

**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. 12/2024

**Date of Registration : 13.05.2024
Date of Hearing : 06.06.2024, 12.06.2024,
20.06.2024
Date of Order : 20.06.2024**

Before:

**Er. Anjuli Chandra,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

M/s. National Printing Press,
EF-280, Mandi Road,
Jalandhar-144001.

Contract Account Number: 3002537085 (NRS)

...Appellant

Versus

Addl. Superintending Engineer,
DS East Division, PSPCL,
Jalandhar.

...Respondent

Present For:

Appellant: 1. Sh. Sandeep Bhalla,
2. Sh. Rajesh Jain,
Appellant's Representative.

Respondent : 1. Er. Jaspal Singh,
Addl. Superintending Engineer
DS East Division, PSPCL, Jalandhar.
2. Er. Gopal Krishan,
Asstt. Engineer.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 04.04.2024 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-043/2024, deciding that:

“Notice no. 176 dated 02.02.2024 vide which the amount of Rs. 2851349/- has been charged to the petitioner is quashed. The account of the petitioner be overhauled from the 23.06.2015 when new meter was installed upto 12.01.2024, by taking the MF 2 instead of 1.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 13.05.2024 i.e. within the period of thirty days from the date of receipt of the decision dated 04.04.2024 by the Appellant on 19.04.2024 in Case No. CF-043/2024 of the CCGRF, Ludhiana. The Appellant deposited the requisite 40% of the disputed amount as required. Therefore, the Appeal was registered on 13.05.2024 and copy of the same was sent to the Addl. Superintending Engineer/ DS East Division, PSPCL, Jalandhar for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 270-272/OEP/A-12/2024 dated 13.05.2024.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 06.06.2024 and intimation to this effect was sent to both the parties vide letter nos. 296-97/OEP/A-12/2024 dated 24.05.2024. As scheduled, the hearing was held in this Court on 06.06.2024 and arguments of both the parties were heard. The Appellant's Representative (AR) had submitted Rejoinder vide Ref. No. E-6/24 dated 05.06.2024, a copy of which was provided to the Respondent. The Respondent was asked to submit his reply to this Rejoinder atleast 2 days before the next date of hearing with a copy of the same to the Appellant. The next date of hearing in this case was fixed for 12.06.2024 and intimation to this effect was sent to both the parties alongwith the copies of proceedings dated 06.06.2024 vide letter nos. 313-14/OEP/A-12/2024 dated 06.06.2024.

As scheduled, the hearing was held in this Court on 12.06.2024. The Respondent submitted the Reply to the Rejoinder of the Appellant vide Memo No. 4257 dated 11.06.2024, a copy of which was provided to the Appellant's Representative. The Appellant's Representative requested for some time to submit his response. This request was allowed & he was directed to file his response well before the next date of hearing with a copy of the same to the Respondent. The next

date of hearing in this case was fixed for 20.06.2024 & intimation to this effect was sent to both the parties alongwith the copies of proceedings dated 12.06.2024 vide letter nos. 318-19/OEP/A-10/2024 dated 12.06.2024. As scheduled, the hearing was held in this Court on 20.06.2024. Arguments of both the parties were heard.

4. Submissions made by the Appellant and the Respondent

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

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having a NRS Category Connection, bearing Account No. 3002537085 (Old J61GC610259N) with Sanctioned Load of 89.780 kW/ 99.760 kVA in the name of M/s. National Printing Press under DS East Division, PSPCL, Jalandhar.

- (ii) The said connection was released in 2013 against A&A form submitted vide Application dated 07.08.2013 after clubbing three old connections bearing A/c No. GC 21/242, CM-61/0043M and CM-61/0041F.
- (iii) As per the bills issued by the Respondent, the Connected Load was 60 kW, Meter No. 1123785 with MF = 1 existed on the NRS Connection of the Appellant till Dec, 2013 (A/c No. J61GC610259N) in the name of M/s. National Printing Press, Jalandhar. The connected load was got extended to 89.780 kW with effect from January, 2014 and Meter with Sr. No. 353564 with MF-1 was installed on the connection of the Appellant w.e.f. Jan, 2014.
- (iv) The bills issued upto the period 08.04.2015 to 08.05.2015, the Meter number remained 353564, with MF = 1, with connected load of 89.780 kW with CT Ratio as well as Meter Ratio remained blank on the bills issued with 'O' Code to authenticate MF of 1.0.
- (v) The bills issued to the Appellant w.e.f. 08.05.2015, the A/c No. changed from J61GC610259N to A/c No. 3002537085 but Multiplying Factor remained 1.0 and CT Ratio and Meter Ratio continued to remain blank on the bills. The continuity of old & new Reading showed that there was no change in Meter

with change of A/c No. from J61GC610259N to A/c No. 3002537085.

- (vi) The bills issued to the Appellant with A/c No. 3002537085 w.e.f. the billing period of 08.06.2015 to 10.07.2015 shows replacement of old meter of Sr. No. 353564 with new meter again with MF=1 for billing. The make of replaced meter, SJO No. for change of meter, C.T. Ratio, Meter Ratio was not shown on the bill (Period 08.06.2015 to 10.07.2015). Further, the above crucial details of CT Ratio, Meter Ratio continued to be missing in the bills issued for the period 10.07.2015 to 08.08.2015. Therefore, without MCO No., SJO No., the date of Replacement of meter during 08.06.2015 to 10.07.2015 could neither be ascertained/ verified nor the CT Ratio & Meter Ratios were available to authenticate any change in the MF from 1.0 to MF = 2.0 with new meter PBB 40876-PSPCL which might have happened from 08.06.2015 to 10.07.2015.
- (vii) The bill for the period 08.08.2015 to 15.10.2015 showed SJO date of 29.09.2015 ZDIS, but continuity of reading showed no change in Meter (Sr. No. PBB40876-PSPCL) on 29.09.2015 and MF continued to be 1.0. Further the bills issued for the period 15.10.2015 to 14.12.2015 showed another SJO date of 03.12.2015, ZMSC but meter reading continuity showed no

change in Meter (PBB 40876-PSPCL). The MF continued to be 1.0 but Meter No., CT Ratio, Meter Ratio still continued to be missing on the bills to authenticate any change in MF from 1.0 to 2.0 even with SJO dated 03.12.2015 ZMSC and earlier SJO dated 29.09.2015 ZDIS.

(viii) The Meter Sr. No. PBB 40876-PSPCL, SJO No. 03.12.2015 ZMSC, MF = 1 Missing CT Ratio, Missing Meter Ratio but with continuity of readings and OK status of Meter continued in all the bills issued for the billing period of 14.12.2015 to 11.01.2016 to billing period of 13.11.2019 to 13.12.2019.

(ix) Further, the bills issued for the period 13.12.2019 to 13.01.2020 and onwards on SAP System showed the same SJO dated 03.12.2015 ZMSC, Meter Serial No. remained missing, Meter make appears as Secure, MF continued to be 1.0, Meter status OK. The MCO No., CT Ratio, Meter Ratio continued to be missing on the bills. The continuity of kWh, kVAh readings showed no change in Meter, though Sr. No. PBB 40876-PSPCL was missing on the bills and make Secure appeared in the bills issued on SAP System from 13.12.2019 onwards.

(x) The bill from 14.10.2020 to 12.11.2020 with MF = 1, Last SJO dated 03.12.2015 ZMSC, missing Meter Serial number,

missing CT Ratio, missing Meter Ratio of Secure make meter was issued with 'P' Code. Further, the consolidated bills for the billing from 14.10.2020 to 14.12.2020 and further upto 12.01.2024 were issued with MF = 1 and Meter No. PBB 40876 of Secure Make 'O' Status of Meter without CT make, without CT Ratio, without Meter Ratio, without last SJO date and MCO No. & date, were issued. This showed the crucial parameters of CT make, CT Ratio and Meter Ratio continued to be missing on all the bills issued upto 12.01.2024. All the bills issued upto 12.01.2021 showed no change in last SJO date of 03.12.2015 ZMSC.

- (xi) The connection of the Appellant was checked by the ASE/ Enf. cum MMTS-1, Jalandhar vide ECR No. 31/1460 dated 24.01.2024 and observed that secure make meter on the connection bearing Sr. No. PBB 40876-PSPCL with Meter Ratio of 100/5A and CT of Ratio 200/5A was found installed on the connection. The CT make and Sr. no was not shown on the ECR and it was directed to the Respondent to correct MF, from 1.0 to 2.0 for the whole period the bills were issued with wrong MF of 1.0.
- (xii) The Appellant was served with a demand of ₹ 28,51,349/- vide Memo No. 176 dated 02.02.2024 to be paid within 15

days. The demand was raised without any Calculation Sheet and without any Section of the Electricity Act, 2003 or Regulation of Supply Code, 2014. Therefore, the impugned demand raised was in violation of CC 53/2013, CC-59/2014 and CC 30/2015 issued by the Licensee on the directions of Hon'ble Punjab and Haryana High Court in CWP 10644 of 2010. Therefore, the impugned demand raised vide Memo No. 176 dated 02.02.2024 was challenged before the Hon'ble CCGRF, Ludhiana vide Case No. CF-043/2024, admitted on 23.02.2024 after depositing 20% of the impugned demand i.e. depositing ₹ 5,70,270/- on 13.02.2024.

(xiii) It was pleaded before the Corporate Forum that neither the demand of the previous period was raised earlier nor the relevant documents of SJO No. & Date, Meter No. with date of MCO, CT make, CT Ratio, Meter Ratio etc. have been linked with impugned demand nor the same has been raised continuously in previous bills issued with 'O' code and payments made by the Appellant regularly thereof. The impugned demand from 10.07.2015 to 12.01.2024 was pleaded to be beyond the period of limitation as specified in Section 56 (2) of the Electricity Act, 2003 and limitation period specified in the Limitation Act.

(xiv) That despite the Respondent failed to supply copy of earlier ECR 34/2302 dated 09.03.2016 to the Corporate Forum wherein meter capacity of 3x100/5 and CT Ratio of 3x200/5 was recorded in the ECR to take further action. The Respondent produced wrong Store requisition of meter installed in 2015 as S.R. No. 45/5502 dated 13.01.2015 in the name of Smt. Monika Verma of 'MS' connection (whereas the connection of the Appellant was 'NRS' connection) and further the Respondent failed to act on ECR 34/2302 dated 09.03.2016 to rectify error of MF in 2016 and even failed to supply the copy of MCO of 2015 to the Corporate Forum. The Respondent stated clearly before the Forum in the proceedings dated 21.03.2024 that no other relevant document was available with the Respondent. The Corporate Forum decided the case without the nominated representatives of the Consumers i.e. without the complete and proper constitution/quorum of the Corporate Forum. The order passed by the Corporate Forum on 04.04.2024 in Case No. 043/2024, was received by the Appellant on 19.04.2024 and the Appellant had informed the Respondent vide letter dated 26.04.2024 that the Appellant was going to file Appeal before this Court under

Regulation 2.37 of the PSERC Forum & Ombudsman, Regulation, 2021 to seek justice.

