

**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. 41/2022

Date of Registration : 29.07.2022

Date of Hearing : 10.08.2022

Date of Order : 10.08.2022

Before:

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

In the Matter of:

M/s. Nandish Alloys Ltd.,
Phase-VII, Focal Point,
Dhandari Khurad, Ludhiana.

Contract Account Number: 3002809434(LS)

...Appellant

Versus

Senior Executive Engineer,
DS Focal Point (Spl.) Division,
PSPCL, Ludhiana.

...Respondent

Present For:

Appellant: (1) Sh. Gopal Krishan Arora,
Appellant's Representative.
(2) Sh. Rajesh Jain,
Appellant's Representative

Respondent : Er. Manik Bhanot,
AEE/ Commercial,
DS Focal Point (Spl.) Division,
PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 26.05.2022 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-66 of 2022, deciding that:

“Forum observed that as per Circular petitioner is required to give request regarding night tariff every year, so, the claim of petitioner is not admissible.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 29.07.2022 i.e. beyond the period of thirty days of receipt of the decision dated 26.05.2022 of the CGRF, Ludhiana in Case No. CGL-66 of 2022. The requisite 40% of the disputed amount was not required to be deposited in this case as it was a refund case. Therefore, the Appeal was registered on 29.07.2022 and copy of the same was sent to the Addl. SE/ Sr. Xen, DS Focal Point (Spl.) Division, Ludhiana for sending written reply/ parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letter nos. 839-841/OEP/A-41/2022 dated 29.07.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 10.08.2022 at 12.15 PM and intimation to this effect was sent to both the parties vide letter nos. 855-56/OEP/A-41/2022 dated 02.08.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. Condonation of Delay

At the start of hearing on 10.08.2022, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant's Representative submitted that the Appellant had to collect a lot of information from the Respondent and the information was supplied by the Respondent on 13.07.2022 for change of Meter in May, 2021. He requested that the delay may kindly be condoned and the Appeal be adjudicated on merits in the interest of justice. The Respondent objected to the condoning of the delay in filing the Appeal in this Court and submitted that the information as asked by the Appellant regarding ME Challan and MCO copy on 13.07.2022 was provided on the same day to the Appellant without any delay. The Appellant wasted time of 30 to 35 days, so it was not entitled for condonation of delay. The Respondent prayed for the dismissal of the Appeal on this ground.

In this connection, I have gone through Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 which 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 30 days on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of 30 days.”

It is observed that refusal to condone the delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant's Representative was allowed to present the case.

5. 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 alongwith 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. 3002809434 with sanctioned load of 2300 kW/ 2495 kVA in the name of M/s. Nandish Alloys Ltd. This connection was running since 26.02.2006 under LS category with Power Intensive Load and Supply Voltage of 11 kV.
- (ii) The Hon'ble PSERC, on the strong recommendations of PSPCL, allowed Special Reduced Night Tariff for use of electricity exclusively during Night Hours in Tariff Order for FY 2018-19 to give an impetus to the Productive consumption of Surplus Power particularly during Night Hours and also to flatten the Load Curve of the Respondent utility. The LS/MS Industrial Consumers, who opted to use Electricity exclusively for Night Hours (from 10.00 PM to 06.00 AM next day), were eligible under Exclusive Reduced Night Tariff. PSPCL issued CC No. 30 of 2018 dated 24.04.2018 for introduction of Special Reduced Night Tariff for use of Electricity exclusively

for Night Hours (10.00 PM to 06.00 AM next day) for LS/MS Category Consumers. The Special Night Tariff had provision of Fixed Charges @ 50% of Fixed Charges of the respective category and the reduced Energy Charges @ ₹ 4.28 per kVAh. The other conditions as approved by Hon'ble Commission in Condition No. 22 of General Conditions of Tariff were specified in CC No. 30/2018. The field officers were ordered vide CC No. 30/2018 dated 24.04.2018 to give wide publicity to the Special Reduced Night Tariff for LS/MS Consumers to Flatten the Load Curve.

- (iii) The Commission decided in Tariff Order for FY 2019-20 to continue with the reduced Night Tariff for LS/ MS Category and also decided to extend the hours of the Special Reduced Night Tariff from 10 PM to 10 AM next day in Tariff Order for FY 2019-20 instead of 10 PM to 6 AM and this extension of four hours from 6 AM to 10 AM was allowed w.e.f. 01.10.2019 at Normal Rates of Tariff of that Category. The terms & conditions for the LS/ MS Industrial Consumers who opted to use Electricity exclusively during Night Hours were specified as per Condition No. 22 of 'General Conditions of Tariff' reproduced in Commercial Circular No. 28/2019 dated 31.05.2019.

- (iv) As per CC No. 28/2019 dated 31.05.2019, the Fixed Charges were kept at 50 % of the Fixed Charges of the relevant category and Energy Charges for LS/MS were kept at ₹ 4.45 per kVAh (10.00 PM to 6.00 AM next day.)
- (v) The Tariff Order for FY 2018-19 continued up to 31.05.2019 and Tariff Order dated 27.05.2019 for FY 2019-20 was applicable from 01.06.2019 to maintain continuity of Tariff Orders without any gap and as such, the option exercised once for Exclusive Reduced Night Tariff automatically continued in the next Tariff Order till exclusive Reduced Night Tariff was stopped by the Hon'ble Commission or withdrawn by the Consumer, whichever was earlier.
- (vi) Neither the General Conditions of Tariff of Tariff Orders for FY 2018-19 and FY 2019-20 nor the Commercial Circulars 30/2018 or 28/2019 empowered the Respondent to stop the Special Reduced Night Tariff Facility without the written consent of the Consumer once the option was exercised by the Consumer.
- (vii) The Appellant opted for Exclusive Night Tariff with the Written Consent submitted on 29.08.2019 which was duly diarized at Sr. No. 1655 by the Respondent and Exclusive Night Tariff was said to be allowed to the Appellant in Sep/

Oct, 2019, but the Energy bills issued to the Appellant continued charging full fixed charges and full Energy Charges at normal rate of PIU Category and the Appellant had been paying all the bills with the hope that these would be adjusted later on by feeding Night Tariff in Software of CBC.

(viii) The Hon'ble PSERC in Tariff Order for FY 2020-21 also decided to continue the Exclusive Reduced Night Tariff (10 PM to 6 AM next day) for the LS/MS Industrial Consumers and further extended the benefit of Exclusive Reduced Night Tariff to SP Category too in view of the huge Financial Benefit to the Licensee in avoiding the surrender of Surplus Power and Flattening of Load Curve. Taking a Conscious Decision in view of only 74 Nos. of Night Tariff Consumers in the State with demand of 229.72 MVA only and on due recommendations of PSPCL, the Commission decided in Tariff Order for FY 2020-21 to allow Electricity at Normal Tariff to the Exclusive Night Tariff Consumers from 6 AM to 10 AM during PADDY SEASON also. The Commission decided the continuation of Exclusive Reduced Night Tariff as per the terms and conditions given in Condition No. 22 of General Conditions of Tariff of Tariff Order of FY 2020-21 and reproduced in Commercial Circular No. 30/2020 dated 30.06.2020.

