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

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

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

 **APPEAL NO. 57/2020**

**Date of Registration : 04.12.2020**

**Date of Hearing : 23.12.2020**

**Date of Order : 31.12.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of:**

 M/s. Sin Bros. Industries Pvt. Ltd.,

 Now M/s. Kanav Agro Industries (P) Ltd.

 Single Cycle Road, Industrial Area-C,

 Dhandari Kalan, Ludhiana,

 **Contract Account Number 3003018201 (Old)**

 **3005747840 (New)**  ...Appellant

 Versus

Addl. Superintending Engineer,

DS Estate Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Appellant : Er. Sukhminder Singh,

 Appellant’s Representative (AR).

Respondent : 1. Er. Kulwinder Singh,

 Addl. Superintending Engineer,

 DS Estate Division (Special),

 PSPCL, Ludhiana.

 2. Sh. Krishan Singh,

 Assistant Accounts Officer,

 DS Estate Division (Special),

 PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 28.10.2020 of the Consumer Grievances Redressal, Ludhiana (Forum) in Case No. CGL-266 of 2020, deciding that:

*“The load of 175 KW as detected during checking dated 27.07.2020 be considered as PIU Load. The energy charges for difference of PIU and General Tariff, be charged from 01.01.2014 onwards, as per SI 3.5 of CC43/2014, CC13/2015, CC26/2016 & CC47/2017 and SI 3.6 of CC24/2018 of Schedule of Tariff of LS consumers, as applicable from time to time.*

*The amount of Rs. 92800/- charged as difference of ACD/ Security is recoverable.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 04.12.2020 i.e. within one month of receipt on 05.11.2020 of the decision dated 28.10.2020 of the CGRF, Ludhiana in Case No. CGL-266 of 2020 dispatched vide Memo No. 3099/CGL-266/2020 dated 29.10.2020. The Appellant submitted copy of receipt No. 151684666 dated 30.11.2020 for ₹ 1,35,700/-. Besides, the Appellant had deposited ₹ 1,35,700/- before filing petition in the Forum. Thus, the Appellant had deposited ₹ 2,71,400/- which was more than the requisite 40% of the disputed amount of ₹ 5,57,443/- (worked out by the Respondent) for filing the Appeal in this Court. Accordingly, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/DS Estate Division (Special), PSPCL, 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. 1165-1167/OEP/A-57/2020 dated 04.12.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 23.12.2020 at 12.00 Noon and an intimation to this effect was sent to both the sides vide letter nos. 1222-23/OEP/A-57/2020 dated 16.12.2020. As scheduled, the hearing was held on 23.12.2020 in this Court, on the said date and time. Arguments of both sides were heard and the order was reserved. Copies of the minutes of the proceedings were sent to the Appellant as well as to the Respondent vide letter numbers 1250-51/OEP/A-57/2020 dated 23.12.2020.

**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 submissions made by the representatives of the Appellant and the Respondent alongwith material brought on record by both the sides.

1. **Submissions of the Appellant**

(a) Submissions made in the Appeal.

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

1. The Appellant was having a Large Supply Category connection, bearing Account No. 3003018201 with sanctioned load of 269.987 kW/CD 290.000 kVA.
2. The reading of the meter was taken every month and the bills as raised by the Respondent from time to time on the basis of measured consumption had been duly paid.
3. AEE/Commercial, DS Estate (Special) Division, Ludhiana, vide supplementary bill/notice dated 30.07.2020, asked the Appellant to deposit an amount of ₹ 6,78,455/- on account of difference of tariff of PIU category and General Category (including difference of security as ₹ 92,800/-) for the period 01.01.2014 to 22.07.2020 as per CC No. 27/2014 on the basis of checking carried out by ASE/ MMTS-5, Ludhiana vide ECR Nos. 41, 42/3206 dated 17.07.2020 and ECR Nos. 8, 9, 10/3254 dated 27.07.2020. As per ECR, total load of 4 Nos. Billet Heaters had been mentioned as 175 kW. It was also mentioned in the notice that as per test report submitted on 13.05.2011, 60 kW Induction load was already mentioned.
4. The Induction/Billet Heaters of 60 kW (30 kWx2) were installed only after requisite approval of competent authority of Respondent on the basis of details of load as given in A & A forms and as per test report submitted in the year 2011. Thereafter, one No. Induction Machine of 35 kW was purchased on 20.07.2018 and another Heater of 35 kW was purchased on 25.04.2019 and were installed accordingly. Thus total load of Induction Machines/Heaters as installed in the premises of the Appellant came to 130 kW (30 kWx2+ 35 kWx2) whereas the total load of Billet Heaters had been wrongly mentioned as 175 kW in the ECR dated 27.07.2020.
5. The connection to the Appellant was released in the year 2011 under General Category (including 60 kW induction load) and billing was done accordingly. After such a long period, charging of difference of tariff of PIU category and General Category for the period 01.01.2014 to 22.07.2020 was unwarranted. Further, the load of Induction Machines/Heaters had been wrongly mentioned as 175 kW and proportionate tariff as applicable on mixed load category was not applied while raising demand of ₹ 6,78,455/- on account of difference of tariff of PIU category and General Category. Therefore, the Appellant approached CGRF, Ludhiana for adjudication of disputed case (of unjustified demand of ₹ 6,78,455/-). Accordingly, the case was registered as Case No. CGL-266/2020. However, the Forum vide its order dated 28.10.2020, did not provide full relief as admissible on merit and provided partial relief. The decision of Forum was wrong & biased. The Appellant was not satisfied with the decision of the Forum. Therefore, the present appeal was filed.
6. It was brought out that the Appellant submitted A & A forms, details of load, test report and other requisite documents in the year 2011. Accordingly, 60 kW load of Induction/Billet Heater in the total load of 269.987 kW/CD 290.000 kVA was approved under General Category. The load was approved as per detail of mixed load submitted in A & A form and test report. The Respondent considered entire sanctioned load/CD as PIU load and tariff had been applied accordingly instead of working out difference of tariff on pro-rata basis in view of Clause SI 3.5 of Schedule of Tariff of LS consumers for the year 2014-15, 2015-16, 2016-17 and 2017-18 reproduced as under: -

