**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

222 (Ten Cases)

**CWP-24704-2018 (O&M).
Date of Decision: 14.02.2023.**

SRI RAM TUBES PVT LTD AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

*****

Present: Mr. Aman Bansal, Advocate,
for the petitioner(s).

Mr. Vivek Chauhan, Addl. A.G. Haryana,
for respondent No.1/State.

Mr. Rajesh K. Sheoran, Advocate, and
Mr. Samir Malik, Advocate,
Respondents No.2 and 3.

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VINOD S. BHARDWAJ. J (ORAL).

A batch of ten petitions are being decided by a common order as the counsel for the parties are *ad idem* that issue involved in the present batch of petitions is common. The details of the cases are tabulated as under:-

Sr. No.	Writ Petition Number	Title
1	CWP-24704-2018 (O&M)	SRI RAM TUBES PVT LTD AND ORS V/S STATE OF HARYANA AND ORS
2	CWP-3509-2019 (O&M)	HS STRIPS PVT LTD AND ORS V/S STATE OF HARYANA AND ORS
3	CWP-3478-2019 (O&M)	THE SURYA INDUSTRIES AND ANOTHER V/S STATE OF HARYANA AND OTHERS
4	CWP-5960-2019 (O&M)	SANJAY KUMAR AND ORS V/S STATE OF HARYANA AND OTHERS
5	CWP-8546-2019 (O&M)	BALAJI AGRO SYSTEMS PVT. LTD. V/S STATE OF HARYANA AND OTHERS
6	CWP-17698-2019 (O&M)	PARTAP SPINTEX PVT. LTD. V/S STATE OF HARYANA AND ORS
7	CWP-17860-2019 (O&M)	RAMA COTSPIN PVT. LTD. V/S STATE OF HARYANA AND ORS.
8	COCP-1717-2019 (O&M)	BARKHA INDUSTRIES AND OTHERS V/S P K DAS AND ORS
9	CWP-17951-2019 (O&M)	PARTAP FABRICS PVT. LTD V/S STATE OF HARYANA AND ORS.
10	CWP-5131-2019 (O&M)	BALAJI AGRO SYSTEMS PVT.LTD V/S STATE OF HARYANA AND OTHERS

For the facility of reference, facts are being referred to from CWP No.24704-2018 titled 'Sri Ram Tubes Private Limited and others Vs. State of Haryana and others.'

The above said writ petition raises a challenge to the demand notices dated 06.09.2018 (Annexures P-5 to P-8) whereby respondent No.3 i.e. Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter to be referred as 'DHBVNL') has revised its demand of Advance Consumption Deposit (hereinafter to be referred as 'ACD'). The petitioners contend that they are the Companies registered with the Registrar of Companies and are carrying on manufacturing activities for last more than two decades. They have been regularly paying their electricity consumption charges without any default. Respondent No.4-Haryana Electricity Regulatory Commission (hereinafter to be referred as 'HERC') had notified Regulation No.HERC/34/2016 dated 11.07.2016 to provide for supply of electricity on request and power to recover expenditure incurred and require security etc. He contends that Regulation 5.6 of the aforesaid Regulation No.HERC/34/2016 dated 11.07.2016 prohibits the respondents from raising/demanding ACD, as such demand can only be raised from the new clients or the consumers to whom the additional load is sanctioned. The relevant Regulation is reproduced as under:-

> ***"5.6 Advance Consumption Deposit***
> ***5.6.1 New applicants*** *shall deposit consumption security (Advance Consumption Deposit) at the flat rates given hereunder or as revised by the Commission from time to time.*

Sr.No.	*Category of Consumer*	*Consumption Security Amount (Rs./KW or part thereof of the Connected Load)*
1	*Agriculture Supply*	*100*
2	*Domestic Supply/Bulk Supply (Domestic)*	*750*
3	*LT Industrial Supply*	*1000*
4	*HT Industrial Supply*	*1000*
5	*Non Domestic Supply*	*1000*
6	*Bulk Supply*	*1000*
7	*MITC*	*1000*
8	*Lift Irrigation*	*1000*
9	*Public Water Works*	*1500*
10	*Street Light*	*2000*
11	*Railway traction and Delhi Metro Railway Corporation*	*1500*
12	*Independent Hoarding/Decorative Lightning*	*2000*
13	*Temporary Metered Supply*	*Supply Four times of the rate of category in which the temporary supply is required*

5.6.2 In case of consumers who are sanctioned additional connected load, the additional consumption security shall be got deposited for the additional connected load."