- (ix) The Tariff Order for FY 2019-20 was applicable up to 31.05.2020 as per the order of the Hon'ble PSERC and Tariff Order for FY 2020-21 was applicable from 01.06.2020 to maintain continuity of Tariff Orders without any gap. So, the option once exercised for Exclusive Night Tariff in any of the previous Tariff Orders continued automatically till Exclusive Reduced Night Tariff was stopped by the Hon'ble Commission or withdrawn by the consumer, whichever was earlier.
- (x) The Fixed Charges for Exclusive Reduced Night Tariff were kept at 50% of the Fixed Charges for the relevant Category of LS/MS/SP consumers and Energy Charges were kept at reduced rate of ₹ 4.83 per kVAh for LS/MS/SP categories in Tariff Orders for FY 2020-21. Even in FY 2020-21, the Appellant was said to be a Night Tariff Consumer based on the option given on 29.08.2019, but the Energy bills issued to the Appellant continued charging full fixed charges and full Energy Charges on the assurance that necessary refund would be made with necessary Night Tariff changes in the Software of CBC.
- (xi) It was explicitly clear that the Respondent could not stop the Exclusive Night Tariff of the Consumer without the consumer's written consent. No conditions of Tariff Order (s) or General Conditions of Tariff or Commercial Circulars of PSPCL

demanded for exercising fresh options every year for Exclusive Reduced Night Tariff once opted by the consumer in any of the previous Tariff Orders and not withdrawn thereafter.

(xii) The Appellant continued to enjoy the Exclusive Night Tariff for FY 2020-21 paying full Charges of PIU Category, hoping that Software shall be updated soon in CBC to issue proper bills and the refund for the excess Tariff charged would be made accordingly and that too without giving any extra consent to continue for FY 2020-21 as it was kept continued on the basis of the original option for Exclusive Night Tariff made on 29.08.2019 and continuity of Tariff orders announced by Hon'ble PSERC. Some adjustments of the refund of excess Tariff Charged was said to be made in FY 2020-21 through Sundries only but the same needed to be reconciled with excess Tariff claimed in FY 2019-20 and FY 2020-21 as no detailed calculations of the refund through Sundries had been made available to the Appellant.

(xiii) The Hon'ble PSERC, after confirmation from PSPCL, continued the Special Night Tariff for LS, MS & SP Categories in Tariff Order dated 28.05.2021 for FY 2021-22 and continued the provision of consumption of electricity from 6 AM to 10 AM at normal Tariff of relevant category. The Hon'ble

Commission retained the provision of 10% of total units consumed during Night hours (10 PM to 6 AM next day) to be availed during the period 10 AM to 10.00 PM. The Hon'ble Commission also extended the applicability of Tariff Order of FY 2020-21 up to 31.05.2021 without breaking continuity and ordered the applicability of Tariff Order dated 28.05.2021 for FY 2021-22 from 01.06.2021. The terms and conditions for Night Tariff were kept as per Condition No. 22 of General Conditions of Tariff for Tariff Order of FY 2021-22 and these conditions were reproduced in Commercial Circular No. 26/2021 dated 01.06.2021.

(xiv) PSPCL issued Commercial Circular No. 26/2021 dated 01.06.2021 on the basis of Tariff Order issued by Hon'ble PSERC for FY 2021-22 with conditions given in Condition 22 of General Conditions of Tariff Order for FY 2021-22. The Commercial Circular No. 26/2021 did not contain any condition to give Fresh Option by the Consumers who opted for Night Tariff earlier and did not withdraw thereafter.

(xv) As per the Tariff Order of FY 2021-22, the Fixed Charges for Exclusive Reduced Night Tariff were kept at 50 % of the Fixed Charges of the relevant Category of LS/MS/SP Category and

Energy Charges were kept at reduced rate of ₹ 4.86 per kVAh for LS/MS/SP Categories.

- (xvi) The Hon'ble Commission in the Tariff Order for FY 2022-23 dated 31.03.2022 had further decided to continue with the Exclusive Reduced Night Tariff. The terms and conditions of Night Tariff were decided as per Condition No. 22 of General Conditions of Tariff of Tariff Order for FY 2022-23.
- (xvii) The Commercial Circular of PSPCL based on the orders of the Hon'ble Commission for continuity of Exclusive Reduced Night Tariff for Tariff Order of FY 2022-23 was not available on the website of PSPCL, but the same could be fairly assumed as per the Tariff Order for FY 2022-23 and its General Conditions of Tariff.
- (xviii) The Appellant noticed in Jan, 2022 that in the bill of April, 2021 i.e. for FY 2021-22, the Night Tariff opted by the Appellant on 29.08.2019 was stopped by the Respondent despite giving some refund through Sundries in FY 2020-21 for Night Tariff of the period from Oct, 2019 onwards upto March, 2020. The Reduced Night Tariff of the Appellant was stopped by the Respondent without any written consent of the Appellant and without any written or verbal information to the Appellant by the Respondent to cite any reason for unilateral action to

discontinue the Reduced Night Tariff of the Appellant. It was pertinent to add that the officials of the Appellant had been regularly asking the officials of the Respondent for reasons of the unilateral discontinuation of the Exclusive Night Tariff of the Appellant without any consent of the Appellant. The officials of the Respondent could neither give any satisfactory reply for up-dation of their Software for Night Tariff and reconciliation of refunds made through Sundries for excess Tariff charged in FY 2019-20 and FY 2020-21 nor restored the Exclusive Reduced Night Tariff from the date of discontinuation made unilaterally by the Respondent.

- (xix) The Appellant asked vide letter dated 04.02.2022, diarized by the Respondent vide diary no. 5863 dated 09.02.2022 to look into the matter as Exclusive Night Tariff opted by the Appellant had been stopped by the Respondent in the bills issued by them from 04/21 onwards. The Addl. S.E., Focal Point, PSPCL, Ludhiana said to have restored the Exclusive Reduced Night Tariff from February/March, 2022 on the basis of the Appellant's representation dated 04.02.2022 and assured to look into the matter as to why it was stopped without the written consent of the Consumer/ Appellant, but the bills issued upto June, 2022 had shown full Fixed Charges and Full Energy

Charges being charged and paid by the Appellant. This was clear that software of CBC had not been updated for Night Tariff till date. This was also clear that neither any reconciliation statement of excess Tariff claimed in FY 2019-20 and FY 2020-21 nor details of its refund made in FY 2020-21 through Sundries had been supplied to the Appellant till date. Moreover, no reason to stop the Night Tariff unilaterally in April, 2021 had been intimated to the Appellant.

(xx) No reply was given by the Respondent to the Appellant to its letter dated 04.02.2022. Therefore, the Appellant filed a Case before the Forum as the approximate amount of refund of only Fixed Charges from 21.04.2021 to 31.03.2022 became ₹ 37,10,274/- by February, 2022 on account of the unilateral action of the Respondent in April, 2021 without giving any reason to the Appellant. This did not include Excess Energy Charges paid on account of Excess Tariff Charged and Excess Taxes and duties Charges on SOP. This also did not include any interest on the refund amount from the date the same became due.

