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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.260 of 2018
Date of decision: April 17, 2018

K.S.M. Spinning Mills Ltd. …Petitioner

Versus

Punjab State Power Corporation Ltd. and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.D.Bansal, Advocate,
for the petitioner.

Ms. Bhawna Gupta, DAG, Punjab.

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Rakesh Kumar Jain, J.

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 17.11.2017 by which it has been asked to pay ₹1,22,81,145/- as calculated upto 31.05.2017, to which further interest has been added and the demand has been raised to ₹1,34,28,736/-.

In brief, the petitioner has averred that it is running a spinning mill having an electricity connection in the premises provided by the Punjab State Power Corporation Limited (hereinafter referred to as the "PSPCL") vide A/c No.K-32-LS01-00001. It is further averred that due to certain reasons, the petitioner could not pay the electricity charges for some time in the year 2015 which resulted into disconnection but on their representation to the PSPCL, the Whole Time Board of Directors (WTD), in its 180th meeting held on 11.04.2016 at Patiala, came to its rescue as a special case. The resolution passed by the said WTD reads as under:-

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> "Resolved that approval be and is hereby accorded as a special case to allow the firm to deposit defaulting amount and MMS in installments starting with first installment of ₹50 lac on 02.05.2016 and next instalment of ₹ 50 Lacs after 10 days i.e. on 12.05.2016 and thereafter monthly payment of ₹ 30 lacs starting from 12.06.2016 allowing re-connection by paying ₹15 lacs and to make payment of outstanding amount in 15 months installments to M/s KSM Spinning Mills Ltd. as per following conditions to be ratified by BOD:-
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> i) The consumer will deposit ₹15 lacs before reconnection.
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> ii) The consumer shall deposit first installment of ₹50 lacs on 02.05.2016 and next installment of ₹50 lacs after 10 days i.e on 12.05.2016 and thereafter shall make monthly payment ₹30 lacs starting from 12.06.2016.
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> iii) Further, at any stage if the consumer default in making 2nd installment the connection will be disconnected again and then the supply will only be restored after the recovery of total outstanding amount.
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> iv) An undertaking of consumer of this regard be taken before allowing reconnection.
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> v) Compliance of the conditions given at Para 34.2 (a) of Supple Code 2014 and late payment surcharge as given in Annexure 1 clause No. 21 of CC 13/2015 shall also ensured by the field office.
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> vi) The Consumer shall submit Post Date Cheques for the installments and weekly advance."

According to the petitioner, the total amount assessed on the basis of the resolution passed by the WTD was of ₹4,58,39,858/- but the grievance of the petitioner is that it had been asked by the PSPCL vide letter dated 17.11.2017 to pay another sum of ₹1,34,28,736/- on account of surcharge and interest.

Learned counsel for the petitioner has submitted that once the WTD had fixed the amount payable by the petitioner as ₹4,58,39,858/-, the

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demand of additional amount vide impugned order/letter dated 17.11.2017 is illegal.

In reply, the respondents have averred that though the decision was taken by the WTD, which was respected by the PSPCL but the petitioner even defaulted in payment of installments in time as at many occasions, their cheques were also dishonoured. It is further averred that the petitioner did not pay the bill amount till September 2015 and as per Clause 5 of the resolution passed by the WTD, the petitioner is liable to pay the late payment surcharge and interest. It is further averred that at the time of reconciliation of the amount on the request of the petitioner, the interest amount was added, which is so provided in Clause 21 of the General Conditions of Tariff which has also been referred to by the WTD in its resolution. Clause 21 of the General Conditions of Tariff reads as under:-

> "**21. Late Payment Surcharge**
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> In the event of the monthly energy bill or other charges relating to electricity not being paid in full within the time specified in the bill, the consumers shall be levied late payment surcharge as under:-
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> **21.1** For all categories of consumers having HT/EHT specified supply voltage, if the full amount of the bill is not paid within due date, late payment surcharge shall be levied @ 2% on the unpaid amount of the bill up to 7 days after the due date. After 7 days, the surcharge shall be levied @ 5% on the unpaid amount of bill up to 15 days from the due date.
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> **21.2** In case of consumers having LT specified supply voltage, if the full amount of the bill is not paid within due date, the late payment surcharge shall be levied @ 2% on the unpaid amount of the bill up to 15 days from the due date.
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> **21.3** In case of AP consumers, late payment surcharge shall not be levied up to 7 days after the due date. After 7 days surcharge shall be levied as in the case of LT consumers.

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> **21.4** Interest @ 1.5% per month on gross unpaid amount including surcharge payable as per clause 21.1, 21.2 & 21.3 above shall be levied after expiry of 15 days from the due date of the bill till the deposit of outstanding amount. Part of the month shall be treated as full month for this purpose."