- (xv) The Appellant has deposited another 20% of the impugned demand of ₹ 28,51,349/- i.e. ₹ 5,70,270/- in addition to 20% of the impugned demand of ₹ 28,51,349/- i.e. ₹ 5,70,270/- deposited on 13.02.2024 to comply with the Forum & Ombudsman Regulation, 2021 by depositing a total of 40% of the impugned demand to file the instant Appeal.
- (xvi) In continuation to the long billing history given in the aforesaid paras of the Appeal, the Respondent issued the bill for the period 12.01.2024 to 14.01.2024, with MF = 2, C.T. Ratio 200/5, Meter Ratio 100/5, Meter Sr. No. PBB 40876-PSPCL but with new SJO dated 07.06.2022 ZMSC, CT/PT 123-PSPCL and bill for the period 14.01.2024 to 12.02.2024 with MF = 2, CTR = 200/5, MR = 100/5, Meter Sr. No. PBB 40876-PSPCL and yet another SJO dated 31.01.2024 ZDIN.
- (xvii) That lot of unconnected dots of the case decided by the Corporate Forum remained unconnected and the case was decided without complete constitution/ quorum of the Corporate Forum in defiance to Regulation of the Hon'ble PSERC regarding consumer Representative Members as mandatory in the Corporate Forum. Further, the Respondent

failed miserably to take action on ECR dated 09.03.2016 for eight long years till 2024 compels the Appellant to seek justice from this Court.

(xviii) It was pertinent to mention that the Corporate Forum had quashed the Notice No. 176 dated 02.02.2024 of the Respondent against which the impugned demand of ₹ 28,51,349/- was raised for the period 10.07.2015 to 12.01.2024 and ordered to overhaul the Accounts from 23.06.2015 to 12.01.2024. But no further notice of overhauled amount has been received till date despite a period of 21 days of compliance as mentioned in Para (ii) of the order of the Corporate Forum had elapsed. The order of the Corporate Forum further raised the eyebrows of one and all to increase the period of demand. Can the Corporate Forum increase the demand which the Appellant pleaded for quashing? Also ECR 31/1460 was dated 24.01.2024 but the billing started charging @ MF = 2 w.e.f. 12.01.2024 which implied that (DS) Organization came to know about their mistake to ignore ECR date 09.03.2024 issued prior to ECR 31/1460 dated 24.01.2024.

(xix) The Corporate Forum had relied its decision on Regulation 21.5.1 framed by the Hon'ble PSERC in exercise of powers

conferred under Section 181 of the Electricity Act, 2003. The footnote of Regulation 21.5.1 states as under:

“Where the accuracy of the meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”

(xx) The Section 56 (2) of the Electricity Act, 2003 states as under:

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

(xxi) The date from which the sum became first due in the instant case needs adjudication. The application of footnote of Regulation 21.5.1 leads to the mistake continued from date of installation of meter PBB 40876-PSPCL in 2015, to make the date 23.06.2015 when sum on account of wrong MF became due/ due first. Or

With the Application of Section 56(2) of the Act the date 09.03.2016 (ECR No. 34/2302) when mistake of MF noted first time to make the sum due with MF = 2. As the date when sum becomes first due/ due for recovery. Or

The date later on 24.01.2024 vide ECR 31/1460. As date when it became first due on the basis of raising demand for payment for the first time from date of mistake i.e. 23.06.2015 by ignoring earlier ECR dated 09.03.2016 to exonerate the erring Officers/ officials. Or

The date when sum becomes first due was at the mercy of the Respondent to decide when to raise the demand of previous period, however long it may be and beyond the scope of any limitation period or any Act. Or

Can the liability when it became first due be left on the whims & fancies of the Respondent under Section 56 (2) of the Electricity Act, 2003?

(xxii) The Regulation 21.5.1 limits the period of overhauling of inaccurate meters to maximum of six months preceding the inaccuracy testing. Also Regulation 21.5.2 for Defective (other than inaccurate)/ Dead Stop Burnt/ Stolen meters also limits overhauling to maximum six months. Even the Section 126 and Section 135 of UUE & theft also had limitation period for penalties too. The Limitation Act, 1963 has limitation period of three years specified in the schedules of the Act, 1963. Therefore, limitation period of Section 56 (2) of

Electricity Act was of paramount importance and cannot be ignored under any Regulation.

- (xxiii) The Regulation 21.3.5 of Supply Code, 2014 regarding periodical testing of L.T 3 Phase meters had Schedule of checking/ testing at least once in 3 years. Even the Respondent had not bothered to make compliance of Regulation 21.3.5 to test the meter/ metering equipment in last 10 to 11 years from 2013 onwards. Even the ECR No. 34/2302 dated 09.03.2016 clearly points CTR 200/5 and MTR 100/5 had neither been acted upon nor the same had been put before the Corporate Forum for reasons better known to the Respondent. Such actions cannot overshadow the Section 56(2) of Electricity Act, 2003.
- (xxiv) The Consumer had a Printing Press where the Electricity charges constitute the major head of expenditure to decide product cost in the competitive era and such overhauling for previous nine years for no fault of the Appellant at all, eats into the vitals of basic finances of the business of the Appellant on account of series of serious mistakes of the Respondent whose burden was thrown on the Appellant with the illegal and unjustified order of the Corporate Forum vide

order dated 04.04.2024 in Case No. CF-043/2024 decided without application of mind on the following issues.

- (xxv) The Section 56 (2) of the Electricity Act, 2003 has been either ignored by the Forum or considered as even subordinate to the footnote of Regulation 21.5.1 of Supply Code, 2014 despite the ECR 34/2302 dated 09.03.2016 clearly recording the Meter Ratio 3x100/5A and CT of ratio 3x200/5A and the Corporate Forum paying no heed to ECR 34/2302 dated 09.03.2016 and not even holding the Respondent responsible justified only for recovery upto 08.03.2018. Further, the recovery has not been shown continuously as recoverable w.e.f. 08.03.2018 onwards, so under Section 56(2) of Electricity Act, 2003 the footnote of Regulation 21.5.1 of Supply Code, 2014 could not be made to rule over the Act, 2003 with ECR 31/1460 dated 24.01.2024 as the first date when sum became due with MF = 2 instead of MF = 1, to exonerate the erring officers/ officials. Had there been no ECR dated 09.03.2016 and the Respondent had observed the mistake for the first time in Jan, 2024 then the Respondent could have recovered by relying on the footnote of the Regulation 21.5.1 but with ECR dated 09.03.2016, the footnote of Regulation 21.5.1 on Supply Code, 2014 cannot

ride over the Section 56(2) of the Electricity Act, 2003 with new ECR in 2024 or any other date after 08.03.2018.

(xxvi) The irresponsible working of the Respondent in installing meter no. PBB-40876 drawn for MS connection of Smt. Monika Verma vide SR 45/5502 dated 13.01.2015 on the connection of the Appellant and CTs drawn (3989, 3985, 3981) vide same SR 45/5502 dated 13.01.2015 going on the MS connection of Smt. Monika Verma assumed magnifications in recording in SAP system further ignoring periodical checking/ testing. As per schedules of testing specified in Regulation 21.3.5 added fuel to the continuity of the mistake.

(xxvii) Under which Section of the Electricity Act, 2003 or under which Regulation of Supply Code, 2014 the upper limits of recovery period goes on to get automatic extensions after expiry of two years period from the date when such sum became first due under Section 56(2) of the Act, 2003 have not been mentioned in the decision of the Corporate Forum dated 04.04.2024.

(xxviii) To accept the Appeal against order dated 04.04.2024 of the Corporate Forum (Received on 19.04.2024 through Speed Post) in Case No. CF-043 of 2024 and pass suitable order after

considering the grounds of Appeal and prayer made in the Appeal:

- (a) To consider the Appeal because the order dated 04.04.2024 of the Corporate Forum has been passed without consumer representatives to complete the quorum of the Forum.
- (b) To consider the Appeal under Section 56(2) of the Electricity Act, 2003 on the basis of details of ECR 34/2302 dated 09.03.2016 given in the Appeal.
- (c) The Corporate Forum has relied on the footnote of Regulation 21.5.1 of Supply Code, 2014 without considering the ECR 34/2302 dated 09.03.2016, when the wrong MF was observed earlier to make the date 09.03.2016 as the date when the sum on account of wrong MF became first due from date of mistake i.e. 10.07.2015 or 23.06.2015 to 09.03.2016 and the same becoming time barred in 08.03.2018 under Section 56(2) of the Electricity Act 2003, on account of not serving a Notice of Demand upto 08.03.2018. The Notice vide Memo No. 176 dated 02.02.2024 or Demand from 23.06.2015/ 10.07.2015 to 12.01.2024/ 24.01.2024 on the basis of ECR 31/1460 dated 24.01.2024 was null & void because after ECR 34/2302 dated 09.03.2016 the later ECR dated 24.01.2024 cannot prove that demand was due first on 24.01.2024 or

12.012024 under Section 56 (2) of the Act. Also the Demand was not continuously shown for recovery after 08.03.2018.

- (d) The Regulations framed under the Electricity Act, 2003 are the means and mode to implement the Act, but cannot rule over the Act.
- (e) The memo No. 176 dated 02.02.2024 has already been quashed by the Corporate Forum and no order has been received till date from the Respondent with revised overhauling of accounts.
- (f) The S.R. of the licensee shows meter drawn in the name of Smt. Monika Verma of MS connection was installed on the connection of the Appellant, but CTs against same S.R. No. drawn & installed on the MS Connection of Smt. Monika Verma.
- (g) Testing Report of CTs installed on the Connection was not available to authenticate C.T. Ratio of the connection of the Appellant.
- (h) Billing continued to be issued with missing data of CTs and Meter particulars.
- (i) Distribution Organization failed to act on ECR 34/2302 dated 09.03.2016 and despite asking copy of the ECR, the DS

organization was reluctant to supply the copy to the Corporate Forum.

(j) To order to quash the Demand as the same was time barred under Section 56(2) of Electricity Act, 2003.

(xxix) The Appellant prays with folded hands to quash the demand raised by applying footnote of Regulation 21.5.1 from date of installation of meter to 24.01.2024 because the ECR 34/2302 dated 09.03.2016 clearly proves that Demand became first due on 09.03.2016 and not on 24.01.2024 and the failure to raise demand from date of installation of Meter to 09.03.2016 became time barred on 08.03.2018 after two years under Section 56(2) of Electricity Act, 2003. The sum was also not shown continuously for recovery in bills from 08.03.2018 onwards rules over all Regulations framed under the Electricity Act, 2003 and no Section of the Electricity Act makes the date 24.01.2024 of ECR 31/1460 as the date when recovery became first due to make Regulation 21.5.1 to Rule over Section 56(2) of the Electricity Act, 2003.

(xxx) This Court was prayed to order the refund of the 40% advance paid to file the Appeal with interest after adjustment/ deductions as per the order of this Court against this Appeal. To pass any other order as deemed fit.

