 and 07/2016.
3. PLE charges amounting to ₹ 43,727/- and ₹ 48,250/- charged for the months of 06/2016 and 07/2016 were refundable to the Appellant but as per decision of the Forum, it was not adjustable to the Appellant. Further, surcharge and interest amounting to ₹ 4,599/- and ₹ 91,816/- as demanded by the Appellant was not refundable as the Appellant had not followed the Supply Code Regulation 35.1.1.
4. Interest on ACD/ Security on amount of ₹ 39,270/- for the period 01.01.2008 to 31.10.2013 and interest on amount of ₹ 2,90,298/- for the period 04/2015 to 03/2016 had been paid to the Appellant without penal interest as per applicable regulations.
5. The application of the Appellant for OTS was processed and sent to AO/ Field, Bathinda, who, vide its letter no. 422 dated 06.02.2020, informed that relief under OTS was not admissible to the Appellant. As per clause No. B (a) of CC No. 35/2018, the refund of surcharge under OTS Scheme was not considerable because the Appellant had not deposited the subsequent bills regularly. Further, the Appellant had not been charged interest @ 1.5% per month in its account and as such, the Appellant was not eligible for benefit under OTS Scheme. The connection of the Appellant was permanently disconnected on 05.04.2019 and the Appellant requested for reconnection during 08.10.2019 and requested for installments of the pending dues which meant that the Appellant had agreed to the pending due amount on that day in October, 2019 and also agreed to deposit 50% amount in one go. As such, the issue of allowing benefits to the Appellant under OTS Scheme at this belated stage was not considerable.
6. The Appellant had not followed Regulation 35.1.1 of Supply Code-2014 and had not submitted any objection about any of the above-mentioned grievances at the relevant time when such bills were issued and therefore the surcharge and interest already charged was not refundable to the consumer.
7. **Submissions of the Respondent vide Memo dated 20.11.2020**

The Respondent after holding a meeting with the Appellant on 19.11.2020, had made the following additional submissions sent via email vide its Memo No. 8360 dated 20.11.2020: -

1. The Appellant raised the issue of 19 No. double entries on the same data in chronology of Appellant’s Account No. 3002963561. The same were checked by the Respondent and found that these entries were interest charged on the outstanding amount payable by the Appellant. After reviewing the interest for this period on actual basis, it was found that entries of amount of ₹ 4,630/- were excess charged.
2. The Appellant demanded to refund RCO fees charged in chronology of Appellant’s Account No. 3002963561. The same were checked by the Respondent and found that out of 36 Nos. RCO fee entries, 4 Nos. were chargeable due to compliance of job orders and rest were refundable amounting to ₹ 8,000/-.
3. Appellant objected that the benefits under OTS (One Time Settlement) as per Commercial Circular No. 35/2018 were not given to it. Appellant demanded that the surcharge amount charged in bills be refunded under OTS and Appellant also demanded that 12% interest be charged on SOP only instead of total amount for calculation of interest under OTS. The calculation under OTS was reviewed as per Commercial Circular No. 35/2018 and clarified that surcharge was not refundable under OTS as Appellant had not deposited subsequent bills regularly as per clause (B) (b) of circular and interest @ 12% was chargeable on outstanding/ defaulting amount as per guidelines of Circular. After reviewing the OTS calculation, the benefit of amount of ₹ 10,964/- was found payable to the Appellant.
4. **Submissions of the Respondent vide Memo dated 01.12.2020**

The Respondent, after holding meeting with the Appellant’s Representative on 27.11.2020, submitted vide Memo dated 01.12.2020 as under:

1. The Appellant submitted its consent for the interest calculated by PSPCL under OTS.
2. The Appellant submitted that it had deposited amount of ₹ 2,22,87,120/- out of total bill issued of ₹ 21,88,030/- from period 10.01.2017 to 30.09.2018. The surcharge of above period was ₹ 92,707/-. In the CC No. 35/2018 Clause No. (B) (a), it was mentioned that “Late payment surcharge shall be leviable only once in case the consumer has paid subsequent energy bills regularly”. So, the surcharge as demanded was not refundable as bills were not paid regularly. But the Appellant disagreed with this and stated that it had deposited amount more than the current bill (excluding surcharge and interest) during the above mentioned bill period. So, the Appellant demanded that surcharge be refunded.
3. **Submission during Hearing**
4. During hearing on 06.11.2020, Senior Executive Engineer/ DS Divn., PSPCL, Rampura Phul reiterated the submissions already made in its written reply and prayed for the dismissal of the Appeal. However, both the Appellant and the Respondent, on being directed, agreed to sort out/ resolve mutually the issues relating to benefit under OTS scheme, charging of surcharge/ interest, refund of excess RCO fee charged/ recovered etc. by holding a meeting in the Divisional Office on 18.11.2020 at 10.00 AM.

(ii) In the hearing held on 23.11.2020, the Respondent submitted Memo No. 8360 dated 20.11.2020 giving details of the outcome of the meeting dated 19.11.2020 held with the Appellant’s Representative. The same was taken on record and copy thereof was given to the Appellant’s Representative who expressed reservation on two out of there disputed issues. On being directed, the Appellant’s Representative agreed to hold another meeting with the Respondent on 26.11.2020 in the Divisional Office and apprise this Court accordingly on 02.12.2020.

(iii) In the hearing held on 02.12.2020, the Respondent reiterated its view point, (as per minutes of joint meeting dated 27.11.2020) sent vide Memo No. 8607 dated 01.12.2020.

**5.** **Analysis and Findings**

The issues requiring adjudication are the legitimacy of

1. Maintainability of the claim of the Appellant for refund of ₹ 43,727/- for 07/2016 and ₹ 48,250/- for 08/2016 as Peak Load Exemption Charges, levied incorrectly, with surcharge/interest.
2. Payment of penal interest on ACD/Security (Consumption) and Security (Meter) on the amount of ₹ 39,270/- for the period 01.01.2008 to 31.10.2013 and on amount of ₹ 2,90,298/- for the period 04/2015 to 03/2016.
3. Refund of RCO fee recovered in excess during the period 01.03.2016 to 06/2019.
4. Benefit/Rebate under OTS scheme as per CC No. 35/2018.
5. Refund of Late Payment Surcharge/Interest levied in the bills.

*My findings on the above issues deliberated and analyzed are as under: -*

**Issue (i)**

1. The Appellant’s Representative submitted that the claim of PLE charges of the Appellant for refund of ₹ 43,727/- for 07/2016 and ₹ 48,250/- for 08/2016 levied incorrectly, with interest was rejected on flimsy ground under Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016. This point was never objected to by the Respondent during the discussion from 24.12.2019 to 04.08.2020 in the Forum. The Respondent never raised the issue in its reply nor the point was raised by the Forum before the registration of the Petition. When the case was accepted and registered, the point raised by the Forum in the decision was biased. It was prayed that the claim be allowed after condoning the delay in filing the case for refund of PLE charges in the Forum.

b) In this connection, it is worthwhile to peruse the Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016 (referred to by the Forum in its order dated 31.08.2020) which reads as under:

**2.25** *“The Forum shall entertain only those complaints where the representation is made within 2 years from the date of cause of action in case the complainant approaches the Forum directly or within 2 months from the date of receipt of the orders of respective Dispute Settlement Committee constituted under CCHP. Provided that the Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.”*

c) It is observed that the Appellant has, in the present Appeal and also during hearing on 06.11.2020, not referred to any Regulation vesting this Court with the power to review/decide the case wherein the Forum had not entertained the grievance of any consumer in which the date of cause of action is more than two years. The Appeal submitted in this Court is based mainly on merits of the case/grievance of the Appellant relating to refund of PLEC/ToD rebate for the financial year 2016-17. The Appellant had not explained the reasons for delay in filing the case before the Forum after three years from the date of cause of action. Delay of each day is required to be explained with documentary evidence but the Appellant had failed to give any justification/evidence for delay. Delay cannot be condoned in a mechanical way suo-motu without any request from the Petitioner/Appellant.