**SI 3.5** “For Arc/PIU Industries, where the load is of mixed nature, i.e. in addition to Arc/Power Intensive loads, General Industrial loads are also running, monthly minimum charges shall be determined by computing the contract demand on prorate basis in proportion to such loads duly sanctioned by the load sanctioning authority. In such cases, Power Intensive loads shall comprise of loads as mentioned in para SI 3.2, including auxiliary loads, loads of pollution control machinery, gas plants & corresponding lighting loads and general industrial loads in such cases shall comprise loads of rolling mills and its allied loads, related workshop, general engineering machinery and corresponding lighting load, for the purpose of levy of monthly minimum charges.”

1. The applicability of tariff for mixed load for the FY 2018-19 and 2019-20 onwards was amended as per clause SI 3.6 of Schedule of Tariff. Accordingly, fixed charges and energy charges were required to be levied on pro-rata basis in proportion to demand/load (PIU & General Load) as approved in the mixed load. The relevant clause SI 3.6 of Schedule of Tariff for FY 2018-19 was reproduced as under: -

**SI 3.6** “For Arc/PIU Industries where the load is of mixed nature, i.e. in addition to Arc/ Power Intensive loads, General Industrial loads are also running, Fixed and energy charges shall be determined by computing the Maximum Demand and energy consumption for the billing month on pro-rata basis in proportion to such demands sanctioned by the Distribution Licensee and applicable tariff (fixed charges and energy charges) shall be as specified against the corresponding demand slab (without clubbing of Arc/Power Intensive and general load) under the relevant schedule of tariff.”

1. In the A & A form and test report, Induction/Billet Heater of 60 kW (30 kWx2) were mentioned and accordingly approved in the year 2011 under General Category. Thereafter, one No. Induction Machine of 35 kW was purchased on 20.07.2018 vide Invoice No. TRD-37 dated 20.07.2018 and another Heater of 35 kW was purchased on 25.04.2019 vide Invoice No. 4 dated 25.04.2019 and were installed accordingly. Thus difference of tariff PIU and General Category was required to be worked out keeping in view date of purchase/installation of Induction/Billet Heaters, as per above clauses of Schedule of Tariff for LS category consumers of Mixed load category.
2. The capacity of Billet Heaters as mentioned in the ECR was tentative (name plate was not there) and not exact, as all the invoices were not available at that time. The connection to the Appellant was released in the year 2011 with sanctioned load as 269.987 kW/CD 290.000 kVA under General Category. After the purchase of above Induction Machine/Heater, the load installed in the premises of the Appellant worked out to be 130 kW whereas the total load of Billet Heaters had been wrongly mentioned as 175 kW in the ECR dated 27.07.2020.
3. The Chief Engineer/Commercial, vide Memo No. 193 dated 24.03.2019 in the case of M/s. Satnam Forging, also clarified that where the load was of mixed nature, difference of tariff from 01.01.2014 was chargeable on pro-rata basis but the Respondent had not amended the calculation accordingly.
4. The Respondent, in its reply to the petition, had submitted before the Forum that the Appellant had not got approved mixed load even after issue of CC No. 27/2014. It was brought out here that Hon’ble PSERC, while arriving at conclusion, mentioned that (page 35 of order dated 28.10.2013): -

“The Commission accepts the comments of PSPCL given vide letter No. 6225 dated 05.09.2013 and decides that all LS consumers where the Induction Billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category. This Order of the Commission will be applicable with effect from 01.01.2014. The Respondent shall issue a public notice in the leading newspapers having wide circulation in the State for wide publicity to the Order of the Commission and its impact. The requisite formalities, if any, required for implementing this decision by PSPCL be completed before 01.01.2014.”