(b) Submissions made in Rejoinder

The Appellant submitted the following Rejoinder vide Ref. No. E-6/24 dated 05.06.2024 during hearing on 06.06.2024 for consideration of this Court:-

- (i) It was a matter of record. The correction in old a/c no. J61GC610259 instead of J61GC210259 mentioned in Appeal due to typographical mistake was accepted for the current a/c no. 3002537085.
- (ii) The Respondent may verify the correctness of the old a/c no. J61GC610259 or a/c no. J61GC210259 for current a/c no. 3002537085.
- (iii) The Appellant was agreed on the basis of SJO 153/60632 supplied now that meter no. 1123785 with MF=1 on the NRS connection of National Printing a/c no. J61GC610259 got replaced with meter no. 353564 (HPL make) of Ratio 3x200/5 and CT Sr. Nos. 2848, 2857, 2854 of 200/5 to yield MF=1 on extension of load from 60 kW to 89.780 kW in November/December 2013.
- (iv) The Appellant was agreed by the Respondent that bills issued from 08.04.2015 to 08.05.2015 with Meter Sr. No. 353564 were issued with MF=1 with extended load of 89.780 kW. Though the Meter Ratio 3x200/5 and CTR 200/5 was not

shown on the bills for the period 08.04.2015 to 08.05.2015, but the same gets verified to authenticate MF=1.

- (v) The Appellant was agreed to by the Respondent that the change in a/c no. 3002537085 from old a/c no. J61GC610259 N (or J61GC210259 to be verified by the Respondent on the basis of records) w.e.f 08.05.2015 due to introduction of SAP System. As no SJO etc. had been produced to effect the change in MTR or CTR so, it proves that MF remained 1.0 even with introduction of SAP system from 08.05.2015 and change of a/c no. 3002537085.
- (vi) The ECR 2/2278 dated 16.01.2015 quoted by the Respondent shows Meter No. 353564 of ratio of 3x200/5 and the same CTs of ratio 200/5 proves MF=1. But Respondent had failed to produce SJO No. for change of meter, C.T. ratio or Meter ratio to authenticate any change of MF on account of change of meter from 353564 to PBB40876-PSPCL during 08.06.2015 to 10.07.2015 and reason for its change. The MCO No. SJO No. and SR No. had not been produced by the Respondent to join the Dots and for further comments/analysis of the case.
- (vii) The Appellant was not agreed as neither copy of SJO dated 29.09.2015 ZDIS nor SJO dated 03.12.2015 ZMSC had been

produced by the Respondent. Moreover, report of Addl. SE/ Enforcement-1 stated in para-7 of the reply where meter PBB40876-PSPCL of capacity 3x100/5 was installed on 23.06.2015 and CTs of Sr. No. 2448, 2857 and 2854 continued on the connection of the Appellant had not been appended with the reply which proves that complete details of change of MF from 1.0 to 2.0 were available with the Respondent/ Enforcement but they failed to take action. The missing of crucial information needs to implicate enforcement wing too as Respondent in the case so that facts may come to the limelight as to why complete details were not linked in the case for which the Appellant must not suffer. **This proves beyond doubt that this date may be 09.03.2016, when the amount became 'first due' on account of wrong MF (if any) and turning a blind eye to the facts cannot postpone the date when it became 'first due' with the support of 'foot note' of Regulation 21.5.1 to ride over the Section 56 (2) of the Electricity Act 2003 which clearly specifies" the word 'first due' rather than 'due'. The carelessness of the Respondent cannot be thrown on the Appellant by ignoring Section 56(2) of the Act. The very purpose of the word 'first due' gets forfeited by the delayed action for eight years and**

dumps the carelessness of action of the Respondent to overshadow the Section 56(2) of the Act-2003. Can the Respondent still ignore the ECR 31/1460 dated 24.01.2024 as done earlier by the Respondent to ignore the ECR dated 09.03.2016 to further postpone the date to some other date after another few years. If not, then how and why earlier report of Enforcement of 09.03.2016 had been managed to postpone the so called 'first due' to 2024? If yes, is it a the whims and fancies of the Respondent to ignore Section 56(2) of the Act by saying/pretending that earlier or current Report was missing in their record so that they were fully powered with footnote of Regulation 21.5.1 to ignore Section 56(2) of the Act-2003 and to escape from the serious responsibility of not taking action earlier and inflicting gloss to the Licensee as well as to the Appellant.

- (viii) The Appellant was not agreed the incorrect updation in SAP system from 23.06.2015 to 12.01.2024 or 24.01.2024 was on account of not taking action on report of Enforcement dated 09.03.2016 which showed meter of ratio 3x100/5 and CTs of ratio 200/5. **Which Section of the Act or Regulation of Supply Code, 2014 empowers the Respondent to ignore the reports of Enforcement for taking action and empowering**

Respondent to make 'first due' at its own whims and fancies to take action to put the Licensee as well as the Appellant to suffer for inaction of the Respondent? Despite the columns of Meter Ratio, CT Ratio available on the bills, these continued to remain blank on the bills for years for reasons better known to the Respondent.

- (ix) It was denied as explained in para 8 above.
- (x) It was denied as explained in para 8 and 9 above. The Respondent had failed to supply information on missing crucial parameters leading to MF.
- (xi) Agreed to the extent that Enforcement Organization checked the premises on 24.01.2024 to record MF=2 instead of 1.0. But billing with MF=2 started from 12.01.2024, which was an eye opener to the facts that some earlier reports were being concealed by the Respondent so that these reports may not prove that the amount became 'first due' earlier. The action of the Respondent in not producing the crucial reports to even CCGRF, Ludhiana cannot alter the date of amount becoming 'first due' to overshadow the Section 56(2) of the Act-2003 and to escape the responsibility of not taking action for eight long years.

- (xii) It was denied because the Regulation 21.5 had only been relied by the Respondent and the Respondent had ignored Section 56(2) of the Electricity Act-2003 with the inaction on ECR dated 09.03.2016, **which cannot deny the date of 'first due' as 09.03.2016.**
- (xiii) It was denied as explained in para 12 above.
- (xiv) **It was denied to the extent that missing record of ECR dated 09.03.2016 cannot make a 'foot note' of a Regulation of Supply Code-2014 to ride and lead the Section 56(2) of the Act.** The SR 45/5502 dated 13.01.2015 of material for MS connection of Monika Verma did not prove that meter PBB40876PSPCL was installed against the Appellant on 23.06.2015 and CTs of the SR got installed on MS connection of Monika Verma. If at all the mistake occurred the same was noticed by Enforcement on 09.03.2016 and the reasons for inaction on Enforcement report dated 09.03.2016 remains unexplained but date of 'first due' as 09.03.2016 cannot be altered even if the record was stated/pretended to be missing in the office of the Respondent, but available in the office of the Enforcement.

- (xv) It was a matter of record for deposit of 40% of the assessed amount to file an Appeal before the Ombudsman, Electricity, Punjab, Mohali.
- (xvi) It was denied to the extent that copies of SJOs asked had not been supplied. Moreover, if it came to notice on 24.01.2024 through ECR No. 31/1460 dated 24.01.2024 that MF was 2 instead of 1.0, then how the bill for the period 12.01.2024 to 14.01.2024 had been issued with MF=2. This proves that the copy of ECR dated 09.03.2016 ignored by the Respondent earlier was probably available in their record and information regarding the ECR dated 09.03.2016 shown as missing was wrong and misconceived to conceal the inaction of the Respondent for long eight years.
- (xvii) The Respondent had admitted that action would have been taken earlier on 09.03.2016 had the so called missing ECR dated 09.03.2016 would have been available in their office. **This proves that the date of amount becoming 'first due' was 09.03.2016 and not the later date at the whims and fancies of the Respondent when the demand was raised in 2024.**
- (xviii) **It was totally denied. The Ombudsman, Electricity, Punjab may look into the illogical reply of the Respondent to**

justify its wrong action and reversing the decision of ‘Quashing of the order of the CCGRF, Ludhiana of its own with illogical arguments. If the Respondent was right in its illegal arguments, the same may had been put forward to the CCGRF, Ludhiana to amend the order accordingly.

- (xix) The copy of Notice No. 811 dated 24.04.2024 for ₹ 22,81,079/- needs to be red with order of CCGRF, Ludhiana whether it was a fresh order superseding the quashed order of CCGRF, Ludhiana or the order by subtracting the amount already deposited from the amount of the quashed order to keep the quashed order alive and applicable.
- (xx) The Regulation 21.5 nowhere states the date when it became ‘first due’ with earlier ECR dated 09.03.2016 and ignoring to take action on the same. The Regulation 21.5 was applicable when earlier reports of ‘first due’ were not ignored/concealed by the Respondent. The Regulation 21.5 cannot force to ignore the Section 56(2) of the Act. Had there been no ECR between 2015 to 2024 to report MF of 2, the Regulation 21.5 could have been applied in the spirit of foot note of Regulation 21.5.1, but ECR dated 09.03.2016 and inaction on it for eight years beings Section 56(2) of the Act in current situation and

differentiates the case from simple MF case. The inaction on account of so called missing report dated 09.03.2016 makes SKY as the limit to change the Prevention Periods of inaction and eats into the Vitals of Section 56(2) of the Act, 2003. The Section 56(2) of the Act, 2003 puts as rider on the period for which the previous payments can be claimed/raised as the period cannot be infinite or unlimited unless these were continuously shown for claim.

- (xxi) It was wrong and denied being misleading, misconceived, irrational, illogical and illegal to say the Law of Limitation applies from the date of amount/bills were raised because such perception may make the **recoverable period of two years to start from the date when amount was raised and not from the day when it became 'first due' by noticing the mistake i.e. at the whims and fancies of the and Claimant. The case needs adjudication on the issue when it become 'first due' because the word 'first' had been mentioned in Section 56(2) which emphasizes the difference between 'first due' and 'due'. The term 'due' and 'first due' have different significance and meaning. Undoubtedly, the amount becomes 'due' when the bill was raised, but 'first due'**

used in the Section 56(2) was a stage definitely prior to the 'due' stage.

(xxii) The note of Regulation 21.5 is neither challenged nor it can rule over Section 56(2) of the Act-2003 in the instant case where the Respondent failed to act on 09.03.2016 when it became 'first due' by simply taking shelter under the following:-

- a. Report dated 09.03.2016 was not available in their office, but available with Enforcement (implication of Enforcement office as Respondent may bring the facts to limelight).
- b. Respondent was free to create 'first due' by ignoring any number of earlier reports of 'first due' by not taking action and then saying/pretending that the record was missing in its office.
- c. Respondent probably thinks that Regulations were above the Act and with foot note of a Regulation they can rule over Section 56(2) of the Act in the current situation of inaction on the earlier report dated 09.03.2016.

Therefore, the Limitation Period of 2 years of Section 56(2) of the Act-2003 cannot be ignored in the current

situation by ignoring the earlier report dated 09.03.2016. The missing on earlier report or inaction on the earlier report cannot make Section 56(2) of the Act, 2003 as redundant/ inactive in the current situation.

(xxiii) It was denied let the Enforcement Agency may also be implicated as Respondent to logically conclude whether they were responsible for inaction or the Respondent was responsible for not taking action earlier. But definitely the Appellant was not responsible.

(xxiv) It was denied as the units consumed should not have been billed too late by ignoring earlier reports making units consume as 'first due' at that stage. These became 'first due' on 09.03.2016 and to keep the spirit of Section 56 (2) intact the same cannot be claimed after such a long time at any later stage by neutralizing the Section 56(2) of the Act-2003 regarding when it became 'first due'. There was neither any Section of the Act, 2003 nor any Regulation which may allow a footnote to pull the Act. Rather the Act pulls all Regulations and footnotes of Regulations. The Regulations were only means and mode of applications of Act and not Vice-Versa.