In view of the aforesaid Regulation, it is argued that ACD could only have been demanded from a new consumer or from a consumer to whom additional load had been sanctioned and not from an existing consumer.

Written statement on behalf of respondents No.2 and 3 had been filed wherein it has been averred that the demand notices have been raised in accordance with the Regulation notified by the Appropriate Commission. The relevant extract of their reply is extracted as under:-

> *"In this regard it is submitted that demand notices were issued in view of clause 5.5 of (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security Regulations 2016) (the copy of the HERC Notification dated 11th July 2016 is already annexed with the writ petition as Annexure P-4)since as per clause 5.5 (1) A security deposit shall be made by all the consumers to cover the estimated power consumption for 2 billing cycles expect HT industrial supply consumers. In case of HT industrial supply consumers, it would be estimated power consumption for one and half billing cycle. It has been further provided in the this clause that in case of enhancement of load additional security to cover additional consumption shall need to be deposited, further there is a provision of revision of ACD annually. So in this clause complete process has defined regarding ACD. By these notices answering respondent is not demanded the fresh ACD but it's a revision of ACD as per clause 5.5(3) of notification. The Calculation sheet is attached as Annexure-R-1 to R-4 on the basis of which the revision of ACD was sought from the petitioners. The Clause 5.5 of regulation 2016 is reproduced hereunder for ready reference of this Hon'ble court;-*
>
> ***5.5 Security Deposit***
>
> *(1) In pursuance of Regulation 5.1, a security deposit shall be made by all the consumers to cover:*

(a) The estimated power consumption for two billing cycles for all categories of consumers except the HT industrial supply consumers. In case of HT industrial supply consumers, it would be estimated power consumption for one and half billing cycles. Initially the applicant shall deposit the consumption security at the flat rates as mentioned under Regulation 5.6. Subsequently the security shall be revised annually as per the procedure defined under Regulation 5.9 (1).

(b) The cost of electric meter that is to be provided for supplying electricity to a premises.

(2) In case of enhancement of load, only additional security to cover the additional consumption shall need to be deposited, estimated as per the methodology given under Regulation 5.9 (1).

(3) As stated under Regulation 5.5 (1), the consumption security deposit shall be revised annually as per the procedure defined under Regulation 5.9 (1). Any excess/deficient amount shall be adjusted within three subsequent bills of the consumer.

(4) The consumption security deposit shall be returned to consumer upon termination of Agreement and within 30 days of adjustment of all dues. In case of delay, interest equivalent to the State Bank of India base rate as on the 1st of April of the financial year shall be payable to the consumer.

From bare perusal of above said regulations its crystal clear that licensee can revised consumption security deposit annually, So, ground taken by petitioners that regulation *would apply prospectively is not tenable in eyes of law since its revision of ACD and by way of this demand notice answering respondents are not demanding the new ACD. Even otherwise earlier also answering respondent has served notice for revised ACD in view of prevalent regulations and the ACDs have been revised subsequently on the basis of consumption pattern and the same were duly paid by the petitioners.*

There is a provision of payment of interest on ACD to the consumer on annual basis at the bank rate as determined by the Reserve Bank of India on 1st April of each year or more as specified by HERC, as per the provision of clause 5.8 of HERC Notification 11th July, 2016. In view of the above clause, the interest was paid to the petitioner firms by the respondent Nigam on the actual ACD deposited by the petitioner time to time. The details of the interest have been adjusted in the energy bills of the petitioner firms through sundries. The copies of the sundries attached as Annexure-R-5 to R-8 with writ petition.

2. That present writ petition is not maintainable in view of clause 5.9 of Notification. Clause 5.9 is reproduced hereunder for the ready reference of this Hon'ble court;-

5.9 Review of Security Deposit for power consumption (ACD)

(1) At the beginning of the financial year, review the consumption pattern of the consumer for the adequacy of the security deposit from April to March of the previous year. A consumer except the HT Industrial supply consumer is required to maintain a sum equivalent to his average payment for the period of two

billing cycles. HT Industrial supply consumer is required to a sum equivalent to his average payment for the period of one and half billing cycles. Where "payments" shall be equal to the average of actual bills paid in the last financial year.

Provided that for consumer whose electricity connection is less than one year old, the security deposit shall not be revised at the beginning of the ensuing financial year.

Provided further that average payments shall not include the arrears of any kind recovered in the lastly financial year pertaining to the prior period.