1. In view of the above observation/conclusion of PSERC, it was the duty of Respondent to issue Public Notices and get other formalities completed such as revision of A & A forms under PIU/Mixed Category (wherever Billet Heaters/Induction Hardening Machines had been installed before 01.01.2014). These were pre-requisite formalities before charging PIU tariff (for load including Billet Heater load sanctioned under General Category before 01.01.2014). However, this was not done and after such a long period, the Appellant had been burdened with huge amount of ₹ 6,78,455/- as difference of tariff of PIU Category and General Category for the period 01.01.2014 to 22.07.2020 (6 years and 7 months) which was not covered under any instruction/rule of PSPCL. Thus, the Respondent was at fault for not acting as per above direction of PSERC. As such, period of overhauling/charging of difference of tariff may be restricted to 6 months.
2. The capacity of Billet Heaters as mentioned in the ECR was tentative (name plate was not there) and only One No. of invoice dated 25.04.2019 could be traced at that time and accordingly 35 kW load of Billet Heaters was mentioned in the checking report. One No. Induction Machine of 35 kW was purchased on 20.07.2018 but at that time invoice could not be traced, so tentative load was mentioned, whereas this document was presented to the Forum but the Forum did not consider the capacity of 35 kW of Billet Heater as per invoice dated 20.07.2018. The Forum rejected the submission of the Appellant regarding total capacity of Billet Heaters as 130 kW (30 kWx2+35 kWx2) on the ground that:
3. The Invoice dated 25.04.2019 of 35 kW Induction Heater was in the name of M/s. Kanav Agro Industries.
4. As per Invoice the 35 kW Induction Machine was old assembled and Forum mentioned that why someone will purchase the Machine, which was not in working condition.
5. The copy of invoice placed on record was meant for the transporter and not for the consignee.
6. The Appellant never informed the Respondent for additional PIU load as and when Appellant purchased the Billet Heater, as such invoices seems to be afterthought.
7. The Forum did not ask anything during proceedings, so, the position could not be clarified regarding above observations of the Forum. However, it was brought out as under for the kind consideration of this Court.
8. The name of the Company was changed from Sin Bros. Industries to Kanav Agro Industries and duly registered with the Registrar of Companies. Further, change of name had also been effected in the record of the Respondent.
9. As per law, there was no prohibition that Company cannot purchase old/assembled machine. The old machine was purchased @ 25% price of the new machine and after getting it repaired, the same was put to working condition/ installed. Moreover, this was GST purchase through proper invoice. The checking agency had also mentioned the load of 35 kW billet heater as per invoice dated 25.04.2019 in the ECR dated 27.07.2020.
10. The copy of invoice dated 25.04.2019 which could be traced in record immediately at that time was presented to the checking agency. The capacity of 35 kW mentioned by the checking agency was as per bill.
11. The load of induction billet heaters of 60 kW (30 kWx2) was sanctioned under General Category as per A & A forms and as per test report submitted in the year 2011, so, the Appellant installed additional induction/billet heaters within the sanctioned load considering it to be under General Category as similar load was sanctioned under General Category.
12. In view of the observations/conclusion of PSERC as per order dated 28.10.2013, it was the duty of the Respondent to issue Public Notices and get other formalities completed (including revising of A & A forms under PIU/Mixed category, wherever Billet Heaters/ Induction hardening machines had been installed before 01.01.2014). The Appellant had provided valid evidence for purchase of billet heaters. Surprisingly, the Forum had ignored these invoices with wrong presumptions. The Forum totally relied on conjectures and surmises and considered the entire PIU load as having been installed from 01.01.2014 by ignoring clear evidence. The decision of the Forum, based on conjectures and surmises, was wrong, biased and unjustified and thus liable to be set aside.
13. In view of the submissions made, the Appellant prayed that charging of huge amount of ₹ 6,78,455/- as difference of General tariff and PIU tariff for the period 01.01.2014 to 22.07.2020 was wrong and unjustified. Thus it had been prayed to set aside the decision of the Forum and demand so raised by the Respondent may be ordered to be charged on pro-rata basis for 6 months only in the interest of natural justice and fairness.

(b) **Submission in Rejoinder**

The Appellant’s Representative, vide e-mail dated 22.12.2020, submitted the following in its rejoinder (to the written reply of the Respondent) for consideration: -

1. The reply submitted by the Respondent was not convincing, as such, all the submissions as per Appeal may be considered while arriving at the conclusion of the case.
2. At the time of submission of A & A forms and as per test report submitted in the year 2011, induction/billet heaters of 60 kW (30 kWx2) were mentioned and approved accordingly under General Category. Thereafter, one number Induction machine of 35 kW was purchased on 20.07.2018 and another on 25.04.2019 and were installed accordingly. Thus, total load of Induction Machines/ Heaters as installed in the premises of the Appellant worked out to be 130 kW (30 kWx2+35 kWx2) whereas the total load of Billet Heaters had been wrongly mentioned as 175 kW in the ECR dated 27.07.2020. The Appellant had provided evidence for purchase of Billet Heaters, whereas the Respondent was just presuming the date of its installation from 01.01.2014. It was also a point to be considered that if the Appellant required 175 kW heaters, it would have got approved in the year 2011 itself as at that time, load of Billet Heaters was under General Category whereas the Appellant purchased/installed the heaters on different dates as per requirement.
3. The Public Notice in compliance to order dated 28.10.2013 of PSERC was issued by PSPCL on 16.05.2017 (as confirmed by the Respondent) i.e. after about 2 years and 7 months of the said order of PSERC, then, why the Appellant had been penalized from 01.01.2014 by the Respondent. Further, CC No. 27/2014 was never sent to the Appellant.
4. The capacity of billet heaters as mentioned in the ECR was tentative (name plate was not there) and only one number invoice of purchase of 35 kW induction heater could be located at the time of checking and its load was mentioned accordingly whereas load of remaining heaters was tentative due to non availability of invoices. As far as signing of ECR was concerned, it was signed in token of having received the copy of ECR and it did not mean that the load as entered in ECR was admitted as correct, as contended by the Respondent in the reply.
5. The Respondent emailed the calculation sheet on 21.12.2020, as such, the calculation could not be checked. However, it can be got audited by the Respondent as per decision.
6. The officers/officials of the Respondent could not say that they were ignorant about the provisions of CC No. 27/2014 and the Respondent was required to explain as to why, every connection was not checked as prescribed in instructions especially in order to ensure compliance as per CC No. 27/2014. Had it been done, then there was no necessity for presumption/assumption, conjectures and surmises that consumer had installed this much of load on or before 01.01.2014.
7. CE/Commercial, PSPCL, Patiala, vide its Memo No. 861/66/DD/SR-62 dated 09.12.2020 addressed to all Engineers-in-Chief/Chief Engineers/DS of PSPCL, had clarified certain things relating to PIU and had issued instructions/guidelines for regularization of PIU load. It had been also made clear in the said letter that the matter had been considered by higher authorities and it was decided that any General Category LS consumer whose connection was sanctioned/released under General Category and who had installed any PIU a notice be issued to get the PIU load regularized immediately without any further delay. Thus PSPCL had given opportunity to consumers to get the PIU load regularized without any penalty and without charging any difference of tariff from 01.01.2014 i.e. date of issue of CC No. 27/2014. The case of the Appellant was still pending with this Court and may be considered to provide relief in view of ibid letter of the CE/Commercial.
8. It was prayed that charging of huge amount of ₹ 6,78,455/- as difference of General tariff and PIU tariff for the period 01.01.2014 to 22.07.2020 was wrong and unjustified. This Court was requested to consider providing relief in view of Memo dated 09.12.2020 issued by office of CE/Commercial.

