

**COURT OF THE LOK PAL (OMBUDSMAN),
ELECTRICITY, PUNJAB,
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,
S.A.S. NAGAR (MOHALI).**

**(Constituted under Sub Section (6) of Section 42 of
Electricity Act, 2003)**

APPEAL No. 03/2023

Date of Registration : 16.01.2023

Date of Hearing : 30.01.2023

Date of Order : 30.01.2023

Before:

**Er. Gurinder Jit Singh,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

M/s. Avtar's Roll Forge Industries,
Amloh Road, Mandi Gobindgarh.

Contract Account Number: 3002309839 (LS)

...Appellant

Versus

Addl. Superintending Engineer,
DS Division, PSPCL,
Mandi Gobindgarh.

...Respondent

Present For:

Appellant: 1. Sh. Ashok Dhawan,
Appellant's Representative.

2. Sh. Budh Ram Jindal,
Appellant's Representative

Respondent : Er. Ravi Chouhan,
Asstt. Executive Engineer/ Commercial,
DS (Spl.) Division, PSPCL,
Mandi Gobindgarh.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 03.01.2023 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. T-257/2022 deciding that:

“Forum observed that there is no such provision in the said regulation therefore in view of the above, Forum is of the opinion that the present petition is not maintainable being time barred. The case is disposed of accordingly.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 16.01.2023 i.e. within the period of thirty days of receipt of the decision dated 03.01.2023 of the CCGRF, Ludhiana in Case No. T-257/ 2022. The Appellant was not required to deposit requisite 40% of the disputed amount as it was a refund case. Therefore, the Appeal was registered on 16.01.2023 and copy of the same was sent to the Addl. Superintending Engineer/ DS Divn., PSPCL, Mandi Gobindgarh for sending written reply/ para wise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 69-71/OEP/A-03/2023 dated 16.01.2023.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 30.01.2023 at 12.00 Noon and intimation to this effect

was sent to both the parties vide letter nos. 105-06/OEP/A-03/2023 dated 24.01.2023. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. Submissions made by the Appellant and the Respondent

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral deliberations made by the Appellant's Representative and the Respondent along with material brought on record by both the parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having a LS Category Connection, bearing Account No. 3002309839 with sanctioned load of 324.506 kW/ CD as 361.000 kVA under ASE/ Special Division, Mandi Gobindgarh.
- (ii) The Appellant had applied for extension in load of 2248.506 kW/ CD 2137 kVA vide A&A No. 65376 dated 09.12.2011. After deposit of Earnest Money of ₹ 3,20,550/- as 10% of ACD, the case was sent to the CE/ Commercial, Patiala. Approval for technical feasibility clearance was accorded by the CE/ Commercial, Patiala

vide Memo No. 24227 dated 12.10.2011 and the Appellant was asked to register file within 30 days of the letter which was extendable to 60 days.

- (iii) Therefore, the Appellant got registered A&A No. 24227 dated 12.10.2011 after deposit of balance 90% of ACD for ₹ 28,24,950/- vide BA 16 No. 508/91739 dated 09.12.2011. Demand Notice was issued by AEE/ Comm., Mandi Gobindgarh vide Memo No. 1101 dated 30.03.2012.
- (iv) However, the Appellant could not go through the proposal and was unable to avail the extension of load/ CD and the application stand cancelled due to non-compliance of Demand Notice. The office had failed to refund the amount of ACD deposited as mentioned above. Therefore was entitled for the following amounts as mentioned below:-
- a) ACD for ₹ 32,05,500/-
 - b) Interest as admissible under Reg. No. 17 and 18 of the Supply Code-2007 and 2014 for ₹ 29,02,034/- for the period it remained deposited in the office of Respondent.
 - c) Interest on interest for ₹ 28,40,560/- as admissible under Reg. 17.4 of the Supply Code-2007 and under Reg. 17.3 of the Supply Code- 2014.
- (v) It was stated that the CCGRF, Ludhiana, while deciding the case, did not act in a justified manner with the Appellant and the case was decided within 2 minutes of hearing. The Respondent office

had submitted reply on 03.01.2023 and immediately the case was declared as time barred and the Forum refused to listen any arguments of the Appellant. Neither any rejoinder was allowed nor any argument was allowed to speak. The order-cum-speaking order in case no. T-257/22 is as under –

“Forum observed that in present case the petitioner demanded refund of security deposited in 2009 and 2011 along with interest now after elapse of 11 years and in the reply submitted by the Respondent it is mentioned that the application of the Petitioner was cancelled due to non – compliance of demand notice and the petitioner never requested to refund the security since 2011.