(xxi) The Forum listed the Case as CGL-66/2022 (T-67/2022) and decided the case hurriedly with order passed on 26.05.2022 without mentioning any reason for unilateral action of the

Respondent and simply rejecting the claim that option was to be given by the Appellant as required in CC No. 26/2021 whereas, neither the Circular No. 26/2021 calls for any Fresh Option nor the Hon'ble Commission had passed any order to ask for Fresh Options. The Respondent had also not desired Fresh Options for Continuity of Reduced Night Tariff through any reference written to the Appellant or to other such Consumers.

(xxii) The Forum had decided the case without analysis of the facts leading to the unilateral action of the Respondent, without citing any reasons for unilateral action of the Respondent and without reconciliation statement for FY 2019-20 and FY 2020-21. No reasoning was given for not updating the Software of CBC for Night Tariff which caused the adjustments through Sundries at the whims and fancies of the Respondent. Even the right to interpret the Tariff Order in case of any ambiguity or any clarification required on Tariff Order, the right for the same lies with the PSERC. Moreover, the Licensee cannot neutralize the imitative taken by the Commission with unilateral action to stop the facility to the consumer without his/ her consent.

(xxiii) The Appellant, being frustrated with the order dated 26.05.2022 of the Forum who had not even gone into the root cause of the

uncalled for action of the Respondent, the Appellant itself tried to find out the root cause because CC No. 26/2021 did not mention for any fresh options for Night Tariff and the Appellant was facing all hardships and excess Night Shift allowances to the employees without getting benefit of the reduced Night Tariff. Moreover, the PSPCL was gaining a lot financially with the reduced Night Tariff by avoiding the surrender of the Surplus Power and flattening of the Load Curve with Exclusive Reduced Night Tariff allowed by Hon'ble PSERC.

(xxiv) The Appellant finally came to the conclusion that the Exclusive Reduced Night Tariff was stopped by the Respondent in April, 2021 by mistake on account of some metering issues of T.O.D. recording observed by CBC in April, 2021 which led to the change of meter of L&T make (Sr. No. 16293916) with Secure Make (Sr. No. 1431218) meter in May, 2021, because the bill for the period 21.04.2021 to 19.05.2021 showed the L&T make meter (Sr. No. 16293916) and bill from 19.05.2021 to 22.07.2021 showed Secure make meter (Sr. No. 1431218). The Appellant requested AEE/ Commercial, Focal Point (Spl.) Divn., Ludhiana vide letter dated 13.07.2022 to provide copy of MCO & Store Challan of ME Lab of PSPCL to confirm the

date of change of meter and its correlation with the disconnection of the Exclusive Night Tariff of the Appellant. The copy of the SJO for change of meter provided by AEE Commercial vide Memo No. 6459 dated 13.07.2022 confirmed that meter was changed on 19.05.2021. Had this analysis been made by the Forum before passing the order dated 26.05.2022, the Appellant may not have to suffer with the non-speaking and non-reasoned order dated 26.05.2022 and the Appellant may not have to collect information from the PSPCL in June/July, 2022 i.e. after the order was passed by the Forum on 26.05.2022. This was the main reason to file the *ibid* Appeal a bit later than the stipulated period of 30 days from the order of the Forum.

(xxv) Since, the Exclusive Night Tariff of the Appellant was discontinued by the Respondent in April, 2021 without any written consent of the Appellant and without any condition of Fresh Options for Night Tariff in Commercial Circular No. 26/2021, therefore, it was confirmed that the Night Tariff of the Appellant was wrongly discontinued by the Respondent knowingly or unknowingly due to some metering issues observed by CBC in April, 2021 which required the change of meter on 19.05.2021.

(xxvi) It was amply clear from the Tariff Orders issued by Hon'ble PSERC which formed the base for Commercial Circulars issued by the PSPCL for Exclusive Reduced Night Tariff that neither the Hon'ble Commission nor the Licensee had issued any order for exercising Fresh Options for availing Exclusive Reduced Night Tariff. No condition had been mentioned in any of the Tariff Orders or Commercial Circulars since Tariff Order of FY 2018-19 initiating the Exclusive Reduced Night Tariff which empowered the Respondent to stop the Night Tariff on its own or with the change of meter or metering equipment. The Respondent cannot ask for Fresh Options on account of change of meter or metering equipment. In view of the above discussions, the Appellant had totally failed to understand to which option, the Forum was referring to in CC No. 26/2021 in its order dated 26.05.2022.

(xxvii) The Forum decided the case without considering full facts of exclusive Night Tariff ordered by Hon'ble PSERC in Tariff Order of FY 2018-19 and later continued by Hon'ble PSERC in Tariff Orders of FYs 2019-20, 2020-21, 2021-22 and 2022-23 with additional reliefs. The order of the Forum denied the Appellant a refund of ₹ 37,10,274/- on account of stopping the

Night Tariff by the Respondent without the consent of the Appellant.

(xxviii)The Appellant prayed to quash the non-speaking and non-reasoned order dated 26.05.2022 passed by the Forum in Case No. CGL-66 of 2022 and order for restoration of Exclusive reduced Night Tariff opted by the Appellant on 29.08.2019 from the date of unilateral discontinuation by the Respondent in April, 2021 to the date of restoration of the Night Tariff in Feb/Mar, 2022, on the representation of the Appellant challenging the discontinuation of Night Tariff and to order the refund of extra payments charged by the Respondent due to charging of Normal Tariff despite non withdrawal of option of Night Tariff by the Appellant. The Appellant further prayed for detailed reconciliation statement of excess tariff charged and their refund later on through Sundries in FY 2020-21 and issuance of future bills with proper up-dation of Night Tariff in the billing software at CBC.

(b) Submission in Rejoinder

In its Rejoinder to the written reply of the Respondent, the Appellant submitted the following for consideration of this Court: -

- (i) The detailed reasoning for the delay in filing the Appeal had been discussed in the Appeal as well as in the request to condone the delay. Since the delay was primarily due to non-reasoned and non-speaking order of the Forum and totally unexplained billing against Reduced Night Tariff Option of the Appellant, therefore, lot of connected information of Tariff Orders, Commercial Circulars and Metering details of the Appellant, had to be collected which had caused the delay. The Appellant prayed to accept the Appeal to give justice to the Appellant as the Appellant had suffered a huge financial loss due to unilateral action of the Respondent to discontinue Night Tariff by misinterpreting the Commercial Circulars of the Respondent and Tariff Orders issued by the Hon'ble PSERC. Still lot of billing information and other relevant information was pending from the Respondent for a reasoned Order based on facts.
- (ii) The Appeal was according to Tariff Order provisions. Neither the Tariff Orders nor the Commercial Circulars demand fresh Options when Night Tariff was kept continued since 2018-19 by Hon'ble PSERC in each Tariff order issued till date. Moreover, the Night Tariff was stated/ admitted by the Respondent to have been stopped on 18-05-2021 by its own

unilateral action whereas CC No. 26/2021 was issued on 01-06-2021. Even the Tariff Order for FY 2021-22 was issued on 28-05-2021. The speaking and reasoned Order was not issued by the Forum with complete details and analysis.