**(c)** **Submission during Hearing**

During hearing on 23.12.2020, the Appellant’s Representative reiterated the submissions made in the Appeal as well as in the rejoinder. The Appellant’s Representative, on being asked, during hearing, admitted that approval of the Chief Electrical Inspector for installation of 3rd & 4th Billet Heater was not taken by the Appellant. However, he prayed to allow the charging of difference of Tariff between PIU and General Category Tariff on pro-rata basis w.e.f. 01.01.2014 by treating date of installation of 3rd & 4th Billet Heater as 20.07.2018 and 25.04.2019 respectively.

1. **Submissions of the Respondent**

**(a) Submissions in written reply**

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

1. The connection of the Appellant was running in LS category under General Category. This connection was released vide SCO No. W11-LS/11/84716/0706 dated 09.07.2011 effected on 13.07.2011 by extension of load of 179.94 kW in Account No. MS 02/1792 having load as 89.993 kW. As a result, total load became 269.987 kW with CD 290 kVA. The consumer submitted its test report on 13.05.2011 for the total load as 269.987 kW. In this test report, 60 kW (2\*30 kW) induction load had been filled. The billing of this consumer was being done in General Category.
2. The said connection was checked by the ASE/ MMTS-5 vide ECR No. 21/3206 dated 13.07.2020. As per this ECR, 4 number billet heaters having load as 195 kW (30, 40, 45 and 80 kW) were found installed. Thereafter, the connection was checked vide ECR No. 41, 42/3206 dated 17.07.2020 by ASE/MMTS-3 & 5, Ludhiana. As per this ECR, 4 numbers billet heaters/induction heaters of total 240 kW (30, 50, 60 and 100 kW) were found installed in the connected load.
3. The total connected load was not checked on 17.07.2020 by MMTS and the connection was again checked vide ECR No. 8, 9, 10/3254 dated 27.07.2020 by the ASE/Enforcement & MMTS-5 and Dy. Chief Engineer/DS (West) Circle, Ludhiana. As per ECR No. 8, 9, 10/3254 dated 27.07.2020, the total connected load was found 350.832 kW including 175 kW of 4 number (30, 50, 60 and 35 kW) induction heaters.
4. As per office order no. 1688 dated 30.07.2020, the competent authority decided to charge an amount of ₹ 6,78,455/- on account of difference of General & PIU tariff from 01.01.2014 to 22.07.2020 instead of treating this case under UUE.

An amount of ₹ 5,85,655/- + ₹ 92,800/- difference of ACD totaling ₹ 6,78,455/- had been charged to the consumer vide Memo No. 612 dated 30.07.2020 as difference of General & PIU tariff for the period 01.01.2014 to 22.07.2020 as per CC No. 27/2014, PIU tariff was to be charged from 01.01.2014.

1. The Appellant had filed its case in office of the CGRF, Ludhiana by depositing 20% of disputed amount. The Forum decided the case on 28.10.2020. The Appellant was not satisfied with the said decision and filed the present Appeal against this decision in this Court.
2. This connection was checked as per ECR No. 8, 9, 10/3254 dated 27.07.2020 whereby, the total connected load was found 350.832 kW including 175 kW of 4 numbers (30, 50, 60 and 35) induction heaters. The consumer had signed the ECR dated 27.07.2020 by admitting the load checked and entered in it as correct.
3. After issue of Commercial Circular No. 27/2014 dated 25.09.2014, the PSPCL had issued a Public Notice in the newspapers dated 16.05.2017 for the registration of PIU load under PIU category and had also uploaded the said CC No. 27/2014 on the PSPCL website for wide publication for the information of the consumers. In this regard, Memo No. 718 dated 30.10.2017 was issued by the Chief Engineer/ Commercial as clarification was sought in CGRF case filed by M/s. Brij Mohan Syal. But, the Appellant never intimated about installation of its PIU load to PSPCL in 2018 & 2019 and now till date about the installation of new Billet Heaters as stated in the Appeal and had not filed A & A forms for any type of extension in load since 13.07.2011 (date of connection with sanctioned load 269.987 kW). The consumer had not converted his load into PIU after the issue of CC No. 27/2014 and Public Notice dated: 16.05.2017.
4. The Forum correctly decided the case and gave detailed observations in its decision.
5. The consumer had not raised any objection while signing the ECRs dated 27.07.2020. The contention of the consumer to adopt 130 kW PIU load instead of 175 kW was not maintainable.
6. In view of the submissions made, it was prayed that the Appeal may be dismissed.

**(b) Additional submission after written reply**

In response to the observations made vide letter no. 1232-33/OEP/A-57/2020 dated 21.12.2020 on the written reply to the Appeal, the Respondent stated, vide its Memo No. 2698 dated 21.12.2020, as under:

1. As per revised calculation pursuant to decision of the Forum, a sum of ₹ 5,57,443/- instead of ₹ 6,78,455/- was found recoverable from the Appellant.
2. The case of the Appellant for charging difference of General and PIU tariff instead of UUE, as per ECR dated 27.07.2020, was considered vide office order No. 1688 dated 30.07.2020.
3. ASE/ MMTS-5, Ludhiana, vide ECR No. 24/3206 dated 13.07.2020, had checked the premises of the Appellant upon receipt of message from AEE/Tech. Unit-2 regarding damage of its CT/PT and found that 4 No. Billet Heaters of 195 kW (30, 40, 45 and 80 kW) capacity were installed.
4. Thereafter, the premises of the Appellant was again checked jointly on 17.07.2020 and found that 4 No. Induction Heater of 240 kW (30, 50, 60 and 100 kW) were there and case under UUE was made as the Appellant was being billed under General Category. The case was discussed by Dy. CE/ DS West Circle, Ludhiana being the Assessing Authority who found that as per Note 3 of ECR No. 41, 42/3206 dated 17.07.2020, load of 4 No. billet heaters has been mentioned as 240 kW. Out of that, load of 60 kW billet heater had already been sanctioned and remaining load of 180 kW billet/induction heater was found in excess, which was beyond the sanctioned load of 269.987 kW of the Appellant. During this checking, it was not clear whether excess load of 180 kW of the Induction Heater was covered under sanctioned load or not. The total connected load of the Appellant was not checked and ASE/MMTS-5, Ludhiana was informed accordingly vide Memo No. 1555 dated 20.07.2020 by ASE/ DS Estate Division (Special), Ludhiana.
5. Again on 27.07.2020, the premises of the Appellant was checked in the presence of Dy. CE/DS West Circle, Ludhiana, ASE/ Enforcement-3, Ludhiana, ASE/MMTS-5, Ludhiana and ASE/DS Estate Division (Special), Ludhiana and total connected load of the Appellant was found to be 350.832 kW which included 175 kW PIU load and 175.832 kW General load.
6. Since the Appellant had mentioned its load as 60 kW in the test report dated 13.05.2011, it was decided by the Respondent to charge the Appellant for difference of General and PIU tariff as per CC No. 27/2014. The Appellant had shown its induction load as per test report since 2011 whereas, the DS Estate Division, instead of considering it in PIU Category, charged the same as under General industry. Thus, it was clear that it was a case of Unauthorized Extension and therefore, the Appellant was liable to be charged for difference of General and PIU tariff from 01.01.2014. Therefore, a sum of ₹ 5,85,655/- had been charged to the Appellant as difference of tariff from 01.01.2014 to the date of bill dated 22.07.2020. In addition to this, a sum of ₹ 92,800/- on account of difference of Security (Consumption) had been charged to the Appellant. Accordingly, a sum of ₹ 6,78,455/- was found recoverable from the Appellant.
7. The said recoverable amount of ₹ 6,78,455/- had now been revised to ₹ 5,57,443/- as per decision dated 28.10.2020 of the Forum.

**(c) Submission during Hearing**

During hearing on 23.12.2020, the Respondent reiterated the submissions made in the written reply to the Appeal and contested the submissions made by the Appellant in its Appeal/Rejoinder and also orally with the prayer to dismiss the Appeal.

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

The issue requiring adjudication is the legitimacy of recovery of difference of energy charges between PIU and General Tariff from 01.01.2014 to 22.07.2020 considering PIU load as 175 kW as detected during checking dated 27.07.2020 and Security (Consumption) as per applicable regulations.

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

1. As per material on record, the connection of the Appellant was running in LS category. The load of the connection was extended, vide SCO No. W11-LS/11/84716/0706 dated 09.07.2011 effected on 13.07.2011, from 89.993 kW to 269.987 kW with CD 290 kVA. Before extension of load, the consumer submitted its test report on 13.05.2011 for the total load 269.987 kW. In this test report, 60 kW (2x30 kW) induction load was filled. The billing of this consumer was being done in General Category. The connection of the Appellant was checked by Addl.S.E/Sr.Xen, EA & MMTS-3, Ludhiana, vide ECR No. 21/3206 dated 13.07.2020 and it was reported that:

“SDO/u-2 ਟੈਲੀਫੋਨ ਸ਼ੰਦੇਸ (CT/PT damage ਅਨੁਸਾਰ) ਮੀਟਰ ਚੈੱਕ ਕੀਤਾ । ਮੌਕੇ ਤੇ ਸਪਲਾਈ ਆਫ/Meter Battery Low ਹੋਣ ਕਾਰਣ DDL ਨਹੀ ਹੋ ਸਕਿਆ । ਧਮਾਕੇ ਨਾਲ CT/PT ਚੈਬਰ ਖੁਲਾ ਪਾਇਆ ਗਿਆ । Y-Ph PT damage ਪਾਇਆ ਗਿਆ ।R/B Phase PT ਉਪਰ ਵੀ flash ਪਾਈ ਗਈ । CT/PT damage ਹੋ ਗਿਆ ਹੈ । CT/PT ਬਦਲੀ ਕਰਕੇ ਨਵਾਂ ਲਗਾਇਆ ਜਾਵੇ । Modem ਵੀਸੜ ਚੁਕਾ ਹੈ । Modem ਨਵਾਂ ਲਗਾਇਆ ਜਾਵੇ । Meter ਦੀ MTC ਤੇ ਵੀ flash ਪਾਈ ਗਈ । Meter ਵੀ ਨਵਾਂ ਲਗਾਇਆ ਜਾਵੇ । ਖਪਤਕਾਰ ਦੇ ਅਹਾਤੇ ਵਿੱਚ 4 ਨੰ. Induction Heater ਲੱਗੇ ਹਨ (ਖਪਤਕਾਰ ਅਨੁਸਾਰ 30 kW, 40 kW, 45kW, 80 kW). ਡਿਟੇਲ ਰਿਪੋਟ ਬਾਅਦ ਵਿੱਚ ਤਿਆਰ ਕੀਤੀ ਜਾਵੇਗੀ ।”

The connection of the Appellant was again checked by Addl.S.E/Sr.Xen, E.A & MMTS-3, Ludhiana, vide ECR No. 41/3206 dated 17.07.2020 whereby it was reported that:

“ECR NO. 21/3206/13/7/20 ਦੀ ਲਗਾਤਾਰਤਾ ਵਿੱਚ ਕੁਨੈਕਸ਼ਨ ਖਪਤਕਾਰ ਵਿਕਰਮ ਸਿੰਗਲਾ ਰਾਮਪਾਲ ਇਲੈਕਟ੍ਰੀਸ਼ੀਅਨ, ਵਧੀਕ ਨਿਗਰਾਨ ਇੰਜ. ਇਨਫੋ.-5, ਸੀਨੀਅਰ ਕਾਰਜਕਾਰੀ ਇੰਜੀ. ਇਨਫੋ.-3, ਲੁਧਿ., SDO ਅਸਟੇਟ u-2 ਦੀ ਹਾਜ਼ਰੀ ਵਿੱਚ ਚੈੱਕ ਕੀਤਾ ਗਿਆ । ਖਪਤਕਾਰ ਦੇ ਅਹਾਤੇ ਵਿੱਚ 4 NO.Billet Heater (Induction Heater) ਲੱਗੇ ਹਨ, ਉਹਨਾ ਉੱਪਰ ਕੋਈ ਵੀ Rating/Data Name ਪਲੇਟ ਨਹੀਂ ਲੱਗੀ ਹੋਈ ਹੈ । ਖਪਤਕਾਰ ਵੱਲੋ ਮਾਰਕਰ ਨਾਲ ਉੱਪਰ ਲਿਖੀ ਕਪੈਸਟੀ/Rating ਅਨੁਸਾਰ 4 NO. ਹੀਟਰਾਂ ਦੀ Rating ਹੇਠ ਲਿਖੇ ਅਨੁਸਾਰ ਹੈ ।

1. Induction Heater-1-30 kW
2. Induction Heater-2-50 kW (Inducto Heat Make)
3. Induction Heater-3-60 kW (Electro Mech. Pvt. Ltd., Mandi Gobindgarh)
4. Induction Heater-4-100 kW.”

Another checking was done by Addl.S.E/Sr.Xen, E.A & MMTS-5, Ludhiana, vide ECR No. 42/3206 dated 17.07.2020 reporting as under:

“ਮੋਕੇ ਤੇ ਵੇਖਿਆ ਗਿਆ ਇਹ Billet Heaters ਦੀ ਵਰਤੋਂ Job ਨੂੰ Red Hot ਕਰਨ ਲਈ ਵਰਤੋਂ ਕੀਤੀ ਜਾ ਰਹੀ ਹੈ। ਦਫਤਰੀ ਰਿਕਾਰਡ ਅਨੁਸਾਰ ਖਪਤਕਾਰ ਕੇਸ ਵਿੱਚ ਖਪਤਕਾਰ ਵੱਲੋਂ ਪੇਸ਼ ਕੀਤੀ ਗਈ ਟੈਸਟ ਰਿਪੋਰਟ ਵਿੱਚ 2 NO. Induction Heater, 30 kW each=60 kW ਦਾ ਜਿਕਰ ਕੀਤਾ ਹੋਇਆ ਹੈ । ਦਫਤਰੀ ਰਿਕਾਰਡ ਅਨੁਸਾਰ ਖਪਤਕਾਰ ਦੀ ਬਿਲਿੰਗ ਜਨਰਲ ਕੈਟਾਗਿਰੀ ਅਧੀਨ ਹੋ ਰਹੀ ਹੈ । ਹੁਣ ਚੈਕਿੰਗ ਦੌਰਾਨ ਕੁੱਲ 4 NO. Billet Heater/Induction Heater ਦਾ ਕੁੱਲ ਲੋਡ 240 kW ਬਣਦਾ ਹੈ । ਖਪਤਕਾਰ ਦਾ ਮੰਨਜੂਰ ਲੋਡ 269.987 kW/290 kVA ਹੈ । PSPCL ਦੀਆਂ ਤਾਜਾ ਹਦਾਇਤਾਂ ਅਨੁਸਾਰ ਬਣਦੀ ਕਾਰਵਾਈ ਕੀਤੀ ਜਾਵੇ ਜੀ ।”

Subsequently, the connection of the Appellant was checked vide ECR No. 8, 9, 10/3254 dated 27.07.2020 wherein it was reported, inter-alia, that:

ਵਧੀਕ ਨਿਗਰਾਨ ਇੰਜ. ਸੰਚਾਲਣ ਅਸਟੇਟ ਮੰਡਲ ਖਾਸ ਲੁਧਿਆਣਾ ਦਾ ਮੀਮੋ ਨੰ. 1555 ਮਿਤੀ 20-7-20 ਦੇ ਸਬੰਧ ਵਿੱਚ ਖਪਤਕਾਰ ਦੇ ਅਹਾਤੇ ਵਿੱਚ ਲੋਡ ਚੈੱਕ ਕਰਨ ਲਈ ਵਿਜਿਟ ਕੀਤੀ । ਮੌਕੇ ਤੇ ਉੱਪ ਮੁੱਖ ਇੰਜਨੀਅਰ ਵੈਸਟ ਸਰਕਲ ਲੁਧਿਆਣਾ, ਵਧੀਕ ਨਿਗਰਾਨ ਇੰਜ. ਅਸਟੇਟ ਮੰਡਲ ਲੁਧਿਆਣਾ, ਐਸ.ਡੀ. ਓ ਅਸਟੇਟ-II, ਏਰੀਆ ਇੰਚਾਰਜ ਜੇ.ਈ ਭਜਨ ਸਿੰਘ. ਵਧੀਕ ਨਿਗ. ਇੰਜ. ਇਨਫੋਰਸਮੈਟ-5. ਅਤੇ ਸੀਨੀ. ਕਾ. ਰਾ. ਇੰਜ. ਇਨਫੋਰਸਮੈਟ-3 ਹਾਜ਼ਰ ਸਨ । ਮੌਕੇ ਤੇ ਖਪਤਕਾਰ ਸ੍ਰੀ ਵਿਕਰਮ ਸਿੰਗਲਾ ਅਤੇ ਸ੍ਰੀ ਨਵੀਨ ਸਿੰਗਲਾ ਵੀ ਹਾਜ਼ਰ ਸਨ । ਉਪਰੋਕਤ ਸਾਰਿਆ ਦੀ ਹਾਜਰੀ ਵਿੱਚ ਖਪਤਕਾਰ ਦੇ ਅਹਾਤੇ ਵਿੱਚ ਲੱਗਿਆ ਲੋਡ ਚੈੱਕ ਕੀਤਾ । ਜਿਸ ਦੀ ਡਿਟੇਲ ਹੇਠ ਲਿਖੇ ਅਨੁਸਾਰ ਹੈ :