Forum observed that as per Regulation 2.25(c) of PSERC (2ND amendment)(Forum and Ombudsman) Rules and Regulations 2021, Forum may reject the grievance / case if it has been submitted two years after the date on which the cause of action has arisen.

Petitioner stated that present case is related to refund of security and the same is not time barred and hence period of limitation is not applicable.

Forum observed that there is no such provision in the said regulation therefore in view of the above, Forum is of the opinion that the present petition is not maintainable being time barred. The case is disposed of accordingly.”

- (vi) In the reply to the petition before Corporate Forum, the Respondent had clearly admitted that the claimed amount of security had been deposited as per claim and also admitted that the Demand Notice was not issued as per schedule, but was insisting upon for deduction of 10 % percent, going against the rules of the PSPCL. Therefore, it was a fit case for an Appeal against the said decision

of the Corporate Forum, as it denied the opportunity of being heard and also for denying the opportunity to answer the wrong claim of the Respondent's office. It was a great injustice, therefore, you are humbly requested to admit this Appeal, so that justice may be done with the Appellant.

- (vii) The following grounds are in favour of the Appellant for the kind consideration. The term Security had been well defined in the Supply Code Regulation 14 as under:-

“14. SECURITY (CONSUMPTION)

The applicant seeking supply of electricity as per regulation 6 of these Regulations shall initially be required to pay to the distribution licensee an amount on kW/kVA basis as specified in the Schedule of General Charges approved by the Commission, as Security (consumption) towards estimated electricity likely to be supplied after release of connection. However, in case of applicants with demand exceeding 100 kVA, 25% of Security (consumption) (inclusive of EMD deposited at the time of feasibility clearance) be deposited at the time of registration of A & A form and remaining Security (consumption) be deposited at the time of compliance of demand notice.”

- (viii) There was also a provision in the Supply Code-2014 regarding withdrawal of Application and the procedure regarding refund of ACD/ Meter Security had been well explained vide Reg. No. 18.1 of the Supply Code, which was as under please:-

“18.1 On Withdrawal of Application

18.1.1 In case the applicant after submitting his application for supply of electricity/extension of load etc. withdraws the same, 10% of the Security (consumption)/additional Security (consumption) shall be deducted by the distribution licensee and the balance refunded within thirty (30) days to the applicant

without payment of any interest by the distribution licensee. 18.1.2 1 [If the applicant is not issued a Demand Notice within the time period specified in regulation 6 and the applicant withdraws his application, the Security (consumption)/additional Security (consumption), as the case may be, shall be refunded in full within thirty (30) days along with interest for the period the Security (consumption)/additional Security (consumption) remained with the distribution licensee at Bank Rate (as on 1st April of each year) as notified by RBI.]

18.1.3 1 [In the event of delay in refund beyond the stipulated period as per regulation 18.1.2, the distribution licensee shall pay interest at Bank Rate (as on 1st April of each year) as notified by RBI plus 4%. ”

This was very much clear that circumstances regarding receiving and Refund of Security had been well explained in the Supply Code and no where it was mentioned that if an applicant do not approach or approaches with delay for refund or adjustment, the amount of Security was liable to be forfeited, and the refusal of the Forum in this regard to hear the case was great injustice to the Appellant.

- (ix) The Appellant had applied for extension in load for 2248.506 kW / CD of 2137 kVA in the year 2009 and deposited a sum of ₹ 3,20,550/- on account of Earnest Money vide BA16 No. 190 dated 05.03.2009.
- (x) Technical feasibility clearance was accorded by the CE/Comm., Patiala vide Memo No. 24227 dated 12.10.2011 and the Appellant was asked to register file within 30 days of the letter which was extendable to 60 days. Therefore, the Appellant got registered A&A

No. 24227 dated 12.10.2011 after deposit of 90% of ACD for ₹ 28,24,950/- vide BA16 No. 508/91739 dated 09.12.2011.