d) It is also observed that the case can be adjudicated on merits in this Court only if the same is, prima facie, maintainable. Since the Appellant had not brought any evidence on record of this Court about maintainability of this issue in this Court, it is not just and appropriate to deliberate and decide it on merits.

e) A perusal of the case file of the Forum has revealed that the Appellant did not submit any application alongwith its petition/complaint for entertaining its claim giving reasons for raising it (in December 2019) three years after the date of cause of action (8/2016). The Appellant only submitted the details of its grievance and request for allowing relief on merits but the application/request for condonation of delay in raising this issue beyond limitation period duly supported by documentary evidence was not submitted to the Forum.

In view of the above, this issue is decided against the Appellant.

**Issue (ii)**

1. The Appellant’s Representative submitted that the interest payable had not been calculated correctly and fairly as per the rules of the PSPCL. The Respondent, in spite of repeated instructions issued by the PSPCL from time to time, failed to update the security of the Appellant. Interest on Security had not been calculated in view of Regulation 17.4 of Supply Code-2007 amended vide Regulation 17.3 of Supply Code-2014, which was calculated as under on ₹ 39,270/-:
2. 01.01.2008 to 31.03.2010 = 27 M x 12.25% = 10,824.00
3. 01.04.2010 to 31.03.2011 = 12 M x 11.75% = 4,614.00
4. 01.04.2011 to 31.03.2012 = 12 M x 10.25% = 4,025.00
5. 01.04.2012 to 31.03.2013 = 12 M x 12.00% = 4,712.00
6. 01.04.2013 to 31.10.2013 = 7 M x 11.70% = 2,680.00
7. 01.04.2015 to 31.03.2016 = 12 M x 11.3% = 32,804.00

 (on amount of 2,90,298.00)= 59,659.00

 + Penal interest/ delayed period interest= 65,000.00

Grand Total = 1,24,659.00

1. As per material on record, the Appellant, who had deposited the ACD/Security (Consumption) and Security (Meter), never requested the Licensee, for credit of interest in its account on the 1st April each year.
2. It is observed that the Appellant has not furnished even the copies of request letters, if any, written to the Respondent for credit of amounts due with interest till the filing of the case in the Forum.
3. It is also observed that the Appellant, being a Large Supply Category Consumer, ought to be vigilant and prompt in bringing to the notice of the Respondent the fact of non- credit of interest on Securities as per applicable regulations.
4. The Appellant, a Large Supply Category Consumer, received regularly the energy bills issued by PSPCL from time to time. In all these bills issued by the Respondent, amount of Security (Consumption) and Security (Meter) was invariably depicted. The Appellant paid these bills regularly on receipt thereof but did not point out or file a claim/representation to the Respondent about not crediting/adjusting the interest amount on the Security (Consumption) and the Security (Meter) for the disputed period. The Appellant was supposed to point out the missing/incorrect entries of Security (Consumption) and Security (Meter), if any, in the energy bills. Thus, the Appellant did not take appropriate remedy at appropriate time despite the fact that provisions for allowing interest on Security (Consumption) and Security (Meter) were made in the Supply Code-2007 (applicable from 01.01.2008 to 31.12.2014) amended vide Supply Code-2014 (effective from 01.01.2015).
5. Instead of finding lacunae in the working of the Respondent, the Appellant was expected to be vigilant, update and prompt in discharging its obligation(s). Had the Appellant exercised necessary prudence/vigilance, the dispute regarding penal interest on securities could have been avoided.
6. It is also observed that the Appellant willfully avoided to represent/file a claim to the Respondent for a considerably long time in the hope that it would, in the event of delay, get interest at comparatively higher rates from PSPCL than that admissible for deposits in the banking institutions. Delay on the part of the Appellant to file the representation for correction/updation of securities should not result in additional income to it at the cost of the Respondent (PSPCL). The Appellant may have expected that in the event of success of its Petition/Appeal in the CGRF/Court of Ombudsman (Electricity), it would get interest at higher rates as per provisions of Regulation 17.4 of Supply Code-2007/Regulation 17.3 of Supply Code-2014.
7. The Respondent also defaulted in not allowing the interest on Security (Consumption) and Security (Meter) for the disputed period. The responsibility of erring officials /officers should be fixed by the PSPCL after investigation/ inquiry.