1st floor

 I =143.232 kW

 II =17.0 kW

 III=15.6 kW

 IV Induction Heater Load =175 kW

 Total load =350.832 kW

Subsequently, an office order no. 1688 dated 30.07.2020 was issued with the approval of the competent authority (ASE/DS Estate Division, (Special), Ludhiana) and decided to charge an amount of ₹ 6,78,455/- on account of difference of energy charges for General & PIU tariff from 01.01.2014 to 22.07.2020 instead of treating this case under UUE. The above amount included difference of PIU & General Tariff ₹ 5,85,655/- and ₹ 92,800/- difference of Security (Consumption) and was charged to the consumer vide Memo No. 612 dated 30.07.2020 as per CC No. 27/2014 requiring charging of PIU tariff from 01.01.2014.The Appellant did not agree with the charged amount and filed its case in office of the CGRF, Ludhiana by depositing 20% of disputed amount. The Forum decided the case on 28.10.2020. The Appellant was not satisfied with the said decision and filed the present Appeal against the above decision in this Court.

I find that the Respondent, on being enquired vide letter no. 1230-31/OEP/A-57/2020 dated 18.12.2020, intimated vide letter no. 2698 dated 21.12.2020 that the amount recoverable after the decision of the Forum was worked out as ₹ 5,57,443/-.

1. The Appellant’s Representative contended that the Forum, in its decision, rejected the submissions of the Appellant regarding total capacity of Billet Heaters as 130 kW (30 kWx2 + 35 kWx2) on grounds specified in its decision. But, the Forum did not ask anything from the Appellant during proceedings. As such, the position could not be clarified in the proceedings before the Forum. The Appellant’s Representative added that the name of the Company was changed from Sin Bros. Industries to Kanav Agro Industries and was duly registered with the Registrar of Companies. Further, the change of name had also been effected in the record of the Respondent. As per law, there was no prohibition that the Company cannot purchase old/assembled machine. The old machine was purchased @ 25% price of the new machine and after getting it repaired, the same was put to working condition and was installed. Moreover, this was GST purchase through proper invoice. The checking agency had also mentioned the load of 35 kW billet heater as per invoice dated 25.04.2019 in the ECR dated 27.07.2020.The copy of invoice dated 25.04.2019 which could not be traced in record immediately at that time was presented to the checking agency. The capacity of 35 kW mentioned by the checking agency was as per bill. The load of induction billet heaters of 60 kW (30 kWx2) was sanctioned under General Category as per A & A forms and as per test report submitted in the year 2011. So, the Appellant installed additional induction/billet heaters within the sanctioned load considering it to be under General Category as similar load was sanctioned under General Category.

It is observed that the Appellant’s Representative had admitted that the Appellant had installed two Billet Heaters (35 kW) on its own considering this load as under General category. But he had no convincing explanation/reasoning to contest the findings of checking done vide ECR No. 8, 9 and 10 of book no. 3254 dated 27.07.2020 in the presence of Appellant’s Representative. On the basis of results of the said checking dated 27.07.2020, total load of the Appellant’s connection was found to be 350.832 kW which was more than the load of 269.987 kW sanctioned under General category vide SCO dated 09.07.2011 effected on 13.07.2011. Thus, it is very much clear that the submissions of the Appellant’s Representative are at variance with the factual position/evidence on record.

1. The disputed amount was charged to the Appellant, vide order no. 1688 dated 30.07.2020 of the competent authority of the Respondent (ASE/DS Estate Division, PSPCL, Ludhiana) in terms of provisions contained in Commercial Circular No. 27/2014 issued by the office of the Chief Engineer/Commercial, PSPCL, Patiala vide Memo No. 509/513/DD/SR-62 dated 29.05.2014 which reads as under:

*“In view of PSERC order dated 28/10/13 in petition no. 3 of 2012, all LS consumers where the induction Billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category w.e.f. 1/1/2014. This circular supercedes commercial circular no. 28/2012 dated 6/9/12.*

*Meticulous compliance of the above instructions may please be ensured.”*

In this connection, it is relevant to peruse the ibid order dated 28.10.2013 of PSERC in Petition No. 3 of 2012 in which it was held that:

*“Accordingly, the Order of the Commission as per para 21 (v) above, shall supercede Commercial Circular No.28/2012 with effect from 01.01.2014.”*

I find that the aforesaid order dated 28.10.2013 was passed by the PSERC after due consideration and after giving due opportunity to the stakeholders (by issuing Public Notice in the leading newspapers and inviting objections/suggestions) of making submissions orally and also in writing.

I also find that the Forum, in its decision, rightly observed as under:

“It is observed that SI 3.5 of Schedule of Tariff for the year 2014-15 (CC 43/2014), 2015-16 (CC 13/2015), 2016-17 (CC 26/2016), 2017-18 (CC 47/2017), is same in every year. SI 3.6 was introduced first time, when two part tariff was introduced vide CC 24/2018, w.e.f. 01.04.2018. After going through SI 3.5, it is observed that only monthly minimum charges shall be determined by computing the contract demand on pro-rate basis in proportion to such loads duly sanctioned by the load sanctioning authority. No-where, it is mention that energy charges shall also be determined by computing the same on pro-rata basis. It is only in the FY 2018-19, when two part tariff was implemented and SI 3.6 was introduced when Fixed and Energy Charges were to be determined by computing the Maximum Demand and energy consumption for the billing month on pro-rata basis in proportion to such demands sanctioned by the distribution licensee. Therefore, energy charges for difference of PIU & General Tariff are required to be charged from 01.01.2014 as per SI 3.5 of CC 43/2014, CC 13/2015, CC 26/2016 & CC 47/2017 and SI 3.6 of CC 24/2018.”

