

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 04 of 2019
& I.A No.04 of 2019
Date of Hearing: 17.07.2019
Date of Order: 30.07.2019

In the matter of : Petition for seeking approval of Hon'ble Commission for waiving off interest on arrears, on account of voltage surcharge amount recoverable as per Hon'ble Supreme Court judgements dated 01.03.2017 & 19.06.2017, being non-tariff income.

In the matter of: Punjab State Power Corporation Limited Patiala.

...Petitioner

Present : Ms. Kusumjit Sidhu, Chairperson
Shri S.S.Sarna, Member
Ms. Anjuli Chandra, Member

For Shreyans Industries Ltd: Sh. Tajender Joshi, Advocate
Sh. Anil Kumar, ED, CEO

PSPCL: Sh. Pardeep Gupta, CE/Commercial, PSPCL
Sh. Bhupinder Sharma, CE/ARR & TR
Sh. J.I.S Grewal, Dy.CE/Sales-2
Sh. VPS Kailay, SE/TR-2
Sh. Mukesh Kumar, Addl/SE/ TR-5
Sh. Ranjit Singh, Sr.Xen/Sales- 3

Order

PSPCL has filed this petition for seeking approval of the Commission for waiving off interest on the amount of voltage surcharge recoverable as per the judgment dated 01.03.2017 and 19.06.2017 passed by the Hon'ble Supreme Court of India by relaxing the provisions of clause 6 (5) (ii) of Consumer Compliant Handling Procedure (CCHP) for charging interest on the arrears pertaining to the previous period.

PSPCL also prayed to be allowed to recover pending principal amount on account of voltage surcharge within three months, through monthly installments and to allow 5% rebate to the consumers who will deposit the full amount within a period of 15 days from the date of issue of revised notice.

2. PSPCL submitted that the Hon'ble Supreme Court of India vide its judgments dated 19.06.2017 & 01.03.2017 respectively decided that arrears be recovered on account of voltage surcharge @ 10% from LS consumers with contract demand exceeding 2500 kVA and up to 4000 kVA catered at 11 kV and voltage surcharge @ 17.5% from all arc furnace consumers and other consumers having demand above 4000 KVA catered at 11 kV. Accordingly, PSPCL issued instructions vide memo dated 26.07.2017. Thereafter, Induction Furnace Association Ludhiana made a representation to the Hon'ble Minister of Power Punjab and requested to direct PSPCL not to charge interest for the duration of the case and secondly to allow affected units to deposit the pending demand in installments without interest. Induction Furnace Association has made another representation, submitting therein that PSPCL raised the demand for voltage surcharge from 2004 with interest w.e.f 2011, which is very high and accordingly requested to re-look into the issue of the demand raised by PSPCL. As per the decision of BOD in its 69th meeting held on 02.08.2018, instructions were issued to field officers vide memo no. 1812/16 dated 21.08.2018 regarding recovery of arrears. The relevant portion of the instructions, is reproduced as follows:

“1. The Revised Bill Statement (RBS) for recovery of voltage surcharge be made as per Orders of the Hon'ble Supreme Court of India dated

19.06.2017 and 01.03.2017, i.e., from 01.01.2004 to 09.09.2011 (the date of decision of the Hon'ble High Court) in case of Arc/PIU industry and w.e.f. 01.01.2005 to 09.09.2011 in case of general industry and any issue related to voltage surcharge in case of other consumers, after 09.09.2011, shall be dealt as per the then prevailing instructions of PSPCL.

2. Simple interest at SBI rate of 8.70% as per prevailing instructions of PSPCL, be recovered on the voltage surcharge amount so work out as per above resolution from 09.09.2011 (date of decision of the Hon'ble High Court) till 31.08.2018

3. 15% of total recoverable amount so worked out as per Sr. No. 1 and 2 above, be got deposited as first installment from consumers and balance amount be recovered in 12 monthly installments with interest @ the rate of 8.70% on reducing balance basis....”

2.1 Subsequently on another representation dated 01.10.2018 submitted by Induction Furnace Association, PSPCL issued instructions to field officers vide memo no. 1994/98 dated 15.10.2018 in continuation of the ibid memo no. 1812/16 dated 21.08.2018, which are reproduced as under:

“ that instead of recovering 15% of total recoverable amount indicate at Sr. No. 3 of the above referred memo, only 10% of the recoverable voltage surcharge as per Sr. No. 1 of above referred memo be got deposited in first instance within 15 days from the issue of this letter, without prejudice to the outcome of the final decision of the competent authority. Field offices will provide list of consumers who deposit the arrears as above.”

Thereafter, BOD in its 72nd meeting decided as follows and the relevant portion is reproduced hereunder:

“ Director Commercial apprised the Board that there are 17 consumers who have requested to consider their case as per OTS allowed in 2011/2013 vide which the interest was waived off and the basic amount was discounted to 40%/ 45% /50% for different accounts and have further requested to allow interest free installments. Thereafter, considering the representation of the consumers and details given in the agenda, the board decided subject to the approval of PSERC, to waive off interest but full basic amount shall have to be deposited within 3 months and 5% rebate shall be allowed to those depositing the full amount within 15 days and passed the following resolution:

2. Resolve that letter bearing memo no. 1994/98 dated 15.10.2018 reproduced at Sr. No. 15 of this agenda vide a which instructions were issued to recover only 10% of the recoverable principal voltage surcharge amount as per RBS prepared upto 09.09.2011, alongwith decision to keep the filing of petition with PSERC pending be and is hereby rectified....”

