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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 61/2020**

**Date of Registration : 15.12.2020**

**Date of Hearing : 06.01.2021**

**Date of Order : 11.01.2021**

**Before:**

 **Er. Gurinder Jit Singh,**

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

**In the Matter of:**

 Ridhima Miglani,

M/s. Saarthi Apparel,

Jain Hosiery Complex, Laddu Colony,

Village Noorwala, Ludhiana,

**Contract Account Number: 3002800796**

 ...Appellant

Versus

Addl. Superintending Engineer,

DS Sunder Nagar Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

 Appellant : Sh. Vivek Chauhan, Advocate,

 Appellant’s Counsel (AC).

Respondent : Er. B.S. Sidhu,

 Addl. Superintending Engineer,

 DS Sunder Nagar Division (Special),

 PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the order dated 26.06.2020 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-122 of 2020, deciding that:

*“The amount charged to the petitioner on account of ED charges for the period 07/2015 to 11/2019 is justified and recoverable. Further, as per the request of the petitioner, the amount be recovered in 12 nos. monthly instalments without Interest & Surcharge. If the petitioner fails to deposit the instalments as allowed in time, surcharge & interest be recovered as per prevalent PSPCL instructions.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 15.12.2020 i.e. after more than 30 days of receipt of the decision dated 26.06.2020 of the CGRF, Ludhiana in Case No. CGL-122 of 2020. An application for condonation of delay giving reasons was also received with the Appeal. Besides, the Appellant had deposited ₹ 1,10,450/- on 26.02.2020 before filing Petition in the Forum and deposited ₹ 1,10,449/- on 11.12.2020 and submitted copy of Account Statement for Account No. 0297008700007619 against 40% of the disputed amount of ₹ 5,52,164/- with the PSPCL. Accordingly, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/ DS Sunder Nagar Division (Special), PSPCL, Ludhiana for sending written reply/ parawise comments with a copy to the office of the CGRF, Ludhiana for sending case file under intimation to the Appellant vide this office letters bearing nos. 1211-1213/OEP/A-61/2020 dated 15.12.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 06.01.2021 at 03.00 PM and intimation to this effect was sent to both the sides vide letter nos. 1233-34/OEP/A-61/2020 dated 31.12.2020. As scheduled, the hearing was held on 06.01.2021 in this Court. Argument of both parties were heard and order was reserved. Copies of the minutes of the proceedings were sent to the Appellant and the Respondent vide this office letter nos. 17-18/OEP/A-61/2020 dated 06.01.2021.