In view of the above, this issue of allowing interest on interest/additional interest/penal interest on the Security (Consumption) and Security (Meter) for the disputed period is decided against the Appellant after due consideration. However, the interest on Securities at normal rates as per Supply Code regulations applicable from time to time shall be payable.

**Issue (iii)**

1. The Appellant’s Representative submitted that the billing done by the Respondent was not fair as the SAP system repeatedly charged RCO fee amounting to ₹ 250/- every month to the account. In fact, ₹ 250/- on account of RCO fee was only chargeable if the supply of the connection was actually restored after disconnection. The decision of the Forum in this regard was biased because the amount shown as recoverable under Regulation 3.19 and 34.2 of Supply Code, 2014 had no relevancy. In Case No. CGL/2010 of 2020, the CGRF, Ludhiana had given its opinion differently as the Forum did not allow monthly charges of RCO fees beyond rules and allowed refund of excess charges.
2. During hearing on 06.11.2020 in this Court, the Respondent, on being directed, agreed to resolve this issue after consulting the relevant record in the Divisional Office in the presence of the Appellant’s Representatives on 18.11.2020. In response the Respondent submitted Memo No. 8360 dated 20.11.2020 during hearing on 23.11.2020 stating that out of 36 no. RCO Fee entries, 4 no. were chargeable due to compliance of job orders and rest are refundable amounting to ₹ 8,000/- as per details given in Annexure to the said Memo dated 20.11.2020.
3. The Appellant’s Representative to whom, a copy of above Memo dated 20.11.2020 was given during hearing on 23.11.2020, expressed satisfaction over the resolution of this issue.

In view of the above, this issue is decided in favour of the Appellant as agreed to by the Respondent.

**Issue (iv)**

 a) The Appellant’s Representative contended that in view of CC No. 35/2018 dated 24.05.2018, the Appellant had applied for review of account under OTS Scheme and deposited the processing fee of ₹ 2,000/- on 16.08.2018. It was the duty of the Respondent to raise revised demand within 30 days from the date of deposit as the relief in interest was given in the said circular by the PSPCL from 18% to 12%. Secondly, OTS interest was only chargeable on the SOP and the other charges were reimbursed to the concerned Department as and when the same were recovered. The Appellant just calculated relief of ₹ 1,58,725/- (difference in interest + surcharge) for allowing the same in view of the provision of the circular. The Respondent had not pursued the case before the Competent Authority and no meeting between AO/ Field and Sr. Xen was ever held to finalize the case in view of CC No. 35/2018 dated 24.05.2018 within stipulated period of 30 days. The Appellant, to start its season of the Factory, had deposited ₹ 3,61,500/- as part payment so that Factory work may not suffer. The Respondent did not care to clear the case applied under OTS scheme on 16.08.2018, hence, the claim amount plus interest of ₹ 1,94,438/- be allowed in the interest of justice.