- (iii) The Consent was submitted for Night Tariff on 29-08-2019 but it was nowhere mentioned that the Option was only for FY 2019-20. Moreover, no Fresh Option for Night Tariff was submitted by the Appellant in FY 2020-21 or FY 2021-22 whereas Night Tariff remained continued till 18-05-2021.
- (iv) The purpose to introduce reduced Night Tariff (50% Fixed Charges and Energy Charges @ Rs. 4.28/- kVAh for exclusive Night Tariff Consumers) was clear in para 4.3 of the Tariff Order issued by PSERC for FY 2018-19. The decision of PSERC (Page 110) of Tariff Order for FY 2018-19 may be referred. The Commercial Circular 30/2018 states as under: -

Hon'ble Commission in its Order dated 19-04-2018 has decided to have a special Reduced Tariff for LS/MS category Industrial consumers who opt to use electricity exclusively during night hours.

- (v) The Appellant agreed to the extent that Reduced Night Tariff was introduced in FY 2018-19 but the same was continued by the PSERC in each Tariff Order thereafter. The Appellant did not agree that due to Change of Tariff every year, a Fresh

Option had to be exercised. Tariffs of almost all Categories were changed in Tariff Orders but new options or new A&A forms were not desired to be submitted with each Tariff Order decided by the PSERC.

- (vi) It was agreed by the Respondent that reduced Night Tariff was kept continued by the PSERC for LS/ MS Category in Tariff Order for FY 2019-20. Even Night Tariff Consumers were allowed to use Electricity at normal rates of that Category from 6.00 AM to 10.00 AM w.e.f 1.10.2019 (i.e. after paddy of 2019-20). The Condition of Max 15% CD beyond Night hours as specified in T.O for FY 2018-19 for Night Tariff Consumers was not included in T.O for FY 2019-20. These relaxations allowed by the PSERC while continuing Night Tariff for FY 2019-20 was a clear effort to increase the number of Consumers in Night Tariff because it was huge financial gain to the Utility in Flattening the Load Curve. Neither the T.O for FY 2019-20 nor the CC No. 28/2019 had mentioned anywhere for getting fresh Options from LS/ MS Consumers who opted for Night Tariff in FY 2018-19 because the Consumers had every right to withdraw from Night Tariff if the conditions did not suit the consumers.

(vii) CC No. 28/2019 showed Fixed Charges @ 50% for Night Tariff Consumers and Energy Charges @ ₹ 4.45/KVAh for Night Tariff (10.00 PM to 6.00 AM next day) and other Conditions of General Conditions of Tariff. No Condition was there in Tariff Order of FY 2019-20 or CC No. 28/2019 for Fresh Options of Night Tariff by LS/MS Consumers who opted it in earlier T.O of FY 2018-19. Tariff Order for FY 2018-19 continued upto 31-05-2019, whereas T.O for FY 2019-20 to extend Night Tariff was ordered on 27-05-2019.

(viii) It was agreed to the extent that Option for Night Tariff was given on 29-08-2019 and as such, the Condition 22 of General Conditions of Tariff for FY 2019-20 reproduced in CC 28/2019 was applicable to the Appellant for Night Tariff Billing for FY 2019-20 i.e. upto 31-05-2020 due to extension of T.O upto 31-05-2020 by PSERC. The Condition (IV) of CC No. 28/2019 was amply clear to opt to switch over from Normal Tariff to Exclusive Night Tariff by giving not less than one month notice in writing. This Condition speaks itself that it was for New ENTERANTS TO SWITCH OVER FROM NORMAL TO REDUCED NIGHT TARIFF AND NOT FOR EXISTING NIGHT TARIFF CONSUMERS TO CONTINUE WITH NIGHT TARIFF. The Tariff Orders for FY 2019-20 and CC

No. 30/2018 and CC No. 28/2019 did not call for Fresh Options with each Tariff Order.

- (ix) The Option for Night Tariff continues automatically with the next Tariff Order till Reduced Night Tariff was withdrawn/ stopped by the PSERC or the Consumer withdrew from Night Tariff, whichever was earlier. Moreover, no Tariff Order mentioned for the Fresh Options from existing Night Tariff Consumers as wrongly claimed by the Respondent. If we go by the wrong Interpretation of Options with Fresh Tariff Orders and Fresh Commercial Circulars, then every Night Tariff Consumer shall be stopped for Night Tariff for about a month as per condition (IV) of Commercial Circulars. This will be against the Orders of PSERC to continue the Night Tariff to Flatten the Load Curve with Introduction of Night Tariff in FY 2018-19 and allowing its continuity thereafter till date. This may have also adverse effect on Power System Scenario in April/ May/ June when flattening of Load Curve was highly essential. In view of the above explanation, the Wrong Interpretation of the Respondent to have Fresh Options with Fresh Tariff Orders, when the Night Tariff was kept continued in Tariff Orders, did not have any justification. The claim of the Respondent was baseless, unjustified not technically and

legally correct and hence denied. No where the Appellant had contested for billing at older rates despite change of Tariff. The Night Tariff Circulars also don't mention Fresh Options with Fresh Tariff Orders. Therefore justification given by the Respondent was baseless and hence denied. Night flag updated in SAP upto 31-08-2020 and then from 01-09-2020 to 18-05-2021 itself contradicts the stand of the Respondent to have Fresh Options with each Fresh Tariff Order or with each Commercial Circular of Night Tariff when neither Tariff Orders nor Commercial Circulars demand Fresh Options from existing Night Tariff Consumers. The Respondent was silent on the Billing at Full Rate for Fixed and Energy Charges, whereas each bill should have been @ 50% Fixed Charges and at Reduced Energy Charges of ₹ 4.45/- kVAh for FY 2019-20 and ₹ 4.83/- kVAh for FY 2020-21 and ₹ 4.86/- KVAh in Tariff Order for FY 2021-22 and for FY 2022-23.

- (x) It was agreed by the Respondent that 74 Nos of Night Consumer with demand of 229.72 MVA existed but failed to produce any such case where Fresh Options were exercised by other Night Consumers or Fresh Options were even asked by the Respondent from such Consumers with each new Tariff Order. THE PARA OF TARIFF ORDERS WHERE HON'BLE

PSERC HAS ORDERED FOR FRESH OPTIONS FROM EXISTING NIGHT TARIFF CONSUMERS HAS NOT BEEN QUOTED BY THE RESPONDENT IN SUPPORT OF HIS STATEMENT.