(2) The security deposit available with the licensee in respect of each consumer shall be shown in the bill issued in the bill issued to the consumer. Refund of excess security to the consumer by the licensee, as and when arises, shall be made by way of adjustment in subsequent energy bills showing negative amount where necessary.

So, from the aforesaid clauses of the regulation 2016, it is crystal clear that the Nigam is within its right to determine, demand and revised the security deposit of even existing consumers and that so happened In the present case. The revision of the ACD of the consumer is only to safeguard the interest of the Nigam as in case the consumer became defaulter, the bill amount may be recovered from the ACD. The same has been clearly described in the HERC Regulation Notification 11th July, 2016, Clause 2.3 (2) that "Advance Consumption Deposit (ACD)" means deposit as a security to cover the consumption charges for the period as *specified in these regulations. So, in view of above the respondent Nigam has rightly assessed and demanded the revised ACD from the petitioners and the petitioners are legally liable to make payment of the same."*

Supplementary reply was also filed by the respondents Distribution Licensee on 25.05.2019 raising various issues regarding the maintainability of the writ petition in the light of efficacious alternative remedies provided under the statutory scheme itself. It is averred that the Statute provides for efficacious remedy before the Consumer Grievances Redressal Forum (hereinafter referred to as 'CGRF') as also the Forum of Electricity Ombudsman under Section 42 (5) and 42 (7) of the Electricity Act, 2003 and regulations framed thereunder. A person is required to first exhaust his remedies provided under the Statute before approaching High Court under a writ jurisdiction.

Yet another reply was also filed by the Distribution Licensee in which all the above objections were reiterated.

A short reply was filed by respondent No.4-HERC as well for disposal of the writ petitions in light of the authoritative pronouncements of this Court as well as the Hon'ble Supreme Court.

The relevant extract of the short reply reads as under:-

4. That the Commission has been empowered under the Electricity Act, 2003 for the purposes of making laws for achieving the objects enshrined under the Electricity Act, 2003. The power of the Appropriate Commission to frame Regulations is well settled in the Electricity Act, 2003. As per Section 47 of the Electricity Act, the appropriate

Commission prescribed reasonable security for the payment of all monies which may become due to any person who requires a supply of electricity in pursuance of section 43 of the Electricity Act, 2003:- may

> *(a) In respect of the electricity supplied to such person; or*
>
> *(b) In respect of electric line or plant or electric meter to be provided for supplying electricity to such person.*

The Commission in pursuant to the above made a provision of advance consumption deposit that may be required to be deposited with the distribution licensee by the consumer as a security for the supplied Electricity. Needless to point out that the underlying principle to be understood in proper context i.e. bill is generated by the distribution licensee bimonthly for most categories of consumers during this period, the Consumer consumes the electricity. Hence, when the bill is raised, the same is in relation to the Electricity that has already been consumed over a period of 2 months. In order to secure the financial interest of the distribution licensee lest the Consumer runs away or refuses to pay, a provision has been incorporated under the Electricity Act, 2003 which empowers the State Regulatory Commission to determine reasonable security required to be paid by a Consumer to a Distribution licensee. In lieu of the amount so to be deposited as advance consumption deposit, the Regulatory Commission is mandated to prescribe a rate of interest that is required to be paid on the amount so deposited by the Consumer with the distribution licensee. Accordingly, as per the mandate of Section-47 (4) of the Electricity Act, 2003, the Haryana Electricity Regulatory Commission has prescribed rate of interest *which is required to be paid by the distribution licensee on the amount deposited with it as an advance consumption deposit. The said rate of interest is equivalent to bank rate as determined by Reserve Bank of India on 1st April of each year or such higher rate as the Commission may fix from time to time.*

5. That the requirement to submit the advance consumption deposit and review of security deposit is duly contemplated under the provisions of Electricity Act, 2003. The Commission has prescribed the methodology to determine the advance consumption deposit for which security is to be furnished and the mode of security that is acceptable to the distribution licensee. Invariably, as the provisions of Section-47 itself contemplates the determination of the reasonable security in respect of supplied electricity, hence, the action of the Regulatory Commission in mandating the requirement for a consumer to provide advance consumption deposit with the distribution licensee thus cannot be said to be in conflict with the regulating Statute i.e. the Electricity Act, 2003. Further, the Commission, with a view to safeguard the interests of the Consumers has also prescribed that the distribution licensee shall be obligated to pay interest at the rate at the Bank rate or more as specified by the Commission payable annually on the consumer's security deposit. The interest accrued during the year shall be adjusted in the consumer's bill for the first billing cycle of the ensuing financial year on the amount of advance consumption deposit, to the consumers. Hence, the substantive rights of both the parties i.e. distribution licensee and the consumers have been balanced. While the fears of the distribution licensee stand addressed in the form of having advance consumption deposit which rules out the possibility of the consumer absconding after *consumption of Electricity and also compensate the consumer by awarding interest on the amount deposited by them with the distribution licensee as Advance Consumption Deposit (ACD).*