 b) The Respondent, in its defence, stated that the application of the Appellant for OTS was processed and sent to AO/ Field, Bathinda, who, vide its letter No. 422 dated 06.02.2020, informed that relief under OTS scheme was not admissible to the Appellant. As per clause No. B (a) of CC No. 35/2018, the refund of surcharge under OTS Scheme was not considerable because the Appellant had not deposited the subsequent bills regularly. Further, the Appellant had not been charged interest @ 1.5% per month in its account and as such, the Appellant was not eligible for benefit under OTS Scheme. The connection of the Appellant was permanently disconnected on 05.04.2019 and the Appellant requested for reconnection during 08.10.2019 and requested for installments of the pending dues which meant that the Appellant had agreed to the pending due amount on that day in October, 2019 and also agreed to deposit 50% amount in one go. As such, the issue of allowing benefits to the Appellant under OTS Scheme at this belated stage was not considerable.

c) During hearing on 06.11.2020, the Representatives of both the sides agreed to review and sort out the issue mutually by holding a meeting in the Divisional Office on 18.11.2020 and submit the outcome of the review in the next hearing fixed for 23.11.2020 in this Court.

 d) In the hearing dated 23.11.2020, Sr. Xen, DS Division, Rampura Phul submitted Memo No. 8360 dated 20.11.2020, stating as under:

“Petitioner objected that the benefits under OTS (One time settlement) as per commercial circular no. 35/2018 were not given to him. Petitioner/applicant demanded that the surcharge amount charged in bills to be refunded under OTS and he also demanded that 12% interest to be charged on SOP only instead of total amount for calculation of interest under OTS. In this regard the calculations under OTS are reviewed as per commercial circular no. 35/2018 and clarified that surcharge is not refundable under OTS as consumer has not deposited subsequent bills regularly as per clause B) (b) of circular and interest @ 12 % is chargeable on outstanding/defaulting amount as per guidelines of circular. Therefore, after reviewing the OTS calculations, the benefit of amount Rs. 10964/- is payable to consumer as per calculation attached at annexure-3.”

e) The Appellant’s Representative, to whom a copy of the said Memo No. 8360 dated 20.11.2020 was given, expressed reservation on the submission of the Respondent. Accordingly, both the sides were directed to hold another meeting in the Divisional Office on 26.11.2020 to sort out the issue further.

f) In compliance to directions given in the hearing dated 23.11.2020, a meeting was held by both the sides in the Divisional Office on 27.11.2020 and a copy of the minutes was sent to this Court by the Respondent vide Memo No. 8607 dated 01.12.2020 (received by e-mail) stating as under:

“Applicant submitted his consent for the interest calculated by PSPCL under OTS.”

 Clause B) a) of CC No. 35/2018 dated 24.05.2018 containing terms and conditions of OTS scheme reads as under:

*“For all consumers who have not been disconnected under para A (i), the unpaid outstanding amount/ defaulting (single default or more than one) amount except on account of Additional Security (Consumption) shall be payable with interest @ 12% per annum compounded annually from the date it became due. Late Payment Surcharge shall be leviable only once in case the consumer has paid subsequent energy bills regularly. For calculation of defaulting amount, it may be ensured that the amount paid by a consumer against subsequent energy bill after default is adjusted first against the current energy bill only and then against arrears on account of previous bills/ interest.”*

 g) After going through the material brought on record of this Court and oral & written submissions made by both the sides and CC No. 35/2018 dated 24.05.2018, it is evident that the Appellant is entitled only to the benefit of amount of ₹ 10,964/- worked out by the Respondent. This issue is disposed off accordingly.