- (xi) Though the Respondent claimed to have allowed Night Tariff from 20-09-2019 to 21-01-2021 on the basis of Option given on 29-08-2019 but the Appellant Continued to be Charged @ full Fixed and Energy Charges and some intermittent rebates were given probably of Fixed Charges and that too WITHOUT proper Reconciliation Statement as per Rates of Night Tariff allowed by Hon'ble PSERC and circulated through various Commercial Circulars of PSPCL. The Consumer/ Appellant had never been issued proper bills showing Half Fixed Charges, Reduced Energy Charges for Night time Consumption, Normal rates from 6.00 AM to 10.00 AM and Consumption in the period 10 AM to 10 PM with separate peak hour Consumption for 6.00 PM to 10.00 PM. In view of the missing of the above crucial details in the bills and proper Reconciliation Statement (which had not been provided for each billing period despite instant Appeal), the Appellant cannot make out whether proper Night Tariff rebate was given by the Respondent during the period 10/2019 to 18-05-2021, when it was unilaterally stopped

by the Respondent without any written consent of the Appellant. If we go by the Wrong Interpretation of the Respondent for Fresh Option with fresh Tariff Order, even then no Option was given by the Appellant in FY 2020-21. Also the Tariff Order for FY 2021-22 was ordered on 28-05-2021 and CC No. 26/2021 was issued on 01-06-2021 and Night Tariff of the Appellant was unilaterally stopped by the Respondent on 18-05-2021. Therefore, even the wrong interpretation of the Respondent did not justify the unilateral discontinuation of the Night Tariff at the Respondent's end. The Clauses mentioned for CC No. 26/2021 and CC No. 30/2020 are self explanatory regarding option TO SWITCH OVER FROM NORMAL TO REDUCED NIGHT TARIFF which implies that clauses are for NEW ENTRANTS and not for existing NIGHT Tariff Consumers as they have not to SWITCH OVER from Normal to Night Tariff because they had already Opted Night Tariff and were billed accordingly. Moreover, the clauses of CC No. 26/2021 and CC No. 30/2020 have not been mentioned completely that at least one months notice was to be given by Consumers while opting the Night Tariff. This period as discussed in earlier paras breaks the Continuity of Night Tariff of each Night Tariff Consumer for at least few days every year

and as such, the Continuity allowed in Tariff Orders by PSERC was not adhered to by the Respondent.

(xii) The Respondent had never issued the bills in proper format with Half Fixed Charges and Energy Charges of Reduced Night Tariff declared by the PSERC and has been giving some intermittent Night Tariff Rebates through Sundries and that too after few months. How can the Consumers represent timely against STOPPAGE of Night Tariff by the Respondent in such a SCENARIO of Night Tariff Billing by the Respondent. Does any of Commercial Circular ask for TOD rebate to Night Tariff Consumers. There was no question of enjoying ToD rebate by Night Tariff Consumers who had to be Charged even lesser and not at Full Normal Rate of Energy Charges minus ToD rebate. Also the ToD rebate had not been given in all the bills. This type of Billing of Night Consumers requires Proper Reconciliation Statement and issue of Bills in Proper Night Tariff Format in Future.

(xiii) The letter of the Appellant dated 04.02.2022 can be referred to. It was not a Fresh Option for Night Tariff, it was a representation as to why the Night Tariff rebates after few months, through sundries (as per the practice of the Respondent) had not been given to the Appellant since long.

- (xiv) The Petition before the Forum clearly stated that Night Tariff of the Appellant had been stopped by the Respondent without any written consent of the Appellant. The Representative of the Appellant visited the office of the Respondent every month to enquire about the stoppage of Night Rebate was clearly mentioned in the Petition before the Forum.
- (xv) It was typographical error that date 19.05.2021 was written as 19.05.2022 and the same was regretted but the Appeal was clear that meter was replaced in May, 2021 when Night Rebate was also stopped unilaterally by the Respondent without the written consent of the Appellant. The Respondent had admitted that 1629 Series L&T Meters had probably some problems with compatibility of Night Tariff accounting and as such, the Meter of the Appellant was replaced. This did not mean that Night Tariff be stopped on change of Non Night Tariff Compatible Meter with a Night Tariff Compatible Meter. So long as proper Reconciliation Statement was not provided, no comments can be made whether complete Night Tariff Rebate was given by the Respondent or not even upto 18.05.2021 when it was unilaterally stopped by the Respondent without any consent of the Appellant and without any intimation to the Appellant.

(xvi) The Night Tariff Charges were much lower than the Normal Energy Charges minus ToD rebate of ₹ 1.25 given in only one or two bills. The Appellant strongly denies the view point of the Respondent on TOD rebate.

(xvii) The unilateral stoppage of Night Tariff by the Respondent without the written consent of the Appellant coincides with the Change of Meter of the Appellant. Therefore, relevant information of Change of Meter was required to be supplied by the Respondent to the Forum. As the same was not supplied by the Respondent to the Appellant and the viewpoint of the Respondent for so called fresh options with fresh Tariff Orders never satisfied the period of FY 2020-21 and upto 18.05.2021, (when it was discontinued of its own by the Respondent). Therefore, Appellant had to collect the information to fill the gaps to file a detailed Appeal. This caused a delay of about 30-35 days and as such, it was prayed before this Court to kindly condone the delay in view of the principle of natural justice

(c) Submission during hearing

During hearing on 10.08.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal as well as in the Rejoinder and prayed to allow the same. It was stressed that there is no need to submit fresh option for continuance of

Reduced Night Tariff after issuance of every new tariff order by the Commission. The Respondent had already given benefit of Reduced Night Tariff to the Appellant during the period from 01.06.2020 to 18.05.2021 as per Tariff Order for FY 2020-21 without any fresh option. Reduced Night Tariff was stopped on 18.05.2021 without any notice or justification. The Reduced Night Tariff is being allowed even during the current FY 2022-23 without obtaining any fresh option from the Appellant.

(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 a LS Category Connection bearing Account No. 3002809434 with sanctioned load of 2300 kW and CD as 2495 kVA running under DS Focal Point (Spl.) Division, PSPCL, Ludhiana in the name of M/s. Nandish Alloys Ltd.
- (ii) The Appeal was not according to Tariff provision. The Appellant was not entitled to continue the exclusive Reduced Night Tariff and other benefits as claimed as it had failed to submit the option during the new tariff order as per CC No. 26/2021 dated 01.06.2021- Clause No. (iv) w.r.t. FY 2021-22

valid up to 31.03.2022. The option was exercised only on 29.08.2019 and it was only for the Tariff Order of FY 2019-20. Therefore, no such consent was ever submitted to PSPCL office to continue the benefit of Reduced Night Tariff.

- (iii) The Forum had passed the correct order and the same may be upheld.
- (iv) As per CC No. 30/2018 dated 24.04.2018, the provision was made to opt for the Night Tariff on reduced rate. This option was for the tariff order for the FY 2018-19 and it was not mentioned in the tariff order that once a consumer opted for the Night Tariff, it would remain continued forever. There was change in Tariff every financial year and as such, option was likely to be resubmitted every year and the Appellant had not fulfilled the desired option.
- (v) The option given by the Appellant on 29.08.2019 was for the tariff order for the financial year 2019-20 i.e. as per CC No. 28/2019 dated 31.05.2019 which was valid from 01.06.2019 to 31.03.2020 but was extended to 31.05.2020 till the issue of new tariff order for the financial year 2020-21. The Appellant opted on 29.08.2019 when new tariff order was announced vide CC No. 28/2019 dated 31.05.2019 and could not claim to CC No.