**4. Condonation of Delay**

1. At the start of hearing on 06.01.2021, the issue of condonation of delay in filing the Appeal beyond stipulated period was taken up as there was delay of 137 days in filing the Appeal.
2. The Appellant’s Counsel submitted that the decision from office of the CGRF, Ludhiana was received on 01.07.2020. He stated that no application for condonation of delay was required to be filed in the present Appeal in compliance of order dated 23.03.2020 passed by the Hon’ble Supreme Court of India in Suo-Motu Writ Petition (Civil) No. 3/2020 stating that “*it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation period prescribed under General Law or Special Laws whether condonable or not shall stand extended w.e.f 15.03.2020 till further orders to be passed by this Court in present proceedings*”. The Appellant’s Counsel stated in its application for condonation of delay that the Appellant had approached the Counsel alongwith certified copy of the order for seeking his advice for further course of action but the Counsel for the Appellant was not available at that time as he had gone to his Village for some family ritual/ function. The Counsel of the Appellant returned on 21.07.2020 and the Appellant again approached him alongwith the copy of order of the Forum. The Counsel sought some time to go through the order carefully and thereafter, suggested to comply with the order dated 26.06.2020 of the Forum. The Appellant had also received a copy of the calculation chart of monthly instalments (from the Respondent) which were to be recovered from the Appellant as per the impugned order. The Appellant had made up its mind to comply with the order of the Forum. However, in November, 2020, a close friend of the Appellant had arranged a meeting with her Advocate friend who had suggested to challenge the order dated 26.06.2020 of the Forum before the Hon’ble High Court by filing a Civil Writ Petition. Accordingly, the Appellant started collecting and arranging the necessary documents for approaching the Hon’ble High Court. The writ petition was prepared by the Counsel and filed before the Hon’ble High Court on 21.11.2020. The CWP No. 20159 of 2020 came up for hearing on 26.11.2020 when the Hon’ble High Court had confronted the Counsel with the specific direction given in the last paragraph of the order dated: 26.06.2020. The case was adjourned to 01.12.2020 when the Counsel for the Appellant sought permission to withdraw the writ petition with the liberty to approach this Court by way of filing an Appeal. The writ petition was then dismissed with the liberty to approach this Court. The Appellant had been given the impression that the order dated 26.06.2020 could be challenged directly by way of filing Civil Writ Petition before the Hon’ble High Court. As such, she had been pursuing and prosecuting her cause of action with due diligence and in good faith before the Hon’ble High Court. The delay in filing the Appeal was neither intentional nor willful but had occurred due to the reasons mentioned above. In case, the delay in filing the Appeal was not condoned, the Appellant shall suffer an irreparable loss and injury.
3. The Respondent in its written reply contested the averments of the Appellant made in application for condonation of delay and stated that the application was not maintainable and merits dismissal. No cogent reason had been given in the application for condonation of delay of 137 days. It was categorically mentioned in the order dated 26.06.2020 by the learned Forum that “*if the petitioner is not satisfied with the decision of the CGRF, he is at liberty to file a representation before the Ombudsman, Plot No. A-2, Industrial Area, Phase-I, SAS Nagar, Mohali appointed/ designated by the Punjab State Electricity Regulatory Commission within thirty days from the date of receipt of the order of the Forum as required under Regulation 2.49 read with Regulation 2.45 and 2.48 of the Punjab State Electricity Regulatory Commission, Forum and Ombudsman Regulations, 2016.”* When this fact was clearly mentioned in the order itself that Appeal lies before the Ombudsman/ Electricity within thirty days of the receipt of the order, so there was no reason to file the Civil Writ Petition before the Hon’ble High Court and thereafter, seeking withdrawal of the same for filing the present Appeal. It was clearly stated in Regulation 3.18(iii) that “*that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/ she had reason for not filing the representation within the aforesaid period of one month*.” In the present case, no sufficient cause has been shown and the present application merits dismissal. The Respondent contested the averments of the Appellant’s Counsel that the Appeal was likely to succeed on the grounds taken in the Appeal. The provisions of order dated 23.03.2020 passed by the Hon’ble Supreme Court of India in Suo-Motu Writ Petition were not applicable in this case because the Appellant/ Applicant was fully aware of the order dated 26.06.2020 and the Appellant knowing well that the Appeal lies against the same, chose to file Civil Writ Petition before the Hon’ble High Court. The Respondent added that no sufficient cause was shown by the Appellant and as such, the Appellant was not entitled to the relief claimed in this application. It was not fair on the part of the Appellant that the delay was neither intentional nor willful. The Respondent prayed for dismissal of the Application for condonation of delay.
4. In this connection, Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 reads as under:

*“No representation to the Ombudsman* shall lie unless:

*(ii) The representation is made within 30 days from the date of receipt of the order of the Forum.*

*Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month.”*

1. After going through oral and written submissions of both the sides, it was decided to afford an opportunity to the Appellant’s Counsel to present the case.