6. That the Haryana Electricity Regulatory Commission has acted within the provision and four corners of the Electricity Act, 2003 and the relevant Regulations i.e Regulation No HERC/29/2014 Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2014 and Regulation no HERC/34/2016 (Duty to Supply electricity on request, Power to recover expenditure incurred in providing supply and statute i.e. the Electricity Act, 2003."

Learned counsel for the respective parties have reiterated their submissions noticed above, during the course of their arguments. While counsel for petitioners prayed that the demand notices were liable to be set aside, the respondents argued that the writ petitions ought to be dismissed in view of HERC (Duty to Supply Electricity on request, power to require security) Regulation 2016. While petitioners relied on Regulation 56.1 and Regulation 5.6.2, the respondents relied on Regulation 5.5 and Regulation 5.9. Additional plea of maintainability was also raised in view of alternative remedies.

I have heard learned counsel for the parties and have gone through the pleadings as well as documents on case file and judgments cited by them.

The preliminary objection qua maintainability is being taken up first.

Availability of alternative efficacious remedies as a ground to refuse entertaining a writ petition has been well recognized as a valid principle. A writ Court may thus elect not to exercise its writ jurisdiction. Certain exceptions are however recognized by law when a writ can be entertained despite existence of alternative remedies. Hence, ordinarily, the matter would not be entertained in a writ and a litigant must exhaust his statutory remedies, the position of law in this regard is well settled. The bar is not absolute.

The case in hand has remained pending in this Court for last 5 years. Dismissing the petitions to direct the petitioners to avail alternative remedies at this stage may actually be a travesty of justice. More so, the question revolves purely on the interpretation and applicability of Statutory Regulation and whether the demand is well founded therein or not. The question being purely legal and not involving any question of fact can be looked into by the High Court. Relegating them to alternative remedies would only delay the adjudication on the issue still further. Hence, I have decided to proceed to examine the case on merits. The objection of respondents is thus declined at this stage. Long pendency of matter is a good ground to examine the issue further.

While examining the issue on merits, learned counsel for the petitioner has heavily placed reliance on Regulation 5.6.1 to contend that the ACD could not be demanded from existing consumers and that such demand was sustainable only against the new clients or against the consumers who are sanctioned additional load.

Per Contra, learned counsel for the respondents have submitted that the provision of Regulations 5.9 empowers review of Security deposit for power consumption and that Section 47 of the Electricity Act, 2003 necessitates a consumer to deposit reasonable security and/or to make payment of all monies which may become due after determination in accordance with law.

A reference is made to Regulation 5 to contend that the same empowers a Distribution Licensee to call upon a consumer to make good the deficiency/insufficiency or as well.

The relevant provision of the Regulations relied upon by the respective parties are extracted as under:-

> ***5 POWER TO REQUIRE SECURITY***
>
> *5.1 In pursuance of Section 47 of the Act, the licensee may require any person, who requires a supply of electricity in his premises, to give him reasonable security for the payment of all monies, which may become due to him:-*
>
> > *(a) in respect of the electricity supplied to such person;*
> >
> > *(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter;*
>
> *and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.*
>
> *5.2 Where any person has not given such security as is mentioned in Regulation 5.1 or the security given by any person has become invalid or insufficient, the distribution*

licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

5.3 If the person referred to in Regulation 5.2 fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

5.4 The distribution licensee shall not be entitled to require security in pursuance of clause (a) of Regulation 5.1 if the person requiring the supply is prepared to take the supply through a pre-payment meter.

5.5 Security Deposit

(1) In pursuance of Regulation 5.1, a security deposit shall be made by all the consumers to cover:

(a) The estimated power consumption for two billing cycles for all categories of consumers except the HT industrial supply consumers. In case of HT industrial supply consumers, it would be estimated power consumption for one and half billing cycles. Initially the applicant shall deposit the consumption security at the flat rates as mentioned under Regulation 5.6. Subsequently the security shall be revised annually as per the procedure defined under Regulation 5.9 (1).