- (xi) The Demand Notice was issued by the Respondent's office vide his office Memo No. 1101 dated 30.03.2012, after 111 days, missing the permissible limits fixed and approved by the Hon'ble PSERC and was admitted in the reply submitted before the Corporate Forum. Despite this, the Respondent's office was bent upon for deductions of 10% of Security Amount going against the rules of the PSPCL and Supply Code Reg. 18.1.2.
- (xii) The Respondent's office also refused to allow interest on the pretext of that Appellant had not given any request, which was also wrong and not as per rules and regulations of the PSPCL and the Supply Code.
- (xiii) The Regulation 18.1.1 had clearly mentioned about the refund of security within 30 days of the cancelled/ withdrawal of application and no where mentioned that security should be kept pending until the applicant tendered an application for the same. However, it had already mentioned above that the Respondent office had missed the target as fixed by the Regulation 18.1.2 that Demand Notice should be issued within time period as allowed vide Regulation No. 6 of the Supply Code and if the Demand Notice is not issued within 30

days as was allowed, then the amount of Security would be refunded in full along with interest as applicable.

- (xiv) After deposit of Earnest Money as mentioned above, the case for technical feasibility was processed by the Respondent's office and finally, the approval was accorded by the office of CE/ Commercial, Patiala vide his office Memo No. 24227 dated 12.10.2021 and it was directed to the Appellant to get the application registered within 30 days extendable to 60 days.
- (xv) Considering 10% earnest money (₹ 3,20,550/-) as part of ACD, balance 90 % of ACD i.e. ₹ 28,24,950/- was deposited vide BA 16 No. 508/91739 dated 09.12.2011, the A&A was got registered within permissible period.
- (xvi) The Demand Notice was issued by AEE/ Commercial, Mandi Gobindgarh vide Memo No. 1101 dated 30.03.2012, after 111 days which was beyond the limit as fixed by the PSERC/ PSPCL as mentioned vide Reg. No. 18.1.2 reproduced *ibid*.
- (xvii) As per Regulation 18.1 of the Supply Code-2007, the rules applicable were as – **“18.1 On withdrawal of application**

In case the applicant, after submitting his application, for supply of electricity/extension of load etc. withdraws the same, 10% of the initial security/additional initial security will be deducted by the Licensee and the balance refunded to the applicant without payment of any interest by the Licensee on these deposits. **However, if the applicant is not issued a Demand Notice within three months of submission of his application and he withdraws the same, the initial**

security/additional initial security, as the case may be, will be refunded in full with interest for the period the initial security/additional initial security remained with the Licensee at SBI's Short Term PLR prevalent on first of April of the relevant year."

(xviii) Therefore, it was very clear that in case the Respondent's office jumped the period for issue of Demand Notice, the licensee would refund the amount of ACD in full along with interest as applicable for the period the amount of security / ACD remained deposited with the office, and it was also mandatory to refund the amount of security within 30 days period. But the office neither refunded security amount nor credited to the security account of the Account No. 3002309839 being maintained by the Respondent's office.

(xix) The Respondent had admitted about the said fact regarding delay in the period for issuing DN, in the reply submitted, before the Forum in clear terms. But it was very surprising that even then the Respondent's office was insisting upon for deduction of 10% of ACD, which was against rules and also refusal to obey the instructions of PSPCL, as mentioned above. The pretext used for delay in issue of DN in the own words of the Defendant office was as – "The Demand notice issued by completing the procedure of the PSPCL and due to shortage of staff and other onward circumstances. It is possible that demand notice may not be issued

within time. The 10% amount is liable to be deducted from the amount deposited”.

(xix) The conditions imposed in the Demand Notice regarding augmentation and shifting of load as per Sr. No. 12 & 13 of the Demand Notice, by the office of the Respondent, were same as it were mentioned in the letter of Feasibility Clearance. It was specifically mentioned that time schedule for issue of DN was as under –

6.2 The Demand Notice under Regulation 6.1 be issued by the Licensee within:

- (a) 7 days of receipt of application in case of LT supply
- (b) 10 days of receipt of application in case of HT/EHT supply
- (c) 7 days of receipt of Commission’s approval in a case covered under Regulation 6.3 (c).