28/2019, against Condition No. 22 of General Conditions of tariff, reproduced as under:-

“22. Use of electricity exclusively during night hours

Reduced tariffs as may be decided by the Commission in the Tariff Order for the year, shall be applicable to LS/MS Industrial consumers who opt to use electricity exclusively during night hours from 10.00 PM to 06.00 AM next day. However, from 01.10.2019 onwards, they shall be entitled to use electricity also from 06:00 AM to 10:00 AM at normal tariff rate of energy charge applicable to the respective category. Other conditions shall be as under:

- i) TOD rebate and voltage rebate shall not be allowed on the reduced tariff under this category, as the tariff rate is already reduced.*
- ii) A maximum of 10% of total units consumed during night hours(10:00 PM to 06:00 A.M. next day) in a billing period can be availed beyond the period of 10.00 PM to 06.00 AM (10.00 PM to 10.00 AM w.e.f. 01.10.2019). However, TOD surcharge, as applicable, shall be chargeable for the consumption, if any, during the peak hours.*
- iii) In case the consumer exceeds the %age specified in condition no. (ii) above during any billing month, then fixed charge and energy charges for the entire energy consumption during the relevant billing month shall be billed as per normal tariff applicable to the respective category.*
- iv) This tariff shall be applicable if the consumer opts to be so charged in place of normal tariff by using electricity exclusively during night hours as above. The option can be exercised to switch over from normal tariff to exclusive night time tariff by giving not less than one month’s notice in writing.*

Other terms and conditions shall remain the same as applicable to the respective categories as per the relevant Schedule of Tariffs.”

- (vi) The option under Night Tariff was for only the relevant financial year and not for lifetime. The PSERC issues tariff order every year with clear cut instruction to furnish option. The tariff was well published in all news papers. The option was to be automatically stopped at the end of financial year, whenever a new tariff order was released. It was also added that tariff was changed every year and rate per unit was changed for all categories as well. It was also pointed that can billing be continued on older rates inspite of change in tariff. There was no where mentioned in night tariff circulars, that a single option submitted by the Appellant was to be considered forever for all tariff orders. Therefore, the point raised by the consumer was baseless.
- (vii) It was submitted that the consumer had opted for Night Tariff as on 29.08.2019 as per its Appeal and Night flag on Appellant's request was updated in SAP as on 01.10.2019 upto 31.08.2020 as well. The connection of the Appellant was again checked by Xen/ Enforcement-3 vide ECR No. 26/3400 dated 09.09.2020 as per letter vide Memo No. 1921 dated 03.09.2020 of the Respondent for checking of electricity connection of the Appellant on account of availing night tariff by it. Thereby, night flag was again updated w.e.f. 01.09.2020 upto 18.05.2021

as per CRM order no. 8006368167 dated 21.09.2020. The Appellant was given night rebate in its bills since 20.09.2019 to 21.01.2021 through sundry allowances.

- (viii) The account of the Appellant was pre-audited by the Audit Party, Focal Point and found that from 18.09.2020 (since when 1629 series meter installed) up to 20.05.2021, as per the consumption reports, ₹ 1,85,489/- needed to be refunded to the Appellant on account of night rebate. However, tariff order for FY 2021-22 was issued vide CC No. 24/2021 dated 01.06.2021. Therefore, immediately the night flag was removed for the night rebate consumers, in view of fresh option to be given by the consumers. The Appellant was therefore not eligible for night tariff rebate for the period from 19.05.2021 to 21.01.2022.
- (ix) It was stated that as per Night Tariff Commercial Circular No. 26/2021 dated 01.06.2021 Clause No. (iv), CC No. 30/2020 dated 03.06.2020 Clause No. (v), it was mentioned that the night tariff was only applicable to the consumers who opts to be so charged in place of normal tariff by giving option in writing. In view of that, after fresh tariff order for FY 2021-22 was issued, no option was ever received by the Respondent office from the Appellant asking for night option for FY 2021-

22. On 09.02.2022, the Appellant had given its option for opting night tariff and therefore, night flag was again updated in SAP w.e.f. 21.01.2022. But in its Appeal, the Appellant asked to continue night tariff option which he had given in the year 2019 or 2020 whereas, the consumer was required to give fresh option as per new tariff orders issued from time to time. It was further added that after stopping the Night Tariff rebate, the Appellant was billed with TOD rebate as per tariff provisions but the Appellant never protested and thus, wanted to enjoy double rebate.

- (x) It was submitted that as per CC No. 26/2021 Clause No. (iv), option was to be given by the Appellant in order to avail night tariff for that relevant financial year only, and also, there was nowhere mentioned in night tariff circulars, that a single option submitted by the Appellant was to be considered forever for all the tariff orders. Therefore, the point raised by the Appellant was baseless.
- (xi) As per Condition No. 22 of General Conditions of Tariff, it was very much clear that the Appellant should opt for Night Tariff, only then it was entitled for rebate.
- (xii) The Appellant had never represented against stopping the night tariff rebate and also not objected to TOD rebate allowed in

General Tariff. The TOD rebate was enjoyed and again in February, 2022, on option given by the Appellant, the Night Tariff rebate was given to it. The Night tariff was restored as per the request/option w.e.f. 04.02.2022 and no such assurance was given for the rebate for the disputed period.

- (xiii) The Appellant had not submitted the representation / copy of letter dated 04.02.2022 before the Forum with the Petition. The refund was not genuine as there was no provision to continue option once exercised. As such, the Forum had decided the petition correctly. The Forum had decided the case after thoroughly studying the contents, record and evidence produced before the Forum.
- (xiv) There was no mistake and the Night Tariff rebate was stopped as fresh option was not received. It was very much clear to file fresh option in every tariff order. It was also added that tariff was changed every year and rate per unit was also changed. It was pointed out that can billing be continued on older rates in spite of change in tariff.
- (xv) It was submitted that the connection of the Appellant was checked vide ECR No. 49/3413 dated 13.05.2021 on account of wrong refund being given to night consumers having 1629 series L & T Meters installed, as per directions from higher

authorities and the meter of the Appellant was replaced accordingly on 19.05.2021 vide MCO No. 100013462828. The tariff for FY 2021-22 was issued vide CC No. 24/2021 dated 01.06.2021. Therefore, immediately the night flag was removed for the night rebate consumers, in view of fresh options were to be given by the consumers. The Appellant here wrongly correlated the fact that when its meter was replaced, then night flag was removed, which was completely wrong and baseless.

- (xvi) As explained, due to non furnishing of fresh option, the tariff was changed and TOD rebate was given to the Appellant in its bills, which it did not object either in written or verbally but enjoyed the rebate of TOD. The Night Rebate was rightly discontinued.
- (xvii) The Respondent prayed for the dismissal of the Appeal.