(xxv) The Appellant prays before the Ombudsman, Electricity, Punjab that the ibid case of Multiplying Factor, Enforcement

Report 34/2302 dated 09.03.2016 and inaction on the same by the Respondent purely on the flimsy grounds that the same was not available in their office may not be allowed to put the financial burden on the Appellant by ignoring Section 56(2) of the Act. Therefore, the due justice be given to the Appellant under Section 56(2) of the Act, 2003, please. The Ombudsman, Electricity, Punjab may pass any order as deemed fit please.

(c) Submissions made in 2nd Rejoinder

The Appellant submitted the following parawise response to the Reply of the Respondent to Rejoinder of Appellant for consideration of this Court:-

- (i) The matter of record was agreed by the Respondent.
- (ii) The matter of record was agreed by the Respondent.
- (iii) The matter of record was agreed by the Respondent.
- (iv) The matter of record was agreed by the Respondent.
- (v) The matter of record was agreed by the Respondent.
- (vi) The Respondent had admitted the **'DEFICIENCY IN SERVICE'** that in SAP system only Meter Serial No. got updated from 353564 to PBB40876. The Respondent had failed to produce Compliance copy of MCO to join the dots to

a logical conclusion of submission of basic data for updating of change of meter and MF. This proves **'DEFICIENCY IN SERVICE' of the Respondent.**

- (vii) It was denied. The reply of the Respondent was misleading and not based on facts. Neither the desired documents were supplied nor the report of Addl. SE/ Enforcement-2 referred by the Respondent in its reply (Memo No. 3808 dated 22.05.2024) had been supplied to the CCGRF/Ombudsman, Electricity, Punjab. Moreover, the Appellant had requested once again to implicate the Enforcement Wing too so that facts may come to the limelight regarding the crucial information referred to distribution on 09.03.2016 by Enforcement wing to pin point the responsibility of the Respondent or enforcement in the **'DEFICIENCY IN SERVICE'** of not acting to raise the demand of the factual **ESCAPED LIABILITY** on 09.03.2016. By not producing the crucial report dated 09.03.2016 (when the mistake was detected for the first time) on the plea that the same was not available with the Respondent cannot empower/ enable the Respondent to mislead the **DEFICIENCY IN SERVICE** to be projected late on under **SHORT BILLING** after eight years to escape from Section 56 (2) of the Electricity Act,

2003. In fact the **'DEFICIENCY IN SERVICE'** had postponed the action to raise demand in 2024 i.e. after eight years to create a pseudo **'FIRST DUE'**. If the Respondent had failed to raise the demand, when it was detected first, the **'DEFICIENCY IN SERVICE'** of the Respondent cannot shift **'FIRST DUE'** by eight years from 09.03.2016 by creating a pseudo **'FIRST DUE'** in 2024. Moreover, the report of Enforcement dated 09.03.2016 had not produced by the Respondent too CCGRF/Ombudsman, Electricity, Punjab to cover its mistake of **'DEFICIENCY IN SERVICE'**. **This issue needs detailed adjudication because Regulations were neither above the act nor can change the meaning of 'DUE' or 'FIRST DUE' on first detection of mistake. The issue of 'DEFICIENCY IN SERVICE' OR ESCAPED LIABILITY had been analyzed at length by the Hon'ble Supreme Court in the Civil Write Petition No. 7235/2009 of M/s Prem Cottex vs UHBVNL decided on 05.10.2021.** No such extra ordinary delayed action to raise the demand on first detection of the mistake occurred in the Civil Writ Petition No. 7235/2009 of M/s Prem Cottex vs UHBVNL.

- (viii) Denied. The **'DEFICINECY IN SERVICE'** of incorrect updation of SAP system was due to the fact that the action was

not taken on 09.03.2016 on the report of Enforcement when, the mistake was detected first and that too by neutralizing the action of even the **ENFORCING AGENCY OF THE LICENSEE** by the Respondent. This proves **'DEFICIENCY IN SERVICE'** of the Respondent which was contrary to facts of the Civil Write Petition No. 7235/2009 decided by the Hon'ble Supreme Court on 05.10.2021.

- (ix) Already explained and denied in para 8 above.
- (x) Already explained and denied in para 9 above.
- (xi) Denied. Already discussed in para 7,8 above the Respondent can neither cover its mistake by not producing the report dated 09.03.2016 nor can create **'FIRST DUE'** by concealing the crucial report of dated 09.03.2016 to escape **'DEFICIENCY IN SERVICE'** and to convert the **'DEFICIENCY IN SERVICE' TO ESCAPED LIABILITY** later after eight years. The Respondent cannot make the Act so Subordinate to the Footnote of a Regulation. The Appellant pleads strongly that word **'FIRST'** before the word **'DUE'** in Section 56 (2) of the Act was to emphasize that such mistakes of **'DEFICIENCY IN SERVICE'** and **'INACTIONS OF EARLIER REPORTS'** may not be thrown on the consumers by the Respondents. The Hon'ble Supreme Court of India in Civil

Write Petition No. 7235/2009 of M/s Prem Cottex Vs UHBVNL had analyzed this aspect in detail in its verdict dated 05.10.2021.

- (xii) Denied. The amount should have been raised when the mistake was detected first i.e. 09.03.2016. The Appellant denied that it can be raised on 02.02.2024 after ignoring the first detection of 09.03.2016 by not raising demand or ignoring the report of Enforcing Agency or concealing the crucial record from CCGRF/Ombudsman, Electricity, Punjab to illegally change the label of the **'DEFICIENCY IN SERVICE' to ESCAPED LIABILITY** and that too after eight long years for the Appellant to bear the burden of inaction of the Respondent.
- (xiii) Denied. As already explained in para 11 & 12.
- (xiv) Denied to the extent that if at all the mistake occurred by installing meter drawn against other consumer i.e. Monika Verma then why the action was not taken on the report of Enforcement dated 09.03.2016. This clearly adds another **'DEFICIENCY IN SERVICE'** of the Respondent. Not taking action on 09.03.2016 by raising the demand in 2016 cannot shift the **'FIRST DUE'** date to any other after eight years by ignoring the first detection. This tantamount the

‘DEFICIENCY IN SERVICE’. The raising of the demand after eight years of first detection of mistake cannot be considered under **SHORT BILLING or ESCAPED LIABILITY** by any yardstick under **PRINCIPLES OF NATURAL JUSTICE** to create a pseudo ‘FIRST DUE’ after eight years by failing to raise demand on ‘**FACTUAL FIRST DUE**’.

(xv) Matter of record.

(xvi) Denied. Neither SJO had been supplied nor the Respondent had explained that if MF of 2 came to their notice with ECR No. 31/1460 dated 24.01.2024, then how it was updated in the bill from 12.01.2024 to 14.01.2024. The Appellant strongly contends the ECR dated 09.03.2016 was available with Respondent and was not produced to CCGRF and Ombudsman, Electricity, Punjab to conceal serious ‘**DEFICIENCY IN SERVICE**’ of the Respondent to label this mistake **AS ESCAPED LIABILITY/SHORT ASSESSMENT FOR CLEVERLY MAKING THE CASE PARALLEL TO THE CASE OF M/S PREM COTTEX VS UHBVNL WHERE THE HON’BLE SUPREME COURT OF INDIA AFTER THROUGH ANALYSIS**

FOUND THAT THERE WAS NO 'DEFICIENCY IN SERVICE' OF UHBVNL.

(xvii) Already explained. The non availability of ECR No. 34/2302 dated 09.03.2016 in the official record of the Respondent and non implication of Enforcement as Respondent to bring facts to the limelight cannot shift **FIRST DETECTION** and **'DEFICIENCY IN SERVICE'** of inaction on 09.03.2016 of the Respondent to another category of **ESCAPED LIABILITY** and that to after eight years. Such created escaped liability was in contradiction to actual escaped liability detected by audit after three years in M/s Prem Cottex Vs UHBVNL case.

(xviii) Totally denied. If an order was quashed by the CCGRF or any Court, the amended/revised order clearly mentioning **'SUPERSEDING THE EARLIER ORDER'** was issued to make compliance of the orders of the respective Court. It was sorry to point out that Respondent had earlier ignored the crucial report dated 09.03.2016 and took the plea that it was not available and then ignored to issue a proper order in compliance to the order of the CCGRF, Ludhiana.

(xix) Denied, as explained in para 18 above.

(xx) The Regulation 21.5.1 and the Foot note of the same did not specify anywhere that not taking action on the earlier report of 2016 allows the Respondent to take action in 2024 to shift first detection and inaction on the same to another eight years to cover '**DEFICIENCY IN SERVICE**' of the Respondent. The mistake noted first in 2016 cannot be shifted to 2024. Such '**DEFICIENCY IN SERVICE**' was not the part of UHBVNL in Prem Cottex Vs UHBVNL case decided by the Hon'ble Supreme Court of India on 05.10.2021.

(xxi) The verdict of Hon'ble Supreme Court dated 05.10.2021, delivered in Civil Writ Petition No. 7235/2009 titled as Prem Cottex vs UHBVNL quoted by the Respondent for interpretation of Section 56 of the Electricity Act was based on detailed analysis by the Hon'ble Supreme Court of India on '**DEFICIENCY IN SERVICE & ESCAPED LIABILITY**' in the case of application of wrong Multiplying Factor. The instant Appeal No. A-12 of 2024 before the Ombudsman, Electricity, Punjab has the following difference from the case of M/s Prem Cottex Vs UHBVNL quoted by the Respondent.

- a. There was no **DEFICIENCY IN SERVICE OF UHBVNL** in three years when the mistake came to their notice first through on Audit report only and UHBVNL

immediately took action to raise the demand of escaped liability/short assessment. But in the instant Case No. A-12 of 2024 the mistake was noted in ECR No. 34/2302 dated 09.03.2016 and **RESPONDENT IGNORED THE FIRST DETECTION BY NOT RAISING A DEMAND which proves the 'DEFICIENCY IN SERVICE'** of the Respondent. Not raising demand when mistake was noted first definitely a **'DEFICIENCY IN SERVICE'** and raising demand after eight years on the pretext that mistake had come to their notice in 2024 and not on 09.03.2016 cannot alter the **'DEFICIENCY IN SERVICE'** to **ESCAPED LIABILITY** to draw a parallel with the verdict of Hon'ble Supreme Court of India in Civil Writ Petition No. 7235/2009 titled as M/s Prem Cottex Vs UHBVNL.

- b. The Respondent was on the plea that ECR No. 34/2302 dated 09.03.2016 of Enforcement wing of the Licensee was not in their record and as such there was no **'DEFICIENCY IN SERVICE'** but an **ESCAPED LIABILITY** only and that too after eight years of first detection was totally different from the Civil Writ Petition of M/s Prem Cottex Vs UHBVNL case and as such without the similar case history of both the cases it may

not be fair to apply the verdict of entirely a different situation and entirely a different case history. The Hon'ble Supreme Court of India had made a detailed analysis of **'DEFICIENCY IN SERVICE'** and **ESCAPED LIABILITY** in the Civil Writ Petition of M/s Prem Cottex Vs UHBVNL to decide the case as **ESCAPED LIABILITY** and not the **'DEFICIENCY IN SERVICE'**, but the instant case A-12 of 2024, had series of serious **'DEFICIENCY IN SERVICE'** of the Respondent and as such no parallel can be drawn in both the cases.