(xx) The excuse of the Respondent about shortage of staff was not justified and totally unacceptable, because to issue a Demand Notice was hardly a work of 15/20 minutes only. Nothing had been explained in the reply regarding onward circumstances, and only use of such words cannot be seen as justified why the delay was occurred. There was also no relaxation or discretionary powers mentioned in the Regulation 18.1.2 for such deduction if there was delay beyond the period mentioned therein. One cannot understand why the Respondent was bent upon to inflict heavy loss upon the

Appellant, when rules did not permit for such deduction and to disallow interest as admissible under own rules of PSPCL.

(xxi) The Respondent had admitted that a sum of ₹ 3,20,550/- was lying unadjusted in the books of the PSPCL and a sum of ₹ 28,84,950/- as deposited as mentioned above and copies of the cash book were also produced before the Forum. Thus, a sum of ₹ 32,05,500/- was neither adjusted towards security account of the Appellant nor refunded in the Bill. Due to non-transfer of the amount, the Appellant was unable to receive the benefit of interest as allowed vide Supply Code Regulation 17. It was a settled law under the Electricity Act-2003 and Supply Code that the Distribution Licensee shall pay the interest on the amount received as security. The relevant regulation is reproduced as under:-

“17. Interest on Security (consumption) – As per Supply Code- 2007.

17.1 The Licensee will pay interest on Security (consumption) at the SBI's Long Term PLR prevalent on first of April of the relevant year, provided that the Commission may at any time by notification in official Gazette of the State specify a higher rate of interest.

17.2 The Licensee will indicate the amount becoming due to a consumer towards interest on the Security (consumption) in the first bill raised after thirtieth of April every year.

17.3 The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/or any amount becoming due to the Licensee thereafter.

17.4 In the event of delay in effecting adjustments due to the consumer as per Regulation 17.3, the Licensee will for the

actual period of delay pay interest at twice the SBI's Short Term PLR prevalent on first of April of the relevant year.

17. INTEREST ON SECURITY (CONSUMPTION) AND SECURITY (METER) – As per Supply Code – 2014

17.1 [The distribution licensee shall pay interest on Security (consumption) and Security (meter) at the Bank Rate (as on 1st April of the year for which interest is payable) as notified by RBI.]

17.2 The interest on Security (consumption) and Security (meter) shall be credited to the account of a consumer annually on first day of April each year and shall be adjusted paid in first bill raised after first April every year against the outstanding dues and/or any amount becoming due to the distribution licensee thereafter.

17.3 1 [In the event of delay in effecting adjustments due to the consumer as per regulation 17.2, the distribution licensee shall for the actual period of delay pay interest at Bank Rate (as on 1st April of each year) as notified by RBI plus 4%. ”

But the Respondent office had failed to act as per instructions mentioned above. Had the office worked and implemented upon the directions as mentioned above and as per Reg. 18.1.1 & 18.1.2, the Appellant could have received interest as admissible to him. But the office did not act and such a big amount was lying unattended for years together. The office was duty bound to complete whole process within 30 days as per Regulations 18.1.2 and 18.1.3 of the Supply Code.

(xxii) The Respondent office put another excuse for non-adjustment that the Appellant had not given any application and tendered original receipt. But nothing had been mentioned for such an action on behalf of Appellant vide Regulation 18 of the Supply Code as mentioned above. Moreover, the Respondent never wrote any letter in this

regard to the Appellant. It was the sole responsibility of the Respondent office to complete the process under law as mentioned above as the procedure was well explained and needed no clarification.

(xxiii) On the directions of the Hon'ble PSERC, the office of the Chief Engineer/ Commercial, Patiala had/ have issued directions to the field offices for up-dation of Security/ACD and adjustment of interest from time to time vide Memo No. 1038/43 dated 15.05.2019 and a period of 3 months was given to the field offices to update pending security work and to allow interest w.e.f. 01.01.2008 to date @ the rate of interest as allowed by the PSPCL from time to time. Again the office of the Chief Engineer/ Commercial, Patiala issued another letter vide his office Memo No. 49/54 dated 08.01.2020 and a period of 3 months for the similar action, was further given to do the needful and a compliance report was also sought, but again nothing was done. Similarly, again Memo No. 297/302 dated 26.03.2021 was issued to complete the job of allowing interest and up-dation of ACD/ Security. Another reminder in this regard was issued vide Memo No. 121/126 dated 26.06.2022 to complete the task as above, but the office of the Respondent had failed to update the ACD or to refund the same and interest accrued.