**5.** **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 15.12.2020, for consideration:

1. The Appellant was having a MS category connection, bearing Account No. 3002800796, with sanctioned load (SL) as 98.95 kW/ CD as 99.99 kVA installed at the premises of the Appellant at Jain Hosiery Complex, Laddu Colony, Village Noorwala, Ludhiana.
2. The Appellant was not charged ED in monthly bills since July, 2015. However, the amount of ED for the period 07/2015 to 11/2019 amounting to ₹ 5,52,164/- was charged in the electricity bill dated 20.01.2020. The supplementary bill was issued to the Appellant for recovery of ED for the said period.
3. The Appellant did not agree to the said demand of Electricity Duty (ED) raised by the Respondent and challenged it before the Forum after depositing 20% of the disputed amount with the PSPCL.
4. The Forum, passed order dated 26.06.2020 despite settled proposition or of law by Hon’ble High Court in CWP No. 4184 of 2012 decided on 01.02.2016 as well as in CWP No. 994 of 2014. It was specifically held by the Hon’ble Court that “*On a plain reading of Section 56(2) of the Electricity Act, it is clear that no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. Evidently an amount would become due once the energy has been consumed and the bill in respect thereof becomes payable. It could not be said to have become due on the issuance of letter. Hence, there is no merit in the stand of the respondent that this case is not covered by Section 56(2) of the Act.”*
5. The Forum dismissed the Petition of the Appellant by concluding that the amount charged to the Appellant on account of ED charges for the period from July, 2015 upto November, 2019 was justified and recoverable in 12 monthly instalments without interest and surcharge.
6. The Appellant, feeling aggrieved by the said order dated 26.06.2020 passed by the Forum, approached Hon’ble High Court by way of filing CWP No. 20159 of 2020. The writ petition was disposed of by the Hon’ble High Court vide order dated 01.12.2020 by granting liberty to the Appellant to approach the Authority prescribed as per the Indian Electricity Act, 2003 by way of an Appeal.
7. The impugned order passed by the Forum was totally illegal, unjustified, perverse, contrary to the facts and contrary to the provisions of the PSPCL, the Indian Electricity Act, 2003 and was liable to be set aside.
8. The impugned order passed by the Forum was totally a non-speaking, non-reasoned order and the same had been passed without discussing the true intent and purpose of Section 56(2) of the Electricity Act, 2003 which has been deliberated in detail by the Hon’ble Court in numerous judgments. The Section 56 of the Electricity Act, 2003 provides as follow: -

*Disconnection of supply in default of payment.*

*(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

*Provided that the supply of electricity shall not be cut off if such person deposits, under protest,--*

*(a) an amount equal to the sum claimed from him, or*

*(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,*

*whichever is less, pending disposal of any dispute between him and the licensee.*

*(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.*

A perusal of the above provision reveals that the Respondent can recover arrears of electricity but the same are restricted for a period of 2 years only. However, in the present case, the Respondent had directed to recover arrears of electricity for the period from July, 2015 to November, 2019 and the same was wrongly upheld by the Forum.

1. The Forum had erred in not appreciating the judgment dated 01.02.2016 relied upon by the Appellant and passed by Hon’ble High Court in *CWP No. 4184 of 2012 titled as Jasvir Singh Versus Punjab State Power Corporation Ltd.* *And another*. The Hon’ble Court held that the Respondent could not settle a claim of the time barred debt from the Petitioner after the expiry of 2 years, if it is not shown as a continuous arrears in the bills served upon the Petitioner therein. It was further submitted that the said order passed by the learned Single Bench was challenged by the Respondent by way of filing LPA No. 743 of 2016. The said LPA was still pending adjudication before the Hon’ble High Court. However, no stay had been granted to the Respondent.
2. The Hon’ble High Court, vide judgment dated 15.09.2015 in *CWP No. 994 of 2014* titled as *M/s. M.B.Malls Pvt. Ltd. Versus Dakshin Haryana Bijli Vitran Nigam Ltd. Panchkula and others* held that “*On a plain reading of Section 56(2) of the Electricity Act, it is clear that no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.”*

The Respondent-Daksin Haryana Bijli Vitran Nigam Ltd. had challenged the above stated order by way of filing LPA No. 1807 of 2015 and the same was disposed of vide order dated 16.05.2016 by the Hon’ble Court by granting liberty to the Appellants therein to issue a revised notice for the period of 2 years for which, the arrears of electricity could be recovered.

1. The Forum erred in relying upon the judgment dated 09.09.2011 passed by the Hon’ble High Court in LPA No. 605 of 2009. The reproduction of the alleged relevant para of the judgment does not exist in the judgment rendered by the Hon’ble Court. The alleged clarification which has been reproduced in the order dated 26.06.2020 does not exist in the judgment. The said judgment dated 09.09.2011 is subject matter of challenge in RA-LP-56 of 2011 which was still pending adjudication.
2. The Forum wrongly relied upon Circular No. 05/2012 issued by Respondent (PSPCL). Though the said circular had been based upon the above judgment dated 09.09.2011, which was subject matter of challenge and still pending adjudication, the said circular states that recovery of arrears under Section 56 can be of a period of two years. The recovery may be made by filing suit by the Respondent.
3. The above submissions were specifically raised, argued and placed before the Forum but the same were not noticed and considered at the time of passing of the order.
4. The Appellant has no other alternative, speedy and equally efficacious remedy except to approach this Court by way of present Appeal.
5. It was prayed that this Appeal may be accepted with costs by setting aside order dated 26.06.2020 of the Forum.
6. **Submissions during Hearing**

During hearing on 06.01.2021, the Appellant’s Counsel reiterated the submissions already made in the Appeal and prayed to allow the same.