- c. The MCO compliance report was not produced by the Respondent to CCGRF and Ombudsman, Electricity, Punjab. This proves the **'DEFICIENCY IN SERVICE'**.
- d. The SAP data admitted for non updation timely despite ECR No. 34/2302 dated 09.03.2016 was **'DEFICIENCY IN SERVICE'** and not **ESCAPED LIABILITY**. Any such **'DEFICIENCY IN SERVICE'** never existed in the Civil Writ Petition of M/s Cottex Vs UHBVNL decided by Hon'ble Supreme Court of India on 05.10.2021.
- e. The meter against SR of some other consumer was installed to change MF in the instant case was **'DEFICIENCY IN SERVICE'** and not an **'ESCAPED**

LIABILITY'. Such gross **'DEFICIENCY IN SERVICE'** did not exist in the Civil Writ Petition of M/s Prem Cottex Vs UHBVNL decided by the Hon'ble Supreme Court of India on 05.10.2021.

The above main differences from the M/s Prem Cottex Vs UHBVNL case decided by Hon'ble Supreme Court of India on 05.10.2021 makes current Appeal No. A-12 of 2024 totally different from the case of M/s Prem Cottex Vs UHBVNL and highlights the **'DEFICIENCY IN SERVICE'** in the instant case of A-12 of 2024. The Civil Writ Petition of Prem Cottex Vs UHBVNL case had been decided by Hon'ble Supreme Court of India on 05.10.2021 after thoroughly ruling out the **'DEFICIENCY IN SERVICE'** because the Appeal decided by the Hon'ble Supreme Court of India observed an Audit report for change of MF and immediate action of UHBVNL on detection of mistake under **SHORT ASSESSMENT** or **'ESCAPED LIABILITY'** whereas the instant Appeal had the facts which were miles away from the case Appeal decided by the Hon'ble Supreme Court of India.

(xxii) As explained in para 21 above, the instant case was of DEFICIENCY IN SERVICE and with totally different history from the Appeal decided by Hon'ble Supreme Court of India.

(xxiii) As explained in para 20,21 and 22.

(xxiv) As above explained.

(xxv) The Hon'ble Supreme Court of India in deciding the Civil Writ Petition No. 7235 of 2009 of M/s Prem Cottex Vs UHBVNL had first ruled out the DEFICIENCY IN SERVICE to rely on escaped liability by carefully analyzing DEFICIENCY w.r.t. the definition of deficiency in Section 2 (1), (g) of consumer Protection Act 1986 which goes as under (Also reproduced in the verdict of Hon'ble Supreme Court of India dated 05.10.2021 in Prem Cottex Vs UHBVNL case.

2.(1).(g). deficiency means any fault, imperfection, shortcoming or in adequacy in quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force has been under taken to be performed by a person in pursuance of a contract or other wise in relation to any service.

(xxvi) It was prayed before the Ombudsman, Electricity, Punjab to quash the illegal demand raised by the Respondent after eight years of first detection of mistake on 09.03.2016 by the Enforcement wing and ignoring the same by the Respondent

was based on series of **DEFICIENCIES IN SERVICE** of the Respondent. The Current Appeal No. A-12 of 2024 was not an **ESCAPED LIABILITY** by any yardstick or by drawing parallel with the Civil Writ Petition of M/s Prem Cottex Vs UHBVNL case decided by the Hon'ble Supreme Court of India on 05.10.2021 whose judgment had been produced by the Respondent on 12.06.2024 during hearing. It was prayed that the facts of the instant Appeal No. A-12 of 2024 were totally different from the case Appeal decided by the Hon'ble Supreme Court of India. The instant Appeal A-12 of 2024 was based on '**DEFICIENCY IN SERVICE**' of the Respondent not to take action on first detection and not to raise demand on first detection of MF and as such it may not be considered as **ESCAPED LIABILITY** of the Respondent. It was prayed that raising the demand after eight years by pretending/presenting '**DEFICIENCY IN SERVICE**' as **ESCAPED LIABILITY** by creating a pseudo 'FIRST DUE' was neither parallel to the case decided by the Hon'ble Supreme Court nor **THE PRINCIPLES NATURAL JUSTICE** permit to draw parallel between two entirely different cases.

(xxvii) It was prayed to pass any order as deemed fit in view of totally different case histories of both the cases and judgment of the Hon'ble Supreme Court passed after thoroughly ruling out the 'DEFICIENCY IN SERVICE' in Prem Cottex Vs UHBVNL case.

(d) Additional submissions of the Appellant

The Appellant during hearing on 20.06.2024 made following additional submission for consideration of this Court:-

- (i) From the pleadings put forth by the Respondent vide his written statement filed on the last date of hearing, it has been stated by the Respondent that the connection under reference was checked by the Addl. SE/ Enf.-2, Jalandhar vide ECR No. 34/2302 dated 09.03.2016 but the copy of the same ECR was not available in the office of the Respondent.
- (ii) It was a matter of surprise to note that on one side the Respondent in his written statement had accepted the checking dated 09.03.2016 by the Enforcement-2, Jalandhar and on the other side he was denying the availability of the said ECR in its office that too in the Hon'ble Court but the Respondent had taken the same stand before the Corporate Forum also.

- (iii) The plea taken by the Respondent clearly proved the inefficiency of concerned office towards the legal cases pending/ decided by Corporate Forum as well as by this Court. The O/o the Addl. SE/ Enf.-2 Jalandhar and the O/o the Respondent was located in Jalandhar only and had there been any intention of the Respondent to satisfy himself before submitting/ signing the reply on 06.06.2024, they could have contacted the O/o Enforcement-2, Jalandhar for obtaining the copy of ECR No. 34/2302 dated 09.03.2016 for narrating the actual position before this Court.
- (iv) From the report/ written statement submitted by the Respondent it was amply clear that the Respondent at his own wanted to multiply the issue with an intention to infringe the rights of the consumer.
- (v) It was humbly prayed that the O/o Addl. SE/ Enf.-2, Jalandhar be called to clarify the stand taken by the Respondent before this Court along with copy of relevant ECR and the letter vide which the O/o Enforcmenet-2, Jalandhar had informed the concerned Respondent office for taking necessary action against the consumer in March, 2016.
- (vi) In para (21) (f) Another Deficiency in Service was very much clear as raised in the Appeal as well as in the oral discussion

on 06.06.2024. While having a look at monthly consumption bills raised by PSPL from April, 2015 to January, 2024, all the columns which showed the meter ratio and CT ratio were totally blank and showing Multiplying Factor of 1, which was not less than making mockery of Rules and Regulations framed by the Hon'ble PSERC. Had the Meter and CT Coils ratios been entered in these columns properly, the Appellant himself would have noticed the wrong Multiplying Factor being applied much earlier and would have brought the mistake much earlier in the notice of PSPCL.

(vii) It was requested that the O/o Enforcement-2, Jalandhar be asked to be present with the relevant record pertaining to the case on the next date of hearing to reach out to the legitimate conclusion after due verification of the relevant record pertaining to the concerned case.

(d) Submission during hearing

During hearings on 06.06.2024, 12.06.2024 & 20.06.2024, the Appellant's Representative (AR) reiterated the submissions made in the Appeal as well as Rejoinders and by way of additional submissions and prayed to allow the same.

(B) Submissions of the Respondent

(a) Submissions in written reply

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

- (i) The Appellant was having NRS Category Connection bearing Account No. 3002537085 (old legacy no-J61GC610259N) with sanctioned load/CD as 89.780 kW/99.760 kVA running in its name.
- (ii) The said connection was released to the Appellant in the year 2013 against A & A Form after clubbing three old connections bearing Account Nos. GC21/242, CM61/0043 and CM61/0041.
- (iii) The load of the Appellant's connection was extended from 60 kW to 89.785 kW vide SJO No. 153/60632 dated 15.10.2013 and the old meter having serial no. 1123785 was replaced with new meter bearing serial no. 353564 having capacity 3*200/5 with CT set with CT Ratio of 200/5 having serial no. 2848, 2857 and 2854 were installed with Multiplying Factor as 1.
- (iv) The bills were issued to the Appellant for the period 08.04.2015 to 08.05.2015 with MF=1 and the meter having serial no. 353564 with sanctioned load of 89.780 kW.

- (v) Due to introduction of SAP System, the old a/c no. J61GC610259N was changed to new SAP a/c no. 3002537085 w.e.f. 09.05.2015 as per SAP record.
- (vi) This connection was checked by the Addl. S.E. Enforcement-2, Shakti Sadan, Jalandhar vide ECR No. 2/2278 dated 16.01.2015 due to challenge of working of meter by the Appellant on 13.10.2014. It was reported that meter serial no. 353564 having capacity 3*200/5 and CT with capacity 3*200/5 (as per bill) was found on site. But as per data migrated to SAP only 3 Phase Electronic Device having serial no. 353564 was installed at site.
- (vii) After checking done by Addl. S.E., Enforcement-2, Shakti Sadan, Jalandhar, meter with serial no. 353564 got changed at site with meter serial no. PBB40876 having capacity 3*100/5 on 23.06.2015 but CT set with CT ratio 200/5 having serial no. 2848, 2857 and 2854 had not been replaced. Hence, MF got changed from 1 to 2. However, as per SAP System only meter serial no. got updated from 353564 to meter serial no. PBB40876 on 23.06.2015 but meter particulars were still showing 3 Phase Electronic Device.

- (viii) It was stated that due to incorrect updation of meter particulars in SAP System, the bills for the period 23.06.2015 to 12.01.2024 were issued with MF=1 instead of MF=2.
- (ix) The connection of the Appellant was checked by ASE Enforcement-cum-MMTS-1, Jalandhar vide ECR No. 31/1460 dated 24.01.2024 and it was reported that meter serial no. PBB40876 having capacity 100/5 with CT PT ratio 200/5 found at the Appellant's premises according to which the wrong bills were issued to the Appellant with MF=1 instead of MF=2 due to incorrect updation of meter particulars in SAP System.
- (x) On the basis of above checking, the account of the Appellant was overhauled from 23.06.2015 to 12.01.2024 as the bill generated on 18.01.2024 on the basis of MF=1 instead of MF=2. Afterwards on the basis of this checking, correct MF=2 was updated in SAP System and the next bill for the period 12.01.2024 to 12.02.2024 generated on 22.02.2024 was issued with corrected MF=2. The Appellant was requested to deposit the amount of ₹ 28,51,349/- vide Memo No. 176 dated 02.02.2024 as per ESIM Instructions No. 57 and Regulation 21.5.1 of Supply Code, reproduced as under:-

ESIM REG-57 FOLLOW UP ACTION IN CASE OF DAMAGED
OR BURNT METER

In case of defective /dead stop/burnt/stolen meters, the procedure laid down in Reg 21.4 of the Supply Code-2014 shall be followed and the accounts overhauled as per provisions of Reg-21.5 of the Supply Code-2014.

21.5 Overhauling of Consumer Accounts

Note: Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.

(xi) The Appellant had challenged this amount before the Corporate Forum, Ludhiana vide Case No. CF-043/2024 and deposited the 20% amount of ₹ 5,70,270/- on 13.02.2024.