(xxiv)The Appellant had tendered a written request on 26.05.2022 to refund the amount of ACD, which was duly received by the concerned office, but the office concerned had not paid any attention and the application was filed, as neither reply was given nor any action was taken. So for the matter of original receipt was concerned, the Appellant had submitted an affidavit that the original receipt was not available and perhaps the same had been misplaced. Even then no action was taken by the Respondent's office.

(xxv)It was further requested that even on the basis of equity, the Respondent had admitted that the ACD deposited by the Appellant was still in their possession, it should be returned to the Appellant since it does not belong to the Respondent and they did not acquire any right over the Appellant's money as neither the amount had been credited to Security Account nor the Respondent office was paying any interest since long. Therefore, the same should be refunded along with interest. Moreover, the Respondent was legally bound to refund, even if the Appellant had not tendered any application or the original receipt. The instructions regarding payment of principal amount and interest are very clear as mentioned vide Regulation 18.1.2 mentioned above.

(xxvi) Therefore, ACD should be refunded alongwith the interest and interest on interest as mentioned in the Reg. 18.1.3 of the Supply Code- 2014 and as per Reg. No. 18 of the Supply Code- 2007.

(xxvii) A similar case bearing Appeal No. 90/2022 was decided by the Court of Ombudsman, in the almost similar circumstances, in favour of the Appellant and the amount of ACD and interest was also allowed for an amount deposited in the year 2013. Therefore, similar action was requested in this Appeal case, otherwise the Appellant would suffer an irreparable loss.

(xxviii) It was further requested to ask Respondent's office for the original record prepared and submitted to the higher authorities by the Respondent, regarding up-dation/ refund and after allowing interest and getting the same approved from the refund committee as per directions of the Chief Engineer/ Commercial, Patiala.

(xxix) The Appellant could not comply with the demand notice due to bearish conditions of the market and was unable to arrange necessary funds for the project, as the circumstances were beyond his control.

(xxx) The Appellant requested that the speaking order passed by the Corporate Forum be set aside, as the Forum had pre-decided it only on the ground of Regulation 2.25 (c) of PSERC (2nd amendment) (Forum and Ombudsman) Regulations, 2021. Even the reply of the

Respondent was not discussed. The Appellant was neither allowed to speak and nor was allowed to discuss about the regulations of PSERC and PSPCL in this regard.

(xxxi) The Appellant had humbly requested to accept and decide the Appeal sympathetically.

(xxxii) The Appellant had prayed for the following relief:

1. Refund of ACD for ₹ 32,05,500/-
2. Refund of Interest for ₹ 29,02,034/-
3. Interest on interest as admissible under rules of PSPCL for ₹ 28,40,560/-.

(b) Submission during hearing

During hearing on 30.01.2023, the Appellant's Representative (AR) reiterated the submissions made in the Appeal and prayed to allow the same.

(B) Submissions of the Respondent

(a) Submissions in written reply

The Respondent submitted the following written reply for consideration of this Court:-

- (i) The Appellant was having LS Category Connection bearing Account No. 3002309839 running under DS (Special) Division, Mandi Gobindgarh with sanctioned load/ contract demand of

324.506 kW/ 361.00 kVA. The Appellant had applied for the extension of load of 1924 kW and CD of 2137 kVA.

- (ii) The Appellant had deposited the ACD of ₹ 28,24,950/- vide BA 16 No. 508/91739 dated 09.12.2011. Demand Notice No. 1101 dated 30.03.2012 was issued to the Appellant with the validity up to 29.09.2012. After deposit of demand notice extension fee of ₹ 2,500/- vide BA-16 No. 591/91724 dated 25.06.2012, the validity of the demand notice was extended up to 29.12.2012 as per Memo No. 11013 dated 22.10.2012 of the Chief Engineer/ DS (Central), PSPCL, Ludhiana. As per record available, no further extension was granted to the Appellant, so the validity of demand notice expired on 29.12.2012. As such, it was cancelled on the same date i.e. 29.12.2012. The Appellant did not comply with the demand notice and consequently the application of the Appellant was cancelled.
- (iii) The Appellant had never requested for the refund of security from the year 2011. Now, the Appellant had requested for the refund of ACD deposited without producing the original receipt of the amount deposited. So, the Appellant was not entitled for interest on ACD amount. The application of the Appellant was cancelled due to its own reasons. As per the decision dated 03.01.2023 of the Corporate Forum, Ludhiana, there was a provision in the

Regulation 2.25(c) of PSERC (Forum and Ombudsman)(2nd Amendment) Regulations, 2021 that the Forum can reject the grievance/case if it was submitted two years after the date on which cause of action had arisen. This case was related to the year 2011 which was more than 2 years. So, this case was time barred & accordingly was disposed off.