(b) The cost of electric meter that is to be provided for supplying electricity to a premises.

(2) In case of enhancement of load, only additional security to cover the additional consumption shall need to be

deposited, estimated as per the methodology given under Regulation 5.9 (1).

(3) As stated under Regulation 5.5 (1), the consumption security deposit shall be revised annually as per the procedure defined under Regulation 5.9 (1). Any excess/deficient amount shall be adjusted within three subsequent bills of the consumer.

(4) The consumption security deposit shall be returned to consumer upon termination of Agreement and within 30 days of adjustment of all dues. In case of delay, interest equivalent to the State Bank of India base rate as on the 1st of April of the financial year shall be payable to the consumer

5.6 Advance Consumption Deposit

5.6.1 New applicants shall deposit consumption security (Advance Consumption Deposit) at the flat rates given hereunder or as revised by the Commission from time to time.

Sr.No.	Category of Consumer	Consumption Security Amount (Rs./KW or part thereof of the Connected Load)
1	Agriculture Supply	100
2	Domestic Supply/Bulk Supply (Domestic)	750
3	LT Industrial Supply	1000
4	HT Industrial Supply	1000
5	Non Domestic Supply	1000
6	Bulk Supply	1000
7	MITC	1000
8	Lift Irrigation	1000

9	*Public Water Works*	*1500*
10	*Street Light*	*2000*
11	*Railway traction and Delhi Metro Railway Corporation*	*1500*
12	*Independent Hoarding/Decorative Lightning*	*2000*
13	*Temporary Metered Supply*	*Supply Four times of the rate of category in which the temporary supply is required*

5.6.2 <u>In case of consumers who are sanctioned additional connected load, the additional consumption security shall be got deposited for the additional connected load</u>."

xxx xxx xxx

"5.9 ***<u>Review of Security Deposit for power consumption (ACD)</u>***

(1) At the beginning of the financial year, the licensee shall review the consumption pattern of the consumer for the adequacy of the security deposit from April to March of the previous year. A consumer, except the HT industrial supply consumer, is required to maintain a sum equivalent to his average payment for the period of two billing cycles. An HT industrial supply consumer, is required to maintain a sum equivalent to his average payment for the period of one and half billing cycles. Where 'average payment' shall be equal to the average of actual bills paid in the last financial year:

Provided that for a consumer whose electricity connection is less than one year old, the security deposit shall not be revised at the beginning of the ensuing financial year.

Provided further that average payment shall not include the arrears of any kind recovered in the last financial year pertaining to the prior period.

(2) The security deposit available with the licensee in respect of each consumer shall be shown in the bill issued to the consumer. Refund of excess security to the consumer by the licensee, as and when arises, shall be made by way of adjustment in subsequent energy bills showing negative amount where necessary."

It is evident from a perusal of the above Clauses that Regulation 5.1 mandates a person to deposit security. Regulation 5.2 further empowers the distribution licensee to give such security as may be invalid or insufficient. Thus, the said Regulation also perceives demand of additional security if security already tendered is insufficient. Further, Regulation 5.5 (3), the consumption security deposit may be revised annually as per procedure under Regulation 5.9, which empowers a distribution licensee to review the security deposit on the basis of consumption pattern and average bills.

Hence, the Regulation when read with Section 47 of the Electricity Act, 2003 empowers revision of ACD by the distribution licensee.

The aforesaid aspect has also been considered by a Division Bench of this Court in the matter of ***Garg Inox Limited Vs. State of Harana and others, reported as 2017 (1) R.C.R. (Civil) 131***. The relevant extract of the aforesaid judgment reads as under:-

13. Before we proceed to consider the contentions raised by learned counsel for the parties, it would be appropriate to refer to the relevant provisions and the scheme of the Act. The same are extracted below:

Sections 47, 61(c) and (d), 181 (2)(v)(w) and (zd) of the Act

***47. Power to require security**.- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of Section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-*

> *(a) in respect of the electricity supplied to such person; or (b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.*

(2) Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit,

discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

xx xx xx

61. Tariff regulations.*- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

xx xx xx

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner.

xx xx xx

181. Powers of State Commissions to make regulations.*-*

xx xx xx

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:-

xx xx xx

(v) reasonable security payable to the distribution licensee under sub-section (1) of Section 47;

(w) payment of interest on security under sub-section (4) of Section 47;

xx xx xx

(zd) the terms and conditions for determination of tariff under section 61;

xx xx xx

***Clause 5 of the Regulations 5**.*

5. Power to require security

5.1 The licensee may require any person, who requires a supply of electricity to his premises in pursuance of section 43 of the Act, to give him security, for the payment of all monies, which may become due to him in respect of 5.1.1 the electricity supplied/ to be supplied to such person (Consumption Security):

5.1.2 any electric line/ plant/ meter to be provided by the licensee for supplying electricity to such person;

5.2 If the person fails to give such security, referred to in regulation 5.1, the licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the electric line/ plant/ meter for the period during which the failure continues.