(xii) As per Regulation 21.5 of Supply Code-2014, it is stated that
“Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”

Hence the subject cited account was overhauled for the period from 23.06.2015 to 12.01.2024 on the basis of the above Regulation.

(xiii) As far as previous checking was concerned, it was stated that the above connection was checked by ASE, Enforcement-2, Jalandhar vide ECR No. 34/2302 dated 09.03.2016 and it was reported that meter serial no. PBB40876 having capacity 3*100/5A with CT having capacity 3*200/5A (as per bill) was

found installed at site. However, it was again stated that record of ECR No. 34/2302 dated 09.03.2016 was not available in the office of the Respondent. The record of concerned ECRs was taken from the office of ASE/ Enforcement-2, Jalandhar as no such record was available in the office of the Respondent. Further it was intimated that meter serial no. PBB40876 was withdrawn against SR no. 45/5502 dated 13.01.2015 for releasing of new MS connection of Monika Verma but this meter was actually installed at a/c no. 3002537085 of National Printing Press. However, the CT set with CT Ratio 100/5 having serial no. 3989, 3985 and 3981 which were also withdrawn against SR 45/5502 dated 13.01.2015 were installed at MS connection of Monika Verma.

- (xiv) The Appellant had deposited another 20% of the disputed amount on 09.05.2024.
- (xv) As per ECR No. 31/1460 dated 24.01.2024 and according to instructions of ASE Enforcement-cum-MMTS-1, Jalandhar MF was corrected from MF=1 to MF=2 which was previously wrongly entered in SAP System.
- (xvi) It was humbly stated that the connection was checked by Addl. S.E., Enforcement-2, Jalandhar vide ECR No. 34/2302 dated 09.03.2016 but copy of ECR was not available in the

office of the Respondent, so the Respondent office was unable to take any action previously. However, when this connection got checked again the Enforcement MMTS-2, Jalandhar vide ECR No. 31/1460 dated 24.01.2024 which was duly received in the office of the Respondent, MF was corrected on the basis of this ECR.

(xvii) As per the decision of the Corporate Forum, Ludhiana the Notice No. 176 dated 02.02.2024 was quashed and it was ordered to overhaul the account for the period 23.06.2015 to 12.01.2024. It is pertinent to mention here that the account was already overhauled from 23.06.2015 to 12.01.2024. But in the calculation sheet the starting date i.e. 10.07.2015 was actually the date upto which billing was done for the period from 08.06.2015 to 10.07.2015. However overhauling was done from 23.06.2015 when meter got replaced in SAP System. So there was no need to overhaul the account again and to issue revised notice to the Appellant.

(xviii) As per the decision of the Corporate Forum, Ludhiana, Notice No. 811 dated 24.04.2024 was issued to the Appellant to deposit the balance amount of ₹ 22,81,079/- as compliance of the decision of the Corporate Forum, Ludhiana.

- (xix) As it was the case of wrong Multiplying Factor, the Appellant's account was overhauled on the basis of Regulation 21.5 of Supply Code-2014.
- (xx) The law of limitation applies from the date the amount was first raised to the Appellant. As this amount had never been raised to the Appellant in the past, limitation period started from the date of serving of notice to the Appellant i.e. 02.02.2024.
- (xxi) As per Regulation 21.5 of Supply Code-2014, it was clearly mentioned in the note that *“Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”*
- (xxii) It was stated that demand of ₹ 28,51,349/- was against the units consumed by the Appellant which were not billed in SAP System previously due to application of wrong MF as 1 instead of MF as 2. Hence demand of ₹ 28,51,349/- was correct and justified.

(b) Submissions in Reply to the Rejoinder

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

- (i) Point No. 1 was matter of record and already explained in previous reply.

- (ii) Point No. 2 was matter of record and already explained in previous reply.
- (iii) The Appellant had already been agreed with the information provided point No. 3, 4 and 5 in earlier reply.
- (iv) The Appellant had already been agreed with the information provided point No. 3, 4 and 5 in earlier reply.
- (v) The Appellant had already been agreed with the information provided point No. 3, 4 and 5 in earlier reply.
- (vi) It was again stated that due to meter challenged by the Appellant on 13.10.2014 this connection got checked by Addl. SE/ Enforcement-2, Shakti Sadan vide ECR No. 2/2278 dated 16.01.2015 and reported that meter serial no. 353564 having capacity 3*100/5 and CT with capacity 3*200/5 (as per bill) was found on site. But as per data migrated to SAP only 3 Phase Electronic Device having serial no. 353564 was installed at site. After checking of Addl. SE/ Enforcement-2 Jalanhdar meter with serial no. 353564 got changed at site with meter serial no. PBB40876 having capacity 3*100/5 on 23.06.2015 but CT set with CT ratio 200/5 having serial no. 2848, 2857 and 2854 had not been replaced. Hence, MF got changed from 1 to 2. However, as per SAP system only meter serial no. got updated from 353564 to meter serial no.

PBB40876 on 23.06.2015 but meter particulars still showing 3 Phase Electronic Device. However, as stated earlier office copy of compliance copy of MCO was not available in the office.

- (vii) This para was wrong and denied. The Law of Limitation applies from the date the amount was first raised to the Appellant. As this amount had never been raised to the Appellant in the past, limitation period starts from the date of serving of notice to the Appellant i.e. 02.02.2024. As this amount had not been raised ever in the past, so this amount was due and payable by the Appellant now. On account of wrong multiplication of MF, the Appellant had been short billed. The amount was correct and valid as per Instruction No. 57 of ESIM and Regulation 21.5.1 of Supply Code-2014.
- (viii) It was already stated in earlier reply that due to incorrect updation of meter particulars in SAP system, bills for the period of 23.06.2015 to 12.01.2024 was issued with MF 1 instead of 2. So, the account of the Appellant was overhauled from 10.07.2015 to 12.01.2024 for the amount of ₹ 28,51,349/-. So, the amount was correct and valid as per Instruction No. 57 of ESIM and Regulation 21.5.1 of Supply Code.

- (ix) Already explained in point no.8.
- (x) Already explained in point no. 9.
- (xi) Already explained in point no. 7 Law of Limitation applies from the date the amount was first raised to the Appellant. As this amount had never been raised to the Appellant in the past, limitation period starts from the date of serving of notice of the Appellant i.e. 02.02.2024.
- (xii) As this amount was never raised earlier therefore date of first due should be considered as date of serving of notice to the Appellant i.e. 02.02.2024 through which demand was first raised to the Appellant.
- (xiii) Already explained in above point no. 11 and 12.
- (xiv) It was again intimated that meter serial no. PBB40876 was withdrawn against serial no. 45/5502 dated 13.01.2015 for releasing new MS Connection of Monika Verma but this meter was actually installed at a/c no. 3002537085 of National Printing Press. However the CT set with Ct ratio 100/5 having serial no.3989, 3985 and 3981 which were also withdrawn against serial no. 45/5502 dated 13.01.2015 were installed at MS Connection of Monika Verma.
- (xv) On the basis of ECR No. 31/1460 dated 24.01.2024 correct MF=2 was updated in SAP system and next bills for the

period 12.01.2024 to 12.02.2024 was generated on 22.02.2024 with correct MF=2.

- (xvi) Already explained in point no. 12.
- (xvii) As already stated in earlier reply that the account was already overhauled from 23.06.2015 to 12.01.2024. But in calculation sheet the starting date 10.07.2015 was actually the date upto which billing was done for the period from 08.06.2015 to 10.07.2015. However, overhauling was done from 23.06.2015 when meter got replaced in SAP system. So there was no need to overhaul again and to issue revised notice to the Appellant.
- (xviii) The copy of Notice No. 811 dated 24.04.2024 for ₹ 22,81,079/- was the amount derived after subtracting 20% of original disputed amount of ₹ 28,51,349/- which was correct and valid.
- (xix) It was again stated that record of ECR No. 34/2302 dated 09.03.2016 was not available in the office. The record of concerned ECRs which was earlier attached with initial reply submitted on 06.06.2024 was taken from office of Enforcement-2, Jalandhar as no such record was available in office. However, when this connection was got checked again by Enforcement MMTS-2, Jalandhar vide ECR No. 31/1460 dated 24.01.2024 which was duly received in this office so

MF was corrected on the basis of the ECR and demand was raised as per Instruction No. 57 of ESIM and Regulation 21.5.1 of Supply Code due to application of wrong MF.

- (xx) Based on decision of Hon'ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Limited.

Sub Section (1) of Section 56 specifically deals with the negligence on the part of person to pay any charge of electricity or any sum other than charge for electricity. Sub Section (2) uses the word "no sum due from any consumer under this section" Therefore, the bar under Sub Section (2) was related to sum due U/S Section 56 which naturally takes us to Sub Section (1). What is covered by Section 56(1) the negligence on the part of person to pay any charge of electricity and nothing else nor any negligence on the part of licensee. In other words negligence on the part of licensee which led to short billing and rectification of the same when mistake is detected is not covered by Section (1) of Section 56. Consequently any claim so made by licensee after detection of mistake may not fall within the mischief namely "no sum due from any consumer under this section" appearing in Sub Section (2). If licensee has not raised any bill, there can

be no negligence on the part of consumer to pay the bill and consequently the period of limitation u/s Sub Section (2) will not start running. So long as limitation has not started running the bar for recovery will not come into effect.

(xxi) Already explained in point no. 20.

(xxii) Already explained in point no. 19.

(xxiii) Already explained in point no. 20.

(c) Submission during hearing

During hearings on 06.06.2024, 12.06.2024 & 20.06.2024, the Respondent reiterated the submissions made in the written reply to the Appeal as well as Rejoinder and prayed for the dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the decision of the Corporate Forum, Ludhiana in Case No. CF-043/2024 deciding that the account of the Appellant be overhauled from 23.06.2015 when the new meter was installed upto 12.01.2024, by taking MF as 2 instead of 1.

My findings on the points that emerged and my analysis is as under:

- (i) The Corporate Forum in its order dated 04.04.2024 observed as under:-

“Forum observed that connection of the petitioner was checked by ASE/Enf. cum EA & MMTS-1, Jalandhar during joint raid and ECR no. 31/1460 dated 24.01.2024 was prepared. As per ECR pulse of the meter was blinking and segments 1,2,3 were stable; U-1 parameters were compared with clamp meter and current parameters and voltage parameters were found okay; bill of the consumer was checked at the time of checking and found that in the bill MF was 1, whereas, as per CT Ratio (i.e. 200/5 A) and Meter Ratio (i.e. 100/5 A), MF should have been 2. Concerned Sub-Division office was directed to overhaul the account of the petitioner with correct MF as 2 for the whole period for which bills were issued to the petitioner with wrong MF as 1. Accordingly, account of the petitioner was overhauled from 06/2015 to 01/2024 and he was issued notice vide Memo no. 176 dated 02.02.2024 asking him to deposit amount of Rs. 2851349/- within 15 days. Petitioner did not agree to this amount charged to him and he filed a case in Corporate CGRF, Ludhiana.