- (iv) The Appellant had applied for extension in load for 2248.506 kW/CD for 2137 kVA in the year 2009 and deposited a sum of ₹ 3,20,550/- on account of earnest amount vide BA 16 No. 190 dated 05.03.2009. Technical Feasibility Clearance was accorded vide the CE/Commercial, Patiala Memo No. 24227 dated 12.10.2011 and the Appellant was asked to register/file within 30 days of the letter which was extendable to 60 days. Therefore, the Appellant got registered A & A No. 24227 dated 12.10.2011 after deposit of 90% of ACD (₹ 28,24,950/-) vide BA 16 No. 508/91739 dated 09.12.2011.
- (v) The demand notice was issued by the Respondent office vide Memo No. 1101 dated 30.03.2012 after 111 days, missing the permissible limits fixed and approved by the Hon'ble PSERC and was admitted in the reply submitted before the Forum.

- (vi) The interest on ACD was not payable because the Appellant had never requested to the office of the Respondent since year 2011 till now for the refund of ACD amount.
- (vii) The demand notice was issued to the Appellant as per the prevailing circumstances of the PSPCL. The Appellant was issued the demand notice but the Appellant failed to comply with the same due to its own reasons. So, it cannot be excused that demand notice was not issued in time.
- (viii) It was correct that after deposit of earnest amount as mentioned above, the case of technical feasibility clearance was processed by the Respondent office and finally, the approval was accorded by the o/o CE/Commercial, PSPCL, Patiala vide its office Memo No. 24227 dated 12.10.2011. The Appellant was directed to get the application registered within 30 days which was extendable to 60 days.
- (ix) It was correct that the Appellant had deposited balance 90% of ACD of ₹ 28,24,950/- vide BA 16 No. 508/91739 dated 09.12.2011 and the A & A form was registered. The demand notice was issued vide Memo No. 1101 dated 30.03.2012 after compliance of internal process of the PSPCL.
- (x) The Appellant had not submitted the original receipt of ACD deposited by him.

- (xi) The demand notice was issued to the Appellant and due to non compliance of demand notice, the application of the Appellant was automatically cancelled as per Instruction 17.6 of ESIM. So, this was a case of non compliance of demand notice. The Appellant had never requested to the office of the Respondent to refund the amount deposited and for revival of the application for extension of load or adjustment of the amount.
- (xii) The case of the Appellant was decided by the Forum after giving personal hearing to the Appellant.
- (xiii) The Appeal No. 90/2022 decided by the Hon'ble Ombudsman which was mentioned by the Appellant in its Appeal was totally different from the current Appeal as the Appellant had complied with the demand notice in Appeal No. A-90/2022. But in this case, the Appellant had not complied with the demand notice and the Appellant had never requested for refund/adjustment of the amount.
- (xiv) The Appellant had admitted that he had not made the compliance of the demand notice due to bearish condition of the market and was unable to arrange the necessary fund for the project. As the circumstances were beyond his control, so the appellant admitted himself the reason for non compliance of demand notice.

- (xv) So, due to the above mentioned reasons the amount of interest was not payable to the Appellant as decided by the Corporate Forum, Ludhiana.

(b) Submission during hearing

During hearing on 30.01.2023, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the claim of the Appellant for the refund of security amount of ₹ 32,05,500/- deposited in the years 2009 and 2011 along with interest of ₹ 29,02,034/- & penal interest of ₹ 28,40,560/-.

My findings on the points emerged, deliberated and analysed are as under:

- (i) The Corporate Forum in its order dated 03.01.2023 observed as under:-

“Forum observed that in present case the petitioner demanded refund of security deposited in 2009 and 2011 along with interest now after elapse of 11 years and in the reply submitted by the Respondent it is mentioned that the application of the petitioner was cancelled due to non-compliance of demand notice and the petitioner never requested to refund the security since 2011.