2.2 PSPCL submitted that the arrears of voltage surcharge pertain to the previous years therefore, the present case is covered under Regulation 5 (1) (iii) (b) of CCHP which provides for cases other than the disputed current electricity bill amount. According to PSPCL, in such cases as per Regulation 6 (5) (ii) of CCHP interest payable on recoverable amount shall be at SBI base rate prevalent on 1st April of the relevant Financial Year Plus 2% w.e.f. 06.01.2012.

3. Vide its Order dated 10.05.2019, the Commission observed that the provision quoted by PSPCL in this petition is applicable to the cases decided by Dispute Settlement Committee or Consumer Grievance Redressal Forum. Accordingly, PSPCL was directed to quote the relevant provision of law and regulations under which the petition has been filed. In compliance thereof, PSPCL vide memo no. 5218 dated 04.06.2019 has submitted that the present petition has been filed for the waiver off interest on arrears on account of voltage surcharge which is aimed at utilizing surplus power, prevent shutdown of industrial units and for recovery of outstanding dues, defaulting amount and encouraging new investment; which is in line with consumer friendly industrial policy of State Government of Punjab. PSPCL submitted that by easing their financial burden they aim to help industry to overcome the recession, create employment opportunities for youth, boost the economy of Punjab and generate revenue. Further it was stated that the receipt of defaulting amount from consumers under the scheme has mitigated financial crunch being faced by PSPCL to some extent in addition to reduction in cases under litigation with PSPCL.

3.1 Meanwhile an IA No. 04 of 2019 has been filed by M/s. Shreyan Industries Limited to implead them as a necessary party in the present petition. PSPCL filed its reply to the said I.A. vide memo no. 5384-85 dated 15.07.2019 and submitted that the decision of the BOD was effective prospectively and did not apply retrospectively. As such, the benefit of interest waiver was applicable to the consumers who were yet to make the payment of voltage surcharge and not to the other consumers who had already made the payments including M/s Shreyans Industry Ltd. Further, PSPCL submitted that the Commission

is vested with the inherent power under Regulation 69, 71, 72 and 85 of PSERC (Conduct of Business) Regulations, 2005 to deal with such cases which are not specifically covered under Regulation(s) and other law.

Commission's Findings and Order:

The parties have been heard on 17.07.2019 and after considering the averments made in the petition, reply and all the documents available on record it is observed that PSPCL in its reply dated 04.06.2019 failed to quote the relevant rules/regulations or provisions of law under which the petition has been filed. Regulation 10(1) of the PSERC (Conduct of Business) Regulations, 2005 provides that all petitions shall contain a clear and concise statement of the facts with material particulars, ***the applicable provisions of law***, the relief sought and the basis for such relief. PSPCL failed to quote the relevant provisions of law. After considering the submissions made in the petition, documents available on record and the arguments made during hearing, the Commission found that PSPCL failed to quote any provision of law under which the petition has been filed, as required under the PSERC (Conduct of Business) Regulations.

In its reply dated 15.07.2019 on the I.A filed by Shreyans Industries, PSPCL requested the Commission to invoke the inherent powers vested with the Commission under Regulations 69 (3), 71, 72 and 85 of the PSERC (Conduct of Business) Regulations to deal with the case. The inherent powers of the Commission under Regulation 69 (3) of the PSERC (Conduct of Business) Regulations, 2005 provide that there is no express or implied bar on the Commission to deal with

any matter or exercise any power under the Act for which no Regulation have been framed. PSPCL has cited Regulation 69 (3) to make their claim and request the Commission invoke its inherent powers to give approval. However, from a perusal of the said Regulation it transpires that the inherent power of the Commission can be invoked only if there is a statutory stipulation provided in the Electricity Act, 2003 and on the same the corresponding Regulation is silent which is not so in the instant case. Therefore, in the present case, the claim of PSPCL does not falls within the ambit of the said Regulation 69 (3) of the PSERC (Conduct of Business) Regulations, 2005. Further, the powers for removal of difficulties under regulation 71 may be invoked where any difficulty arises in giving effect to any of the provisions of Regulations. No such difficulty in implementation of any provision of the Regulations has been brought out by PSPCL. Regulation 72 empowers the Commission to dispense with the requirement of the regulations for reasons to be recorded however, there is no mention of any such Regulation in the petition that needs to be dispensed with. PSPCL incorrectly mentioned the Regulation 85 of PSERC (Conduct of Business) Regulations for making their case as, there is no such provision available in PSERC (Conduct of Business) Regulations. Thus there are no grounds for the Commission to invoke any provision of the said Regulations to accept the prayer of the petitioner. The petition is thus not fit to be admitted and is disposed of accordingly.

Since the Commission decides not to admit the petition filed by PSPCL so the I.A filed by Shreyans Industries for arraying it

as a party in the instant petition becomes infructuous and is also disposed of accordingly.

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 30.07.2019