She has further submitted that the petitioner has not come to this Court with clean hands as he had concealed the reconciliation proceedings carried out in respect of A/c No.K-32-LS01-00001 which was undertaken by the Committee constituted by the CE Commercial of the PSPCL in its meeting held on 01.08.2017 to 02.08.2017 at Ludhiana, in which the following has transpired:-

> "The deflating amount of Rs.45839858/- was pertinent in WTD agenda by DS organization. To reconnected this connection on 13.04.2016 the amount of Rs. 5782387/- as surcharge and interest were payable as per PSPCL CC No. 43/2014 and CC No. 13/2015 by annexure 1 regulation 21 of tariff regulation. Therefore, total recoverable amount becomes due Rs.51622245/- (45839858+5782387) (Detail Attached)
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> The amount of Rs.45839858/- was deposited in installments upto May 2017. But as per the decision of WTD and CC No. 43/2014 and CC No. 13/2015, the amount of interest was also recoverable on defaulting amount.
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> As per the request of the consumer that his amount of Rs.15232946/- was not credited in the bills, the account was reconciled by the committee as under: -
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> 1. The amount deposited by the consumer from 04/2016 (Date or reconnection) to 03.07.2017 was reconciled. The amount deposited by the consumer was matched with the office record, no difference was found, it was also got checked by consumer.
> 2. It was stated by the consumer that the amount of surcharge and interest being charging wrongly again-again relates to defaulting amount Rs.45839858/-. On the request of consumer a separate statement of defaulting amount and current bills was prepared by the committee. A calculation sheet was framed by the committee w.r.t. the defaulting amount and monthly payments

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along with recoverable/chargeable surcharge and interest. According to which the amount due from the consumer was Rs. 122.81 Lakhs on 30.06.2016. This calculation also checked by consumer. (Annexure Attached).

3. CBC Ludhiana recalculated sheet on the basis of as per readings on the bills issued from 04/16 to 06/17 by the office. The amount recoverable and paid by the consumer was reconciled and surcharge/interest was included on the pending payments due from the consumer month wise.

4. The consumer has challenge the bill of LS010001 for the month 05/2017 in CGRF. A bill of amount Rs.17493250/- was issued in month 05/2017 in which including current consumption bill, old arrears/surcharge/interest were included. As per the order of CGRF 20% amount of Rs.17493250/- was deposited by the consumer i.e. Rs. 3498649/- deposited on 05.07.2017. After RCO, there is no provision/mechanism in the billing software to lock the arrear amount due to which surcharge/interest were not charge properly. In current Bill recalculation as per the details of this bill is for Rs.637985/- due.

5. Accordingly, Rs.6.98 lac is due from the consumer as on 04.07.2017 (excluding the dispute amount balance Rs. 1.74 Cr. for the month of 5/17). Separate sheets are prepared pertaining to old defaulting amount and bill issued up to 04/16 Rs. 129.79 (122.81+6.98) including surcharge and interest is due by Consumer Account No LS010001 (M/s KSM Ltd.).

6. There is another connection of the consumer M/s KSM Spinning Mill Ltd. bearing Account No. LS010013. The consumer had made part payment of the consumption bill of 04/2017 and no payment has been made for the month 05/2017 & 06/2017 till today. The amount of Rs. 134.18 lakh is recoverable with surcharge and interest upto 06/2017 (consumption month bill). (Annexure Attached).

After 03.07.2017 the consumer did not make a payments of currents bill of LS010001 and LS010013 for period of 04/2017 to 06/2017. As on 31.07.2017 the amount given as under of the both accounts LS010001 and LS010013 is as under:

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Details	Amount in ₹ Lakhs)
As per decision of WTD Balance amount of A/c No. LS010001	122.81
Upto 30.06.2017 current bill balance amount of Account No. LS010001 (except 05/2017 bill challenged in CGRF)	6.98
Total amount of Account No. LS010001	129.79
Amount due for LS010013 current bill	134.18

Rs.17493250/- disputed amount for the month 05/17 under consideration is not included in the above calculation.

All the above calculations has got checked by the consumer & their representatives.

The above is submitted for further necessary action.

Sd/-	Sd/-	Sd/-
Deputy CAO Central Zone, PSPCL, Ludhiana	Xen, CBS PSPCL, Ludhiana	Addl. SE, DS, Division PSPCL, Khanna

Sd/-	Sd/-
Consumer Sh. Vipan Kumar	Consumer Sh. Sarish Mittal.”

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no merit in the contention of the petitioner who has relied only upon the decision of the WTD to contend that the respondents are liable to pay the amount of ₹4,58,39,858/- and not to the additional amount of surcharge and interest which has been calculated to the tune of ₹1,34,28,736/- vide the impugned order/letter dated 17.11.2017, which has been passed after due deliberations in the meeting held between 01.08.2017 to 02.08.2017. Moreover, in Clause 5 of the resolution passed by the WTD, it has been specifically mentioned that the compliance has to be made to the conditions given at Para 34.2(a) of the Supply Code, 2014 and the late payment surcharge and interest shall also be recovered/ensured by the Field Office in terms of Clause 21 of the CC 13/2015, which has already been referred to in the earlier part of this order, in which it has been categorically provided that the petitioner would be liable to pay the surcharge as well as the interest, which has been demanded by the respondents because the petitioner has failed to comply with the conditions of payment resolved by the WTD, on which the petitioner has placed the sole reliance.

In view of the aforesaid discussion, I do not find any merit in the present petition for the purpose of interference by this Court and hence, the same is hereby dismissed, though without any order as to costs.

April 17, 2018 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No