Forum observed that as per Regulation 2.25(c) of PSERC (2ND amendment)(Forum and Ombudsman) Rules and Regulations 2021, Forum may reject the grievance / case if it has been submitted two years after the date on which the cause of action has arisen.

Petitioner stated that present case is related to refund of security and the same is not time barred and hence period of limitation is not applicable.

Forum observed that there is no such provision in the said regulation therefore in view of the above, Forum is of the opinion that the present petition is not maintainable being time barred. The case is disposed of accordingly.”

- (ii) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 30.01.2023. It is observed that the Appellant had deposited 10% of Security (Consumption) (₹ 3,20,550/-) vide BA16 No. 190/19324 dated 05.03.2009 as Earnest Money for extension of load from 324.506 kW/361 kVA to 2573.012 kW/2498 kVA. The case was sent to the CE/Commercial, Patiala for approval of Technical Feasibility and the same was accorded by the office of the CE/Commercial vide Memo No. 24227 dated 12.10.2011. The Appellant was asked to get his application registered within 30 days extendable up to 60 days. Therefore, the Appellant had got registered A&A No. 65376 on 09.12.2011 after depositing ₹ 28,84,950/- as balance 90% of the Security (Consumption) vide BA16 No. 508/91739 dated 09.12.2011. Demand Notice No. 1101 dated 30.03.2012 was issued

to the Appellant. The Appellant did not comply with the Demand Notice and got the validity of the same extended till 29.12.2012 by depositing the requisite fee of ₹ 2,500/- vide BA16 No. 591/91724 dated 25.06.2012 with the permission of the office of CE/ DS Central Zone, Ludhiana vide their Memo No. 11014/15 dated 22.10.2012. The Appellant neither complied with the Demand Notice till 29.12.2012 nor get it extended any further. So, the application dated 09.12.2011 for the extension of load stand cancelled by the Respondent on 29.12.2012 due to non-compliance of the Demand Notice No. 1101 dated 30.03.2012.

(iii) The Appellant approached the Respondent for the refund of the Security amount of ₹ 28,84,950/- vide letter dated 26.05.2022, after passage of more than nine years. After that, the Appellant approached Corporate Forum, Ludhiana vide Case No. T-257/22 on 13.12.2022 for the refund of Security (Consumption) of ₹ 32,05,500/- alongwith interest of ₹ 29,02,034/- & penal interest of ₹ 28,40,560/-. The Corporate Forum in its order dated 03.01.2023 decided that the case was not maintainable being time barred. Then, the Appellant filed the present Appeal before this Court.

(iv) I am of the view that the Corporate Forum had erred in deciding the case as time barred. The Appellant although failed to comply with

the Demand Notice No. 1101 dated 30.03.2012, but the Respondent did nothing to refund the Security (Consumption) as per applicable regulation in this regard. The Demand Notice No. 1101 dated 30.03.2012 was got extended up to 29.12.2012 by the Appellant and he was supposed to comply with it on or before 29.12.2012, but he neither complied with the same nor got it extended any further. On non-compliance of Demand Notice, the Application No. 65376 dated 09.12.2011 of the Appellant stood cancelled on 29.12.2012. After cancellation of the application, the Respondent was required to process the case for refund of Security (Consumption) as per regulations, but the Respondent failed to refund the Security (Consumption) to the Appellant after cancellation of his Application dated 09.12.2011. It would be unfair to treat the refund of security amount as time barred under these circumstances. CE/ Commercial had issued instructions many times to up- date the Securities and pay interest thereon but the Respondent failed to act on these departmental instructions in this case.

- (v) The Appellant contended that since the Demand Notice was not issued within three months of submission of his application, no deduction of 10% of the security amount should be made as per Regulation 18.1.2 of Supply Code-2014. In this regard, I have observed that the case pertains to year 2011 & 2012. So the

provisions of Supply Code-2007 would be applicable and not of Supply Code-2014. Regulation 18.1 of Supply Code, 2007 is relevant in this regard, which is reproduced as under:

“18.1 On withdrawal of application

In case the applicant, after submitting his application, for supply of electricity/extension of load etc. withdraws the same, 10% of the initial security/additional initial security will be deducted by the Licensee and the balance refunded to the applicant without payment of any interest by the Licensee on these deposits. However, if the applicant is not issued a Demand Notice within three months of submission of his application and he withdraws the same, the initial security/additional initial security, as the case may be, will be refunded in full with interest for the period the initial security/additional initial security remained with the Licensee at SBI's Short Term PLR prevalent on first of April of the relevant year.”