I find that the Appellant had been given relief by charging it on pro-rata basis for PIU Tariff as per CC No. 24/2018 as a result of which the amount recoverable for ₹ 5,85,655/- was reduced to ₹ 5,57,443/- (as intimated by the Respondent vide letter no. 612 dated 30.07.2020) after the decision of the Forum. The amount of Security (Consumption) of ₹ 92,800/- mentioned in the said letter needs to be reviewed with reference to consumption as per regulation 16 of Supply Code-2014.

All the Tariff orders containing the Schedule of Tariff for different categories of consumers were circulated and uploaded on the website of PSERC/PSPCL and were given wide publicity in the leading newspapers. Billet Heaters are Power Intensive as per Schedule of Tariff and the same is in the knowledge for all LS category consumers.

It is observed that Appellant’s Representative had misinterpreted the provision of the Schedule of Tariff to claim relief which is not permissible thereunder.

It is also observed that the Appellant was a Large Supply category consumer and cannot feign ignorance of rules and regulations framed and circulated by the competent authority of the distribution licensee. The Appellant defaulted by acting unauthorisedly/suo-motu by not intimating and also not getting its PIU category load of 115 kW (175 kW-60 kW mentioned in test report) sanctioned from the licensee. Instead of finding lacunae in the functioning of the licensee, the Appellant ought to be sincere in discharging its own duties and responsibilities.

1. The contention of the Appellant’s Representative in the rejoinder and during hearing on 23.12.2020 that the Appellant had signed the checking report dated 27.07.2020 as a token of acknowledgement of the report and had not signed in support of verification of facts of checking report is not at all convincing. At the time of signing the checking report dated 27.07.2020, the Appellant or its representative was expected to peruse the contents of the said checking and was also supposed to ascertain the implications of the load checked at site. Signing the checking report unconditionally/without reservation and that too by an officer of the rank of Director of the unit amounted to acceptance/admission of report of checking.
2. The Appellant’s Representative argued that the Public Notice, in compliance to directions given by PSERC on 28.10.2013 (Petition No. 3 of 2012) requiring charging of Tariff for PIU category load from 01.01.2014 was given at a very belated stage on 16.05.2017. Accordingly, charging of difference of Tariff between General and PIU category to the Appellant be restricted to six months.

It is observed that the said plea of the Appellant’s Representative is not justified and not supported by any reference to rules/regulations or instructions of PSPCL. Moreover, the Appellant cannot absolve itself of non-intimation of use/installation of 115 kW (175 kW-60 kW) after submission of test report showing 2 Billet Heaters (with 30 kW load each) and not seeking approval of the licensee. Any consumer including a LS category consumer has no locus standi or the legal right to install and use any category of load (on its own) other than that got sanctioned from the licensee.

1. In its rejoinder to the written reply of the Respondent and also during hearing, the Appellant’s Representative submitted a copy of CE/Commercial’s Memo No. 861/66/DD/SR dated 09.12.2020 to all E.I.Cs/C.Es, DS, PSPCL containing guidelines for regularisation of PIU load. The Appellant’s Representative prayed to consider the present case in view of the above Memo and provide relief to the Appellant.

I have gone through the instructions contained in the aforesaid Memo dated 09.12.2020 issued by the office of the C.E/Commercial. Its concluding para reads as under:

“Accordingly, it is once again requested to scrutinize the existing LS connections/A & A forms of LS connections and those connections whose process/technology seems to be similar to PIU, petition may be filed before PSERC by the concerned office under intimation to this office for their inclusion into the list of PIU industries. Further, this aspect be also taken into consideration at the time of release of new LS connections.

Meticulous compliance of the above instructions may please be ensured.”

I am of the view that the above instructions are not relevant in the present context and cannot be made the basis for claiming relief of not charging for the difference between PIU and General category Tariff from 01.01.2014 onwards as per CC No. 27/2014.

Further, the Appellant had not taken approval of Chief Electrical Inspector, Punjab at the time of installation of third and fourth Billet Heaters which is a violation of Safety Regulations.

From the above analysis, it is concluded that the Appellant failed to disprove the legitimacy of detection of 175 kW PIU load during checking dated 27.07.2020. Rather, the Appellant’s Representative signed the checking report dated 27.07.2020 and virtually admitted the load checked by the concerned officers of PSPCL. The Appellant failed to provide any valid evidence so as to claim relief from charging of energy charges for the difference between PIU and General Tariff as per applicable regulations from 01.01.2014 to 22.07.2020.The detection of total load of 350.832 kW (including 175 kW under PIU category) was in excess of the load 269.987 kW under General category sanctioned vide SCO dated 09.07.2011 effected on 13.07.2011. Accordingly, the plea of the Appellant that it had been burdened by charging the difference of energy charges from 01.01.2014 to 22.07.2020 is not sustainable in the eyes of law in view of its having installed load unauthorisedly/without approval of the licensee in excess of that sanctioned. Besides, the Appellant had not taken approval of Chief Electrical Inspector, Punjab at the time of installation of third and fourth

Billet Heaters which is a violation of Safety Regulations. The Appellant has already been given relief by charging it on pro-rata basis for PIU load from 01.01.2018 onwards. However, Security (Consumption) should be reviewed as per Regulation 16 of Supply Code-2014 if not done earlier.

**6. Decision**

As a sequel of above discussions, the Appeal of the Appellant against order dated 28.10.2020 of the CGRF, Ludhiana in Case No. CGL-266 of 2020 is not sustainable in the eyes of law, hence, dismissed. However, Security (Consumption) shall be reviewed as per Regulation 16 of Supply Code-2014 and appropriate action, if required thereafter be taken.

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

(GURINDER JIT SINGH)

 December 31, 2020 Lokpal (Ombudsman)

 S.A.S. Nagar (Mohali) Electricity, Punjab.