1. **Submissions of the Respondent**
2. **Submissions made in the Written Reply**

The Respondent, in its written reply, made the following submissions for consideration of the Court:

1. The Forum had rightly upheld the demand of electricity duty for the period from July, 2015 to November, 2019 amounting to ₹ 5,52,164/- vide energy bill dated 20.01.2020. The ruling mentioned in the Grounds of Appeal were not applicable to the facts of this case. The word first due as stated in Section 56(2) of the Electricity Act, 2003 was defined by various Hon’ble High Courts and the Division Bench of the Hon’ble Jharkhand High Court, in case titled as “*Tata Steel Ltd. V/s Jharkhand State Electricity Board 2009(2) CCC 87* held *that meaning of ‘first due’ - held period of two years starts from the date when the Board demands payment and not from the date of consumption of electricity energy.* Similarly, the Division Bench of Hon’ble Bombay High Court in case titled as “*M/s. Rototex Polyster & Anr. V/s Administrator, Administration of Dadra & Nagar Haveli (U.T) Electricity Department, Silvasa and others, 2011(1) CCC, 546*, held *that limitation period will commence on the revised bill amount when it first became due – it is the date when demand notice with revised bills was served upon the petitioner*.
2. In this case, inadvertently the electricity duty could not be charged in the bill from July, 2015 to November, 2019 and the same was first time charged on 20.01.2020 and the amount first became due on 20.01.2020 when it was charged and the same was rightly held as justified and chargeable by the Forum.
3. The order passed by the Forum was not illegal, unjustified, perverse, contrary to the facts and contrary to the provisions of Electricity Act, 2003 and was not liable to be set aside on any ground as mentioned in the Appeal.
4. It was denied as incorrect that the order passed by the Forum was totally non spaking and non reasoned order. It was denied that the order has been passed without discussing the true intent and purpose of Section 56(2) of the Electricity Act, 2003. It was rightly held that the amount charged was justified and recoverable.
5. The rulings cited in the Appeal were not applicable to the facts of this case. The Forum had rightly relied upon the judgment dated 09.09.2011 passed by the Punjab & Haryana High Court in LPA No. 605. It was denied as incorrect that the clarification which has been reproduced in the impugned order dated 26.06.2020 did not exist in the judgment. The said lines exist in the judgment at page 28 in the middle and the said judgment was already on the file. It was added that the review application against the said judgment was also dismissed and the said judgment dated 09.09.2011 has been upheld by the Hon’ble Supreme Court of India also.
6. It was denied as incorrect that learned Forum had wrongly relied upon circular No. 5/2012. The said circular was based on judgment dated 09.09.2011 and it was added that the said judgment had been upheld by the Hon’ble Supreme Court of India.
7. It was incorrect that any such substantial question of law was involved in the present Appeal.
8. It was prayed that the Appeal of the Appellant may be dismissed with costs.
9. **Submission during Hearing**

During hearing on 06.01.2021, Addl. SE/ DS Sunder Nagar Divn., (Spl.), PSPCL, Ludhiana reiterated the submissions already made in its written reply and prayed for the dismissal of the Appeal.

**6.** **Findings**

(i) The Appellant has, in the present Appeal, prayed to set-aside the order dated 26.06.2020 of the Forum as per which, the amount of ₹ 5,52,164/- on account of Electricity Duty for the period from 07/2015 to 11/2019 charged in the supplementary bill dated 20.01.2020 was held recoverable.