It is clearly mentioned in above regulation that security amount will be refunded in full without deducting 10% only when the Demand notice is not issued to the applicant within three months of submission of his application and he withdraws the same. In the present case, the Appellant never withdrew his application, but his application was cancelled due to non-compliance of the Demand Notice. So, the contention of the Appellant regarding non-deduction of 10% is not tenable.

- (vi) The Respondent kept the load applied by the Appellant as reserve till 29.12.2021. Had the Appellant got his application withdrawn/cancelled then the Respondent could have utilized this reserve capacity for release of other pending connections.

- (vii) In view of discussion above, the refund of securities amounting to ₹ 32,05,500/- shall be permissible as per Regulation 18.1 of Supply Code, 2007 after deduction of 10% of this security amount.
- (viii) As regards the second issue of interest on this amount, the delay of more than nine years in releasing the payment as per regulations is on the part of the Licensee (PSPCL). The Distribution Licensee is required to pay interest on Security Amounts as per Section 47 of 'The Electricity Act, 2003'. The Distribution Licensee had failed to pay interest on the Securities to the Appellant as per the Act and regulations of the PSERC. As such, I am inclined to allow the interest on delayed payment as per Regulation 17.1 of Supply Code, 2007 & Supply Code, 2014 as applicable from time to time. The interest shall be payable with effect from 29.01.2013, i.e, after 30 days from the date of cancellation of application dated 09.12.2011 on 29.12.2012, till the date of payment to the Appellant.
- (ix) Another issue is regarding payment of interest on interest (penal interest) on the amount of Security (Consumption) deposited by the Appellant. The Appellant was a Large Supply Category Consumer and he was expected to be vigilant, update and prompt in discharging his obligations. He did not file any claim/representation to the Respondent during the period of more than 9

years from the date of cancellation of his application in the year 2012 till 26.05.2022, about not refunding the amount of Security (Consumption) deposited by him. The Appellant did not take appropriate remedy at an appropriate time. Had the Appellant exercised necessary prudence/ vigilance at an appropriate time, the present litigation could have been avoided. The Appellant cannot take benefit of its own wrongs, delays and laches. Further, ignorance of law is no excuse. It is evident that the Appellant had not been updating himself about the rules/ regulations and benefits available to him. The regulations framed by PSERC are in public domain and are available on the Websites of PSPCL/ PSERC. The Appellant should be prompt to follow them and failure to follow them on the part of the Appellant cannot be attributed to the Respondent. The delay of more than nine years on the part of the Respondent to file a claim / representation should not result in undue benefit of penal interest to him. I am not inclined to grant interest on interest (Penal Interest). So, the claim of the Appellant in this regard is rejected after due consideration.

- (x) In view of above, this Court is not inclined to agree with the decision dated 03.01.2023 of the Corporate Forum in Case No. T-257/22. The securities amounting to ₹ 32,05,500/- be refunded after deduction of 10% of this amount as per Regulation 18.1 of Supply

Code-2007. Also interest on this delayed payment be refunded as per Regulation 17.1 of Supply Code, 2007 & Supply Code, 2014 as applicable from time to time with effect from 29.01.2013 till the date of refund to the Appellant.

6. Decision

As a sequel of above discussions, the order dated 03.01.2023 of the Corporate Forum in Case No. T-257/22 is hereby quashed. The securities amounting to ₹ 32,05,500/- be refunded after deduction of 10% of this amount as per Regulation 18.1 of Supply Code, 2007. Also interest on this delayed payment be refunded as per Regulation 17.1 of Supply Code, 2007 & Supply Code, 2014 as applicable from time to time with effect from 29.01.2013 till the date of refund to the Appellant.

7. The Appeal is disposed of accordingly.
8. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/ order within 21 days of the date of its receipt.
9. In case, the Appellant or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the Appropriate Bodies in accordance with

Regulation 3.28 of the Punjab State Electricity Regulatory
Commission (Forum and Ombudsman) Regulations, 2016.

January 30, 2023
S.A.S. Nagar (Mohali)

(GURINDER JIT SINGH)
Lokpal (Ombudsman)
Electricity, Punjab.