Petitioner vide his letter dated 05.03.2024 requested to direct the respondent to supply him numbers of documents/information so as to enable him to file his detailed petition/rejoinder. The same was forwarded to the respondent with the direction to supply the requisite documents/information. Respondent vide his memo no. 2096 dated 18.03.2024 submitted the reply to the above but the petitioner stated during hearing dated 19.03.2024 that all documents asked by him have not been provided. Respondent was directed to submit all record relevant to the case and certify that no other record is available with his office and to avoid further delays, Petitioner was also directed to submit all documents he wishes to submit to the Forum, in the next date of hearing. On 21.03.2024 petitioner

submitted few documents and Respondent stated that no other relevant document is available in his office which could be submitted to the Forum. Forum observed that sufficient record/documents had been placed before it to decide the case on merit.

Forum observed that meter and CTs of petitioner were changed at the time of extension in his load vide SJO no. 153/60632 dated 15.10.2013. As per this SJO, old Whole Current Meter of Avon make having capacity 3x10-60 A bearing Sr. no. 1123785 was removed and new LT CT meter of HPL make having capacity 3x200/5A bearing Sr. no. 353564 and CTs of Meltek make having capacity 200/5 Amp bearing Sr. nos. 2848, 2857 and 2854 were installed at the connection of the petitioner.

During the proceedings dated 05.03.2024, Respondent was directed to submit Store Requisition against which meter of petitioner changed on 23.06.2015 was issued alongwith copy of effected MCO. Respondent submitted Store Requisition no. 45/5502 dated 13.01.2015 which was in the name of Smt. Monika Verma as per which LT CT meter having capacity 100/5 Amp and LT CT's having ratio 100/5 Amp had been issued on 13.01.2015 for release of a new MS connection. Respondent was asked vide proceedings dated 19.03.2024 that how was this Store Requisition related/linked to the instant case. Respondent replied vide Memo no. 2238 dated 20.03.2024 as under: -

"As per record, it is stated that Meter serial no PBB40876 was withdrawn against SR no 45/5502 dt 13.01.2015 for releasing new MS connection of Monika Verma but this meter was actually installed at A/c no 3002537085 of National Printing Press. However, the CT set with CT ratio 100/5 having serial no 3989, 3985 and 3981 which were also withdrawn against SR 45/5502 dt 13.01.2015 were installed at MS connection of Monika Verma (Copy of SCO no J21/5/15/11264 dt 18.02.2015 attached herewith annexure A)."

Forum observed that as per copy of SCO no. J21/S/15/11264 dated 18.02.2015 meter bearing Sr. no. PBB40876 issued by ME Lab for releasing new MS connection to Smt. Monika Verma has not been installed against her connection, instead some other meter of L&T Make bearing Sr. No. 09208827 was installed there. However, CT's bearing Sr. no. 3989, 3985 and 3981 issued against the same Store Requisition, have duly been installed on the connection of Smt. Monika Verma. Further it is confirmed from MCO no. 117/48552 dated 13.10.2014 that the petitioner challenged his meter and this MCO was issued subject to checking by MMTS/Flying Squad. Respondent claimed that as per SAP system meter bearing Sr. no. 353564 having capacity 3x200/5 Amp was removed on 23.06.2015 and meter bearing Sr. no. PBB40876 having capacity 3x100/5 Amp was installed there, however, no MCO was issued in SAP system. Respondent also stated that effected MCO no. 117/48552 dated 13.10.2014 or its copy is not available in the office record. Respondent also submitted copy of ME challan no. SRF20160152 dated 29.01.2016 which confirms that HPL Make meter having capacity of 200/5 Amp bearing Sr. no. 353564 which existed on the connection of the petitioner was checked in ME Lab on 29.01.2016. Forum observed that bill dated 09.07.2015 for the period from 08.05.2015 to 08.06.2015 shows that on 08.06.2015, meter bearing Sr. no. 353564 was existing on connection of the petitioner. Further, in bill dated 26.08.2015, which is for the period from 08.06.2015 to 10.07.2015, the meter Sr. no. has been changed to PBB40876. This shows that meter bearing Sr. no. PBB40876, having capacity of 100/5 Amp was installed on this connection on some date between 08.06.2015 to 10.07.2015. Forum observed the consumption data supplied by the Respondent, as under: -

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Month	Cons	Cons	Cons	Cons	Cons	Cons	Cons	Cons	Cons	Cons	Cons	Cons
Jan		1963	4440	1858	6892	2771	3815	3345	3696	5155	3885	5243
Feb		1878	2541	1274	3051	3511	3529	3404	5437	6011	4414	8580
Mar		1577	3980	1374	2559	2392	3698	3492	3691	5181	3377	6508
April		1600	3343	2229	3373	3903	2406	1730	4745	3499	3334	
May	2093	4158		1607	2758	3027	3294	254	4263	3880	4166	
June	2051	1542	3374	3105	3984	4646	2724	3134	6552	5878	4510	
23/06			1761 MCO									
July	1839	677	1260	2653	2550	3577	3597	4367	5020	5191	5556	
Aug	2864	6775	2126	2703	3432	5117	4287	5332	6827	5635	4276	
Sept	3518	2308		1348	2983	2960	4139	6503	6056	4891	4649	
Oct	1831	1140	3789	791	3817	3907	3464	5356	4715	4873	4915	
Nov		843		5371	2283	3952	2601	6557	4518	4379	3605	
Dec	2567	2576	4594	498	2443	2959	2832	10534	5006	3647	4333	
Total	16763	27037	31208	24811	40125	42722	40386	54008	60526	58220	51020	

As per the above consumption table the annual consumption of petitioner for the year 2013 (from May) to 2023 is 16763, 27073, 31208, 24811, 40125, 42722, 40386, 54008, 60526, 582250 and 51020 units. Forum observed that meter of the petitioner was last changed on 23.06.2015 (thenceforward) with new metering equipment, MF of 2 was to be applied) and there has been no other change of either meter or CTs since then till date. It is significant to observe that suddenly the consumption after this reduced to almost half of the previous consumption. For example, the consumption which was 19439 units from 01/2015 to 06/2015 reduced to 11769 units from 07/2015 to 12/2015 and further reduced to 11447 units in the corresponding period of successive year i.e. 01/2016 to 06/2016. Therefore, it is clearly visible that, MF which was to be applied as 2 was being wrongly applied as 1.

Further respondent had submitted copy of checking carried out by ASE/Enf. -2, Jalandhar vide ECR no. 34/2302 dated 09.03.2016 in which meter of Secure make having sr. no. PBB40876 of capacity 3x100/5A and CTs of capacity 3x200/5A (as per bill) had been mentioned. This also shows that MF was required to be applied as 2 but at that time neither the checking agency nor the office of the respondent took notice of this.

The above facts/discussion confirms that w.e.f. 23.06.2015, CTs of 200/5 Amp capacity and meter of 100/5 Amp capacity

were there on the connection of the petitioner hence MF of 2 is rightly applicable w.e.f. 23.06.2015, whereas, his billing was being done wrongly with MF 1. Consequently, his account was overhauled by the Respondent from 06/2015 to 01/2024 and Notice no. 176 dated 02.02.2024 was issued for depositing amount of Rs. 2851349/- within 15 days.

Petitioner in his petition also contended that charging of amount is also in violation of Section 56(2) of E.A 2003.

In this regard, Legal Adviser PSPCL, Patiala vide memo no. 12/76 dated 24.01.2022 has mentioned the decision dated 5.10.2021 of Hon'ble Supreme Court of India, delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd., as under:

Hon'ble Supreme Court in para 24 & 25 of this judgement observed as follows:

*"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.***

*25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistakes detected is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer **under this Section**", appearing in Subsection (2)."*

As per above, amount for the period more than limitation period of two years can be charged. Further, Regulation No. 21.5.1 of Supply Code-2014 deals with the cases of application of wrong Multiplying Factor. The note of Regulation 21.5.1 of Supply Code-2014 dealing with inaccurate meters is reproduced as under:

21.5.1 Inaccurate Meters

.....

.....

Note: Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.

Forum observed further that petitioner in his email dated 28.03.2024 inter-alia stated as under: -

“Proceedings in the present case are pending since February 2024. All the said proceedings have been held by 4 (Four) members. However recently I have come to know that, Constitution of this Hon'ble Forum is not proper. Further enquiries made by me revealed that though as per Rules / Regulations framed by Central Government / PSERC (Punjab State Electricity Regulatory Commission), there should be 2 (Two) nominated representatives of the consumers and prosumers in the CCGRF (Corporate Consumer Grievance Redressal Forum). However, in none of the proceedings pending before this Hon'ble Forum, 2 (Two) nominated representatives as mentioned above have ever participated. On enquiries made by me, to my shock, it was revealed that till date the said 2 (Two) representatives have not even been nominated.

A perusal of the above referred provision would reveal that it is mandatory for PSPCL (Punjab State Power Corporation Ltd) to nominate 2 (Two) representatives of the consumers and prosumers with approval of Regulatory Commission. Thus, PSPCL was required to nominate 2 (Two) representatives as mentioned above and they should also participate in the proceedings of CCGRF. The basic idea for nominating 2 (Two) representatives of the consumers was that there should be someone in the Forum to watch the interest of the consumers because 3 (Three) out of 4 (Four) members are serving officials of PSPCL while the fourth one is retired official of PSPCL However, PSPCL has intentionally not notified appointment of the 2 (Two) representatives as mentioned above.

On account of the same, consumers like us are bound to suffer a serious prejudice. Otherwise also, proceedings in the above mentioned case cannot continue till such time above referred 2 (Two) representatives of the consumers or prosumers are nominated and made part of CCGRF. In the absence of the said 2 (Two) representatives of consumers

and prosumers, Constitution of CCGRF cannot be said to be legal and proper. In our humble submission, no legal and valid adjudication can be done by an improperly/invalidly Constituted Forum.”

Forum observed that on one side the petitioner has filed his petition in this Forum and pursued his case in six hearings during the period from 05.03.2024 to 02.04.2024 and suddenly he is now raising objection regarding composition of this Forum *and contending that in the absence of the said 2 (Two) representatives of consumers and prosumers, Constitution of CCGRF cannot be said to be legal and proper, and no legal and valid adjudication can be done by an improperly/invalidly Constituted Forum.*

His objection was considered by the Forum during the hearing dated 02.04.2024. The matter regarding appointment of consumer representatives is not under the jurisdiction of this Forum and these are to be appointed by the PSPCL with the approval of Hon’ble PSERC. However, it was observed that Reg. 2.4(xiii), 2.10 & 2.11 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) (2nd Amendment) Regulation, 2021 provides as under: -

- 2.4(xiii) The proceedings of the Forum shall not be affected in the absence of the nominated independent member and/or consumer representatives.*
- 2.10 No act or proceeding of the Forum shall be deemed to be invalid by reason only of some defect in the constitution of the Forum or by reason of the existence of a vacancy among its members.*
- 2.11 The proceedings of the Forum shall not be affected in the absence of the independent member and/or nominated consumer representative.*

At present, the Corporate CGRF, Ludhiana is having Four Members including its Chairperson who is a serving Engineer-in-Chief of PSPCL, Member/Finance who is a serving Chief Accounts Officer, one Independent Member appointed by Hon’ble PSERC and one Permanent Invitee Member who is a serving Deputy Chief Engineer of

Commercial Organization of PSPCL. Forum observed that the Corporate CGRF has been working with this composition since 07.06.2022 and till date no superior court or higher authority has ever raised any objection to its working with this composition. Relevant provisions of the concerned Regulation were shown to the petitioner and he was told that matter regarding appointment of the representative of consumers/prosumers was not in the scope of CCGRF and that if he still has objections regarding its composition, he was at liberty to withdraw his petition. He stated that he wants to get his petition decided by the Forum but his application submitted through email message dated 28.03.2024 should be decided first. Forum observed that the objections raised by the petitioner through email dated 28.03.2024 do not hold ground in view of the applicable regulations, hence, this Forum is not inclined to agree to it and decided to close the case for passing speaking orders.