(ii) The relevant facts of the case are that the Appellant was having a Medium Supply Category Connection in its premises since 2015 with sanctioned load of 98.950 kW and CD as 99.999 kVA for running Hosiery Business. The Appellant was not charged Electricity Duty in its energy bills since July, 2015. The CBC provided the Respondent with a list of such cases of non-charging of ED whereafter, a supplementary bill was issued on 20.01.2020 to the Appellant charging it with a sum of ₹ 5,52,164/- on account of recovery of ED for the period from 07/2015 to 11/2019. The Appellant did not agree with the amount charged to it and filed its grievance before the CGRF, Ludhiana in March, 2020. After hearing both the sides, the Forum passed order dated 26.06.2020 and upheld the amount charged to the Appellant. In its above order, the Forum also held that “Further, as per the request of the petitioner,the amount be recovered in 12 nos. monthly instalments without Interest & Surcharge. If the petitioner fails to deposit the instalments as allowed in time, surcharge & interest be recovered as per prevalent PSPCL instructions.”

(iii) The Appellant’s Counsel stated (in its application for condonation of delay in filing the present appeal) that the Appellant had approached the Counsel alongwith certified copy of the order for seeking his advice for further course of action but the Counsel for the Appellant was not available at that time as he had gone to his Village for some family ritual/ function. The Counsel of the Appellant returned on 21.07.2020 and the Appellant again approached him alongwith the copy of order of the Forum. The Counsel sought some time to go through the order carefully and thereafter, suggested to comply with the order dated 26.06.2020. The Appellant had also received a copy of the calculation chart of monthly instalments (from the Respondent) which were to be recovered from the Appellant as per the impugned order. The Appellant had made up its mind to comply with the order of the Forum. However, in November, 2020, a close friend of the Appellant had arranged a meeting with her Advocate friend who had suggested to challenge the order dated 26.06.2020 before the Hon’ble High Court by filing a Civil Writ Petition. Accordingly, the Appellant started collecting and arranging the necessary documents for approaching the Hon’ble High Court. The writ petition was prepared by the Counsel and filed before the Hon’ble High Court on 21.11.2020. The CWP No. 20159 of 2020 came up for hearing on 26.11.2020 when the Hon’le High Court had confronted the Counsel with the specific direction given in the last paragraph of the order dated 26.06.2020. The case was adjourned to 01.12.2020 when the Counsel for the Appellant sought permission to withdraw the writ petition with the liberty to approach this Court by way of filing an Appeal. The writ petition was then dismissed with the liberty to approach this Court.

 A perusal of the above submissions of the Appellant’s Counsel in this Court reveals that the Appellant had consented to the deposit of the amount charged to it vide bill dated 20.01.2020 without surcharge/interest in 12 monthly instalments as stated in order dated 26.06.2020 of the Forum. Besides, the Appellant had also made up its mind to comply with the order dated 26.06.2020 of the Forum to deposit the recoverable amount in 12 monthly instalments as stated by the Appellant’s Counsel.

(iv) The Respondent, while making oral submissions during hearing on 06.01.2021, objected to the case being heard on merits due to the reason that the Appellant had agreed, in the Forum, to deposit the amount recoverable in 12 monthly instalments without surcharge and interest. That is why, the Forum specifically mentioned this aspect in its order and also directed that “if the petitioner fails to deposit the instalments as allowed in time, surcharge & interest be recovered as per prevalent PSPCL instructions.” The Respondent also submitted that by agreeing to deposit the recoverable amount without surcharge/interest in 12 monthly instalments, the Appellant did not have the liberty to approach this Court when its grievance had been redressed by the Forum with its (Appellant’s) consent. Further, the Appellant had not raised any objection in the Appeal relating to his request for recovering the demand in 12 nos. instalments without interest and surcharge. Decision of the Forum is as per request of the Appellant and the Appeal cannot be filed in this Court in view of the provisions contained in Regulation 2.50 of PSERC (Forum and Ombudsman) Regulation-2016 which are reproduced as under:

*“****2.50*** *The Forum may settle any grievance in terms of an agreement reached between the parties at any stage of the proceedings before it and there shall be no right of representation before the Ombudsman against such an order.”*

In view of the above, the Court is not inclined to go into merits of the case. The Appeal preferred by the Appellant against the order dated 26.06.2020 of CGRF, Ludhiana in Case No. CGL-122/2020 is not maintainable in this Court as per Regulation 2.50 of PSERC (Forum and Ombudsman) Regulations-2016.

1. The Appeal is disposed of accordingly.
2. 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)

 January 11, 2021 Lokpal (Ombudsman)

 SAS Nagar (Mohali) Electricity, Punjab.