**Issue (v)**

1. The Appellant’s Representative next submitted that the charges on account of surcharge + interest of ₹ 6,84,582/- during the disputed period were reviewed as the billing during the period was not made accurately and the Appellant became defaulter. Thereafter, by not allowing rebate on account of OTS scheme and excess billing of 06/2016 and 07/2016, the amount of bills went on accumulating in lacs. Further, SAP system kept on charging surcharge/ interest of double amount. This clearly showed that the SAP system had been unnecessarily raising debits in the chronology list checked by the Appellant. The billing of the Respondent in this connection was not fair. The Respondent had charged surcharge/interest on the outstanding amount of the bills, whereas the bills were not served accurately. The prime duty of the Respondent was to serve accurate billing to the consumer, whereas the Respondent had totally failed to comply the instructions of the PSPCL, hence, the surcharge should be waived off during the disputed period as the billing was not served accurately as in the case of CGP No. 426/2018.
2. The Respondent, in its defence, stated that the Appellant had not followed Regulation 35.1.1 of Supply Code-2014 and had not submitted any objection about any of the above-mentioned grievances at the relevant time when such bills were issued and therefore, the surcharge and interest already charged was not refundable to the consumer.
3. During hearing on 06.11.2020, the representatives of both the sides agreed to review and sort out the issue mutually by holding a meeting in the Divisional Office on 18.11.2020 and submit the outcome of the review in the next hearing fixed for 23.11.2020 in this Court.
4. In the hearing dated 23.11.2020, Sr. Xen, DS Division, Rampura Phul submitted Memo No. 8360 dated 20.11.2020, stating as under:

“Petitioner raised the issue of 19 no. double entries on the same date in chronology of petitioner’s account no. 3002963561. The same has been checked by our office and found that theses entries are interest charged on the outstanding amount payable by consumer. After reviewing the interest of this period on actual basis, it is found that entries of amount Rs. 4,630/- are excess charged. Calculation is attached at annexure-1.”

1. The Appellant’s Representative, to whom a copy of the said Memo No. 8360 dated 20.11.2020 was given expressed reservation on the submission of the Respondent. Accordingly, both the sides were directed to hold another meeting in the Divisional Office on 26.11.2020 to sort out the issue further.
2. In compliance to directions given in the hearing dated 23.11.2020 a meeting was held by both the sides in the Divisional Office on 27.11.2020 and a copy of the minutes was sent to this Court vide Memo No. 8607 dated 01.12.2020 (received by e-mail) stating as under:

“Applicant submitted that he has deposited amount of 22287120 out of total bill issued of rupees 2188030 rupees from period 10.01.2017 to 30.09.2018 there for surcharge of above period of amounting rupees 92707 rupees.

In this regard it is informed to applicant that as per CC 35/2018 clause No. (B) (a) it is mentioned that “Late payment surcharge shall be leviable only once in case the consumer has paid subsequent energy bills regularly”, so the surcharge as demanded is not refundable as bills are not paid regularly. But applicant disagree with this and state that he has deposited amount more than the current bill (excluding surcharge and interest) during the above mentioned bill, so he demands that surcharge to be refunded.”

1. In view of the above, the Appellant is entitled to refund of ₹ 4,630/- on account of excess charged entries as verified by the Respondent.

**6.** **Decision**

As a sequel of above discussions, it is held that:

1. The claim of the Appellant for refund of ₹ 43,727/- for 07/2016 and ₹ 48,250/- for 08/2016 as Peak Load Exemption Charges with interest is not maintainable being time barred as decided by CGRF, Patiala in case no. CGP-120 of 2020 vide order dated 31.08.2020.
2. The claim for payment of penal interest on ACD/Security (Consumption) and Security (Meter) on amount of ₹ 39,270/- for the period 01.01.2008 to 31.10.2013 and on amount of ₹ 2,90,298/- for the period 04/2015 to 03/2016 is not sustainable, hence, not allowed as also decided by the Forum vide order dated 31.08.2020.
3. RCO fees recovered in 32 (out of 36) cases/entries in SAP system amounting to ₹ 8000/- are refundable to the Appellant as agreed to by the Respondent vide Memo No. 8360 dated 20.11.2020.
4. Only the amount of ₹ 10,964/- on account of surcharge/interest under OTS Scheme and ₹ 4,630/- on account of the entries charged in excess are refundable to the Appellant as verified/admitted by the Respondent vide Memo No. 8360 dated 20.11.2020.
5. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustments as per instructions of the PSPCL.

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

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

 (GURINDER JIT SINGH)

December 07, 2020 Lokpal (Ombudsman)

 SAS Nagar (Mohali) Electricity, Punjab.