(b) Submission during hearing

During hearing on 10.08.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal. The Respondent failed to submit any documentary evidence to establish that the Reduced Night Tariff was given to the Appellant during the period from 01.06.2020 to 18.05.2021 after obtaining fresh option. He could not produce any notice/ instructions on the basis of which the

Reduced Night Tariff was stopped on 18.05.2021 before beginning of new tariff order for FY 2021-22 with effect from 01.06.2021. The Respondent could not justify the discontinuance of Reduced Night Tariff on 18.05.2021. The Respondent admitted that Reduced Night Tariff is being given to the Appellant with effect from 01.04.2022 as per Tariff Order for FY 2022-23 without any fresh option. The Respondent could not produce any option given by the Appellant after 29.08.2019.

6. Analysis and Findings

The issue requiring adjudication is the legitimacy of the claim of refund by the Appellant on account of denial of Night Tariff to it by the Respondent as per Condition No. 22 of General Conditions of Tariff of Tariff Order of FY 2021-22 for the period from April, 2021 to Feb., 2022.

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

- (i) The Appellant's Representative (AR) reiterated the submissions made in the Appeal. He pleaded that the exclusive night time tariff was approved first time by the PSERC in the Tariff Order for the FY 2018-19 and continued to give the same in all Tariff Orders that followed till date. The Tariff Orders issued by the

Commission did not mention any condition for exercising fresh option every year if the same had been given earlier and not withdrawn through written consent thereafter. The option to adopt Night Tariff once exercised by the consumer continued automatically to the next Tariff Orders unless and until, it was discontinued by the Commission in the Tariff Order or withdrawn by the consumer himself, whichever was earlier. Commercial Circular No. 26/2021 or any other Commercial Circulars for Exclusive Night Tariff were based on the Tariff Orders issued by the Commission. They also did not contain any condition for fresh option for each Tariff Order or with the change of meter/ meter equipment of the consumer. He further pleaded that the Appellant gave its consent to opt for the Night Tariff on 29.08.2019 and had not withdrawn the same till date. The Respondent was not empowered to discontinue the Exclusive Night Tariff once opted by the consumer unless it was withdrawn by the consumer. But in the present case, the Respondent arbitrarily withdrew the Exclusive Night Tariff benefit to the Appellant from April, 2021 stating that the Appellant was required to give its consent every year. He approached the Forum but the Forum also decided against the Appellant without considering the full facts of Exclusive Night

Time Tariff approved by the Commission. Further, no reconciliation statement for adjustment made in FY 2020-21 through Sundry Allowances for excess tariff claimed from the Appellant in FYs 2019-20 and 2020-21 were provided by the Respondent to the Appellant. The Appellant prayed to quash the non-speaking and non-reasoned order dated 26.05.2022 passed by the Forum in Case No. CGL-66 of 2022 and to order for restoration of Exclusive Night Time Tariff opted by the Appellant on 29.08.2019 from the date of unilateral discontinuation by the Respondent in April, 2021 to the date of restoration of the Night Tariff in Feb/Mar, 2022, on the representation of the Appellant challenging the discontinuation of Night Tariff and to order the refund of extra payments charged by the Respondent due to charging of Normal Tariff despite non withdrawal of option of Night Tariff by the Appellant. The Appellant further prayed for detailed reconciliation statement of excess tariff charged and its refund later on through Sundries in FY 2020-21 and issuance of future bills with proper up-dation of Night Tariff in the billing software by CBC.

- (ii) On the other hand, the Respondent controverted the pleas raised by the Appellant in its Appeal and reiterated the submissions

made by the Respondent in the written reply. The Respondent argued that as per CC No. 30/2018 dated 24.04.2018, the provision was made to opt for the Night Tariff on reduced rate. This option was for the tariff order for the FY 2018-19 and it was not mentioned in the tariff order that once a consumer opted for the Night Tariff, it would remain continued forever. There was change in Tariff every financial year. As such, the option was to be resubmitted every year and the Appellant did not submit the desired option for the FY 2021-22 before 09.02.2022. The option given by the Appellant on 29.08.2019 was for the tariff order for the year 2019-20 i.e. as per CC No. 28/2019 dated 31.05.2019 which was valid from 01.06.2019 to 31.03.2020 but was extended to 31.05.2020 till the issue of new tariff order for the financial year 2020-21. The option under Night Tariff was for only the relevant financial year and not for lifetime. The PSERC issues tariff order every year with clear cut instruction to furnish option. The option was to be automatically stopped at the end of financial year, whenever a new tariff order was released. It was also added that tariff was changed every year and rate per unit was changed for all categories as well. There was no where mentioned in night tariff circulars, that a single option submitted by the Appellant

was to be considered forever for all the succeeding tariff orders. Therefore, the point raised by the Appellant was baseless. He argued that the Appellant had opted for Night Tariff on 29.08.2019 and Night flag on Appellant's request was updated in SAP on 01.10.2019 upto 31.08.2020. The connection of the Appellant was again checked by Xen/ Enforcement-3 vide ECR No. 26/3400 dated 09.09.2020 as per letter vide Memo No. 1921 dated 03.09.2020 of the Respondent for checking of electricity connection of the Appellant on account of availing night tariff by it. Thereby, night flag was again updated w.e.f. 01.09.2020 upto 18.05.2021 as per CRM order no. 8006368167 dated 21.09.2020. The Appellant was given night rebate in its bills since 20.09.2019 to 21.01.2021 through sundry allowances. The Respondent argued that due to non furnishing of fresh option for the FY 2021-22, the tariff was changed and TOD rebate was given to the Appellant in its bills, which it did not object either in written or verbally, but enjoyed the rebate of TOD. The Night Rebate was rightly discontinued. On 09.02.2022, the Appellant had given its option for opting night tariff and therefore, night flag was again updated in SAP w.e.f. 21.01.2022. He further argued that the decision of the Forum was correct as the Forum had decided the case after thoroughly

studying the contents, record and evidence produced before the Forum. He prayed for the dismissal of the Appeal.

(iii) The Forum in its order dated 26.05.2022 observed as under:

“Petitioner stated that he is satisfied with the reply and he has nothing more to say.

As per reply, petitioner has not given the request for night tariff for FY 2021-22 as required as per Commercial Circular no. 26/2021. Petitioner also admitted that he has not given requisite request for FY 2021-22.

Forum observed that as per Circular petitioner is required to give request regarding night tariff every year, so, the claim of petitioner is not admissible

The present Petition is disposed off accordingly.”