Forum observed further that date 26.03.2024 was fixed for filing rejoinder/oral discussion but petitioner did not appear on that date and requested for another date which was accepted. As the case was getting delayed, final opportunity was given to both the parties for submitting any other documents alongwith written arguments, if any, and that the case will be closed for passing speaking orders on next date i.e. 02.04.2024 on the basis of the available record. Petitioner did not submit any document/written argument relevant to the case. Forum felt that the petitioner is trying to linger on his case unnecessarily when sufficient documents/information as required for deciding the case stands submitted to the Forum and the same stands provided to the petitioner too. Accordingly, in the morning of 02.04.2024 after hearing both the parties, it was decided to close the case for passing speaking orders. Petitioner after close of the office hours on 02.04.2024 sent another email message at 08:12 PM which reads as under: -

- 1. That, this is with reference to the proceedings of the case held today i.e. on 02-04-2024. In this regard, we had made a*

request to decide our objection sent to your good self-vide E-mail Dt. 28-03-2024, which was duly acknowledged vide Memo No. 576 Dt. 28-03-2024.

- 2. That, while appearing before Hon'ble Forum today, we had made a request to decide our objection/application Dt. 28-03-2024 at the first instance before proceeding ahead with the case. However instead of deciding the same this Hon'ble Forum has closed the case for passing speaking orders.*
- 3. That, a perusal of the earlier proceedings would reveal that the case had been adjourned for supply of certain documents by the Respondents and also to enable us to file Replication/Rejoinder.*
- 4. That, in the proceedings held today, no documents were handed over by the Respondents. On the other hand, straightway order has been passed closing the case for passing speaking orders.*
- 5. That, this has resulted into great injustice with us. You are therefore humbly requested once again not to close the case and instead at the first instance to enable us to get justice in the matter.”*

Forum observed that no communication from either party can be entertained after closure of the case when sufficient opportunities/time had already been granted to the petitioner for submitting documents/rejoinder/written arguments.

Forum has gone through the written submissions made by the Petitioner in the petition, written reply of the Respondent, oral discussions made by Petitioner along with material brought on record. Keeping in view the above discussion, Forum is of the opinion that overhauling of the account of the petitioner is required to be done taking the MF 2 instead of MF 1 from the 23.06.2015 when new meter was installed. Further as the respondent has overhauled the account from 10.07.2015 as such the amount of Rs. 2851349/- charged to the petitioner vide notice no. 176 dated 02.02.2024 is required to be recalculated. Further CE/DS, North, Jalandhar may investigate the matter regarding application of wrong MF.”

(ii) I have gone through the written submissions made by the Appellant in the Appeal as well as the Rejoinders dated 05.06.2024, 18.06.2024 & 20.06.2024, written reply of the Respondent to the Appeal as well as to the Rejoinder dated 05.06.2024 and heard the oral arguments of both the parties during the hearings on 06.06.2024, 12.06.2024 & 20.06.2024. It is observed by this court that the Appellant challenged the working of the meter on 13.10.2014 by depositing the requisite fee of ₹ 1,200/- vide BA16 No. 348/5495. In this regard, MCO No. 117/48552 dated 13.10.2014 was issued by the PSPCL subject to checking from MMTS/ Flying Squad. The connection was checked by ASE, Enforcement-2, Shakti Sadan, Jalandhar on 16.01.2015 vide ECR no. 2/2278, in which it was reported that meter pulse was blinking on the running load & segments R, Y, B were stable on the display. It was instructed that the meter be sealed packed in the presence of the consumer & brought to ME Lab for complete checking & DDL in the presence of the Enforcement staff. The Respondent could not provide the complied copy of MCO No. 117/48552 dated 13.10.2014. However, the Respondent told this Court that the challenged meter bearing Sr. No. 353564 with capacity of 3*200/5A was replaced with meter bearing

Sr. No. PBB40876 with capacity of 3*100/5A on 23.06.2015. CTs of capacity of 3*200/5A, that were installed earlier, were not changed which resulted in change of MF (Multiplying Factor) to 2 from 1. But due to the negligence on the part of the official/ officer concerned, the billing of the Appellant continued on MF = 1 from the date of replacement of meter on 23.06.2015.

- (iii) The connection of the Appellant was checked by the ASE/ Enforcement-2, Jalandhar on 09.03.2016 vide ECR No. 34/2302 where meter bearing Sr. No. PBB40876 with capacity 3*100/5A & CTs of capacity 3*200/5A were found installed which proved beyond doubt that the MF was actually 2, but neither the Respondent nor the Appellant took note of this.
- (iv) This mistake was carried on till the connection of the Appellant was again checked on 24.01.2024 by ASE/ Enforcement-cum- EA & MMTS-1, Jalandhar vide ECR No. 31/1460 during joint raid. On the basis of this checking report, the Appellant's MF was corrected to 2 in the billing software w.e.f. 12.01.2024. The Appellant's account was overhauled and an amount of ₹ 28,51,349/- was charged to the Appellant vide Notice No. 176 dated 02.02.2024 due to overhauling of

the account of the Appellant from 23.06.2015 to 12.01.2024 by applying correct Multiplying Factor of 2 instead of 1.

- (v) The Appellant's Representative (AR) prayed to quash the demand raised by applying footnote of Regulation 21.5.1 from date of installation of meter to 24.01.2024 as the checking vide ECR No. 34/2302 dated 09.03.2016 clearly proved that demand became first due on 09.03.2016 and not on 24.01.2024 and the failure to raise demand from date of installation of Meter to 09.03.2016 became time barred on 08.03.2018 after two years under Section 56(2) of Electricity Act, 2003. The sum was also not shown continuously for recovery in bills from 08.03.2018 onwards ruled over all Regulations framed under the Electricity Act, 2003 and no Section of the Electricity Act makes the date 24.01.2024 of ECR 31/1460 as the date when recovery became first due to make Regulation 21.5.1 to Rule over Section 56(2) of the Electricity Act, 2003. He argued that Section 56 (2) of the Electricity Act, 2003 has been either ignored by the Forum or considered as subordinate to the footnote of Regulation 21.5.1 of Supply Code, 2014. Despite the fact that during checking on 09.03.2016, the checking official clearly recorded vide ECR No. 34/2302 the Meter Ratio as 3x100/5A and CT ratio

as 3x200/5A, but the Corporate Forum paid no heed to ECR No. 34/2302 dated 09.03.2016 and did not hold that the Respondent had the right of recovery only upto 08.03.2018. Further, he contended that the account of the Appellant cannot be overhauled for an indefinite period of time & it is subject to limitation as per Section 56 (2) of The Electricity Act, 2003 and/or Limitation Act. As regards this contention of the Appellant, I had gone through the judgment dated 05.10.2021 of the Hon'ble Supreme Court of India delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Limited. The Hon'ble Supreme Court had observed in its judgment dated 05.10.2021 as under: -

“The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it was not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.

- (vi) Recently, relying on the above mentioned judgment of the Hon'ble Supreme Court of India, the Hon'ble Punjab & Haryana High Court has decided on 02.04.2024, in CWP-

13285-2016 titled as Punjab State Power Corporation Ltd. v/s Vinay Gupta and Another, CWP-24564-2018 titled as M/s MB Rice and General Mills v/s Punjab State Power Corporation Ltd. And Anr. & CWP-3255-2019 titled as B.M. Air Conditioning Pvt Ltd. v/s Punjab State Power Corporation Ltd. And Anr., that the amount charged to the consumer by the PSPCL due to application of wrong Multiplying Factor for the whole period during which this mistake continued was correct & recoverable from the consumer.

- (vii) I am of the opinion that the above judgments of the Hon'ble Supreme Court of India & Hon'ble Punjab & Haryana High Court are applicable to the facts of the present case. The amount of ₹ 28,51,349/- charged to the Appellant due to overhauling of the account from 23.06.2015 to 12.01.2024 by applying correct Multiplying Factor of 2 instead of 1 is on account of "escaped assessment" which was detected by the Respondent after the checking of the Appellant's premises vide ECR No. 31/1460 dated 24.01.2024 of ASE/Enforcement-cum- EA & MMTS-1, Jalandhar during joint raid in which it was found that the meter capacity was 3*100/5A and CTs capacity was 3*200/5A, so the MF was 2, but the Appellant was being billed at MF= 1. The Appellant

was charged for the electricity actually consumed by it which could not be charged earlier due to the mistake of the officials/officers of the Respondent. The demand cannot be restricted to lesser period of time as prayed by the Appellant as the demand was first assessed & charged to the Appellant on 02.02.2024 vide Notice No. 176. Before that the amount was never assessed & charged to the Appellant by the Respondent & therefore became first due only on 02.02.2024 and any limitation would be applicable from this date. Hence, the amount of ₹ 28,51,349/- charged to the Appellant is fully recoverable from the Appellant being escaped assessment.

(viii) In regard to the contention of the Appellant that the order dated 04.04.2024 of the Corporate Forum should be quashed on the ground that the same was passed without consumer representative to complete the quorum of the Forum, this Court agrees with the opinion of the Corporate Forum recorded in its *ibid* order that Regulation 2.4 (xiii), 2.10 & 2.11 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) (2nd Amendment) Regulations, 2021 provides that the proceedings of the Forum shall not be affected in the absence of independent member and/ or consumer representative. This Court also observed that

Regulation 2.15 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) (2nd Amendment) Regulations, 2021 further provides that the quorum for Corporate Forum shall be three members out of which atleast two shall be officers of the distribution licensee. The present composition of the Corporate Forum fulfills these criteria. Therefore, this contention of the Appellant is rejected after due consideration.

- (ix) In view of the above and in the light of judgment dated 05.10.2021 of the Hon'ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., this Court is not inclined to interfere with the decision dated 04.04.2024 of the Corporate Forum in Case No. CF-043 of 2024. The period of overhauling cannot be reduced to lesser period of time as requested by the Appellant.
- (x) Further, CE/DS North, Jalandhar may carry out an enquiry against the erring officials/ officers responsible for various lapses in this case.

6. Decision

As a sequel of above discussions, the order dated 04.04.2024 of the CCGRF, Ludhiana in Case No. CF-043/2024 is hereby upheld.

Further, CE/DS North, Jalandhar may carry out an enquiry against the erring officials/ officers responsible for various lapses in this case.

7. The Appeal is disposed of accordingly.
8. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/order within 21 days of the date of its receipt.
9. In case, the Appellant or the Respondent is not satisfied with the above decision, he 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.

June 20, 2024
S.A.S. Nagar (Mohali).

(ANJULI CHANDRA)
Lokpal (Ombudsman)
Electricity, Punjab.