

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Khatema Fibres Ltd.  
UPSIDC Industrial Area, Khatima,  
Distt. Udham Singh Nagar, Uttarakhand

Vs

Executive Engineer,  
Electricity Distribution Division  
Uttarakhand Power Corporation Ltd.  
Khatima, Distt. Udham Singh Nagar, Uttarakhand

Representation No. 49/2019

### Order

Date: - 29.11.2019

Being aggrieved with Consumer Grievance Redressal Forum, Udham Singh Nagar zone, Rudrapur (hereinafter referred to as Forum) order dated 04.09.2019 in their complaint no. 45/2019-20 before the said Forum against Uttarakhand Power Corporation Ltd. through Executive Engineer, Electricity Distribution Division, Khatima (hereinafter referred to as respondent) M/s Khatema Fibres Ltd. (hereinafter referred to as petitioner) has filed this petition/representation through its Chairman and Managing Director with the prayer that Forum order dated 04.09.2019 be quashed and a sum of Rs. 4,33,139.00 towards the interest on Bank rate be ordered to be adjusted in the bills.

2. It has been submitted by the petitioner that they are a consumer of respondent with 8500 KVA contracted load for industrial purpose. The Hon'ble High Court, Uttarakhand, Nainital in their Writ Petition no. 2129 of 2009 vide judgment dated 22.10.2017 had directed the respondent for refund of excess charges amounting to Rs. 3,41,500.00 towards demand charges and the same had duly been refunded in the bill for December 2018. In their second case no. 178/2018 the Forum vide their order dated 04.01.2019 had ordered for refund of excess charges amounting to Rs. 15,91,794.00 towards illegally charged LPS and the same has also been allowed by the respondent in their bill for the month of January 2019 but in both the cases despite repeated communications the interest at Bank rate as admissible under section 62 (6)

of the Electricity Act, 2003 has yet not been adjusted by the respondent. As the interest as admissible under Electricity Act, 2003 was not adjusted by the respondent a complaint registered at Sr. no. 45/2019-20 was filed with Forum on 13.06.2019. The respondent submitted before the Forum that since neither Hon'ble High Court nor the Forum had ordered for adjustment of interest on the refunded amount so the interest as demanded by the petitioner has not been adjusted. The petitioner has referred Hon'ble Ombudsman order dated 08.07.2009 in petition no. 01/2009 of M/s Tribhuwan Ispat Ltd., Bazpur in a similar case wherein the Ombudsman had directed that the interest on the refunded amount is admissible under section 62 (6) of Electricity Act, 2003 and have accordingly ordered for allowing the same. In addition the Hon'ble Ombudsman in the above case have ordered UPCL to pay the petitioner a sum of Rs. 5000.00 towards the cost of this avoidable litigation.

3. The Forum after hearing both parties had ordered that interest @ SBI's saving bank account be given in accordance with UERC (The Electricity Supply Code) Regulations, 2007 (hereinafter referred to as Supply Code) under sub regulation 3.3.7 (2) instead of Bank rate as admissible under section 62 (6) of the Electricity Act, 2003.
4. The petitioner has averred that in both the cases the amount was recovered by the respondent in contravention to the Tariff provisions which was refundable to them under Rules. Hence provisions of section 62 (6) of Electricity Act, 2003 are applicable and accordingly interest at Bank rate is admissible. The petitioner has also tabulated the Bank rate of interest as applicable from 01.04.2006 to 31.03.2019 which varies from 6% to 9% against SBI saving bank interest rates from 3% to 4% per annum. The petitioner has argued that Forum orders allowing interest @ SBI saving bank interest rate instead of Bank rates as admissible under section 62 (6) of Electricity Act, 2003 are against law, ex-parte and in contravention to the law provisions. They have worked out that a sum of Ra. 4,33,139.00 is payable to them towards interest at Bank rates. He has further substantiated that under directions of UERC the UPCL has been allowing interest at Bank rate on security deposits by the consumers w.e.f. September 2003 which is adjusted each year in the bill for the month of March and hence the petitioner has requested that Forum order dated 04.09.2019 be

quashed and adjustment of interest at Bank rate amounting to Rs. 4,33,139.00 be allowed in their bill.

5. A perusal of Forum order dated 04.09.2019 in complaint no. 178/2018-19 shows that complaint before the Forum was lodged for refund of excess amount charged towards the LPS for the period June 2017 to October 2017 and June 2018 and the Forum vide their order have quashed the sum of Rs. 15,91,794.00 levied towards LPS for the above period and ordered that the same be adjusted in the future bills.
6. The respondent has filed written statement on 01.11.2019. It is averred that refund of Rs. 3,41,550.00 was allowed by way of adjustment in the bill of December 2018 in compliance to Hon'ble High Court, Uttarakhand, Nainital judgment dated 27.10.2017 in writ petition no. 2129/2019 which amount was charged towards excess demand so interest on such amount is admissible at saving bank interest rates. In their second case the excess amount levied towards LPS amounting to Rs. 15,91,794.00 has duly been adjusted in the bill of January 2019 in compliance to Forum's order dated 04.01.2019 in complaint no. 178/2019. He has submitted that interest on such refunded amount shall logically be allowed at saving bank rate of interest. As regards payment of interest at Bank rate the respondent has submitted that UPCL is a power distribution company and not a financial institution so payment of interest at Bank rate is not logically justified so he has requested that the Ombudsman may kindly consider to order payment of interest at saving bank rate.
7. The petitioner in their rejoinder dated 18.11.2019 have reiterated that interest at Bank rate is admissible under section 62 (6) of the Electricity Act, 2003 and have opposed the respondent's submission that UPCL a power distribution company and not being a financial institution is not liable to pay interest on Bank rate, but only on saving bank rate and have thus cogently submitted that orders for allowing interest at bank rate in accordance with section 62 (6) of the Electricity Act, 2003 may kindly be issued.
8. Hearing in the case was held on 28.11.2019. Both parties were present. The petitioner was represented by Shri Pukhraj Singh for whom authorization letter is submitted and the respondent was represented by Shri Anuj Kumar Tripathi, SDO, Khatima. Both argued their respective cases as the contents in their petition/rejoinder and written statement.

9. Documents available on file have been perused, relevant section 62 (6) of the Electricity Act, 2003 as well as sub regulation 2.(2) of UERC (Release of new HT and EHT connections, Enhancement and Reduction of Loads) Regulations, 2008 have also been perused, both these statutes are reproduced hereunder:

*“62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”*

*“2. (2) “Bank Rate” means the Rate as notified by Reserve Bank of India u/s 49 of the RBI Act, 1934.”*

10. The above statutory provisions are very clear and provides that interest at bank rate on such a refunded amount shall be payable. Further, on the principle of Re judicata Pro veritate abetur (an adjudicated matter shall be deemed correct), it would be logical to maintain consistency with Ombudsman’s order dated 08.07.2009 in representation no. 01/2009 referred in the petition in a similar case wherein orders for payment of interest at Bank rates in accordance with aforesaid statutory provisions have been issued
11. In view of above the respondent are directed to pay interest on the refunded amounts at bank rates as specified under sub regulation 2. (2) of above mentioned UERC HT Regulations, 2008 by way of adjustment in the next bill. The petition is allowed. Forum order is set aside.

Dated: 29.11.2019

Subhash Kumar  
(Ombudsman)