(iv) I have gone through the written submissions made by the Appellant in the Appeal/ Rejoinder, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 10.08.2022. The Appellant contended that it had opted for the Exclusive Night Time Tariff by giving an application dated 29.08.2019 as per Condition No. 22 of the General Conditions of Tariff of FY 2019-20 issued by the Commission and had not withdrawn the option till date. Also, the Commission had not withdrawn the Night Tariff till today. As such, the Appellant was eligible for the benefits of the Night Tariff all through this period. Condition No. 22 of General Conditions of Tariff of FY 2019-20 is reproduced as under: -

“22. Use of electricity exclusively during night hours

Reduced tariffs as may be decided by the Commission in the Tariff Order for the year, shall be applicable to LS/MS Industrial consumers

who opt to use electricity exclusively during night hours from 10.00 PM to 06.00 AM next day. However, from 01.10.2019 onwards, they shall be entitled to use electricity also from 06:00 AM to 10:00 AM at normal tariff rate of energy charge applicable to the respective category. Other conditions shall be as under:

- i) ToD rebate and voltage rebate shall not be allowed on the reduced tariff under this category, as the tariff rate is already reduced.
- ii) A maximum of 10% of total units consumed during night hours (10:00 PM to 06:00 A.M. next day) in a billing period can be availed beyond the period of 10.00 PM to 06.00 AM (10.00 PM to 10.00 AM w.e.f. 01.10.2019). However, ToD surcharge, as applicable, shall be chargeable for the consumption, if any, during the peak hours.
- iii) In case the consumer exceeds the %age specified in condition no. (ii) above during any billing month, then fixed charge and energy charges for the entire energy consumption during the relevant billing month shall be billed as per normal tariff applicable to the respective category.
- iv) This tariff shall be applicable if the consumer opts to be so charged in place of normal tariff by using electricity exclusively during night hours as above. The option can be exercised to switch over from normal tariff to exclusive night time tariff by giving not less than one month's notice in writing.
- v) Other terms and conditions shall remain the same as applicable to the respective categories as per the relevant Schedule of Tariffs."

It is evident from the perusal of above Condition No. 22 that there was no need to give fresh option of Exclusive Night Time Tariff every year as it is clearly mentioned that the option can be exercised to switch over from normal tariff to exclusive night time tariff by giving not less than one month's notice in writing. In the present case, there was no need to 'switch over' in April, 2021 as the Appellant was already continuously availing the exclusive night time tariff from Sep/Oct, 2019 after

giving the written option on 29.08.2019. Also, it was not mentioned anywhere, even in the General Conditions of Tariff of the following years, i.e. FY 2020-21 to till date, that the fresh option was to be given every year. So, I agree with the contention of the Appellant that the Exclusive Night Time Tariff as per Condition No. 22 is applicable to the Appellant throughout the period from October, 2019 to 21.01.2022. However, the benefit is subject to fulfillment of all the conditions by the Appellant as mentioned in the Condition No. 22, as amended by the Commission from time to time. Also, the ToD rebate and voltage rebate given to the Appellant during this period, if any, is not allowable as per Condition No. 22.

- (v) It is observed that benefit of Reduced Night Tariff was given to the Appellant from 01.10.2019 to 31.05.2020 as per tariff order FY 2019-20 on the basis of option given on 29.08.2019 to the Respondent.
- (vi) Further, the benefit of Reduced Night Tariff was again given to the Appellant from 01.06.2020 to 18.05.2021 as per tariff order FY 2020-21 without obtaining any fresh option for this Reduced Night Tariff. The earlier option given on 29.08.2019 was treated valid for this period also.

- (vii) Reduced Night Tariff was stopped all of sudden on 18.05.2021 without any notice to the Appellant although tariff order for FY 2020-21 was applicable up to 31.05.2021 as per orders of the Commission. New tariff order for FY 2021-22 was applicable w.e.f. 01.06.2021. It is not understood how the benefit of Reduced Night Tariff was withdrawn before 01.06.2021 (date of start of tariff order for FY 2021-22) by the Respondent.
- (viii) The benefit of Reduced Night Tariff has been given to the Appellant w.e.f 01.04.2022 as per tariff Order for FY 2022-23 without obtaining any fresh option as admitted by the Respondent during hearing on 10.08.2022.
- (ix) The Appellant had furnished a copy of letter dated 04.02.2022 (submitted in PSPCL office on 09.02.2022) for restoring Reduced Night Tariff from 05/2021 onwards. The respondent again started Reduced Night tariff with effect from 21.01.2022 on the basis of this letter which is not a fresh option.
- (x) Even if the contention of the Respondent is to be believed that fresh option was to be given every year, then why the Respondent continued giving the benefit for exclusive night time tariff for the FY 2020-21 as the Appellant had not given the option for that year also. Also, the tariff order for the FY 2020-21 was extended by the Commission till 30.05.2021, then

why the benefit was withdrawn on 20.05.2021. When confronted with these questions by the Court, the Respondent could not give any satisfactory reply. The Respondent did not provide any documentary evidence to justify their action of arbitrarily withdrawing the benefits of exclusive night time tariff to the Appellant.

- (xi) The Commercial Circulars issued by the Licensee in this regard also did not mention anything that the fresh option is to be given every year to avail the benefits of Exclusive Night Time Tariff. The Respondent withdrew the benefit without informing the Appellant which was not correct.
- (xii) The Forum also erred by disallowing the benefits of Exclusive Night Time Tariff without going into the details of the case.
- (xiii) Special Reduced night tariff for use of electricity exclusively during night hours was introduced to give impetus to the productive consumption of Surplus Power particularly during night hours and also to flatten the load curve. But it has been observed that the Respondent is discouraging the Consumers who wish to go for Reduced Night tariff which is ultimately beneficial for the consumers and the Licensee. The perusal of Tariff orders reveals that there is no condition for filing fresh option for availing benefit of Reduced Night Tariff at the

beginning of each tariff order in respect of those consumers who were already availing this facility. The Licensee had not given any notice to the Appellant for furnishing of fresh option. No publicity in the press was given in this regard. The option is mandatory if any new consumer wants to switch over to this Reduced Night Tariff.

- (xiv) In view of above, this court is not inclined to agree with the decision dated 26.05.2022 of the Forum in Case No. CGL-66 of 2022. The Appellant is eligible for the exclusive night time tariff for the period during which the same was arbitrarily withdrawn by the Respondent, subject to fulfillment of all the conditions by the Appellant specified in this regard in the General Conditions of Tariff as applicable from time to time. The Appellant is entitled for the eligible refund in this regard.
- (xv) Further, the Appellant had requested to provide the detailed reconciliation statement of excess tariff charged and its refund later on through Sundries in FY 2020-21. This issue was not raised in the Petition filed before the Forum. As such, this issue cannot be raised in the Appeal. No directions are being given by this Court on this new issue raised in the Appeal.

7. Decision

As a sequel of above discussions, the order dated 26.05.2022 of the CGRF, Ludhiana in Case No. CGL-66 of 2022 is hereby set aside. The Appellant is eligible for the Exclusive Night time

Tariff for the period during which the same was arbitrarily withdrawn by the Respondent subject to fulfilment of all the conditions by the Appellant specified in this regard in General Conditions of Tariff and Tariff Orders issued by the Commission from time to time. The Respondent is directed to give the eligible refund to the Appellant.

8. The Appeal is disposed of accordingly.
9. 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.
10. 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.

August 10, 2022
S.A.S. Nagar (Mohali)

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