5.3 Consumption Security 5.3.1 The LT consumers shall at all times maintain with the licensee an amount equivalent to consumption charges of four months wherever bi-monthly billing is in vogue and two months in the case of monthly billing cycle, as consumption security towards the electricity supplied/ to be supplied to him against any *default in payment during the period the Agreement for supply of energy is in force:*

Provided that as and when the bi-monthly cycle is replaced with monthly billing cycle, the licensee shall refund the excess amount if any, over the two months charges by adjustment against the existing dues or those becoming due immediately thereafter.

5.3.2 The HT consumers shall at all times maintain with the licensee an amount equivalent to consumption charges of two months as consumption security towards the electricity supplied/ to be supplied, against any default in payment during the period the Agreement for supply of electricity is in force.

5.3.3 If any person requiring supply under LT or HT is prepared to take the supply through a pre-payment meter, the licensee shall not be entitled to collect consumption security from such person. Provided that in the case of existing consumers (LT or HT) who opt for the supply through pre-payment meter, the balance amount of consumption security of such consumers after adjusting against pre-payment amounts payable by them, if any, shall be refunded.

5.3.4 The consumption security amount shall be paid either in cash or local cheque(s) (outstation cheque(s) will not be accepted) or through demand draft (DD) drawn in favour of the licensee.

xx xx xx

Clause 5.7 of the Regulations

5.7 Interest on Consumption Security and Meter Security

The licensee shall pay interest on Consumption Security and meter security deposited by the consumer at the Saving

Bank rate notified by State Bank of India or such higher rate as the Commission may fix, from time to time. The interest accruing to the credit of the consumer shall be adjusted in energy bills of April or May of every year or in the final bill if permanent disconnection is sought by the consumer during the year."

14. Section 47 of the Act, as referred to above, empowers the licensee to ask any person who requires supply of electricity to give him reasonable security, as may be determined by the Regulations. The security is on account of the payment, which may become due from the consumer on account of supply of electricity or where any electric line or electrical plant or electrical meter is to be provided for supplying electricity to such person. In case of failure of that person to give security, the licensee may refuse to supply electricity or provide any other facility. In case the security so given by any person becomes invalid or insufficient, the licensee may, by notice, require that person to give reasonable security for the payment of the money due from him. On failure to give security, the licensee can discontinue the supply of electricity for the period the default continues. Sub-section (4) thereof mandates the licensee to pay interest on such security at the rate equivalent to the bank rate or more, as may be specified by the State Commission in this regard. Refund of security is permissible on request of the person concerned. The licensee cannot ask security from a person in case that person is prepared to take supply through a pre-paid meter.

15. Sections 181(2) (v), (w) of the Act empowers the Commission to frame Regulations with reference to the provisions of Section 47 of the Act. In exercise thereof, the impugned Regulations were framed way back in the year

2005, which are sought to be challenged now after more than a decade, though there may have been deposit of security on release of new connections or additional demand of security on account of increased load or power tariff and the amount may have been paid at that time.

16. Before the enactment of the Act, the electricity supply was being regulated by the Electricity (Supply) Act, 1948. Section 49 thereof enabled the Electricity Board to frame Regulations. The Regulations were framed at that time for demand of security deposit. The same were under consideration before Hon'ble the Supreme Court in ***Ferro Alloys Corpn. Ltd.'s case*** *(supra). Hon'ble the Supreme Court opined on the nature of consumption security deposit and the object for demand thereof. It was opined that security deposit is in fact adjustable advance payment of consumption charges. It is revisable from time to time on the basis of average consumption charges. The normal period of consumption, time for raising the bills, time granted for payment, notice for disconnection etc. were taken care of and it was opined that consumption cycle for a period of three months is reasonable for demanding the security. The consumer is supplied energy on credit as the billing is periodic. For generation, purchase and supply of energy, the Board needs funds, which are in the form of capital or loans taken from various financial institutions. Working capital is required for purchasing inputs. If the power generation is through thermal plant or if it is to be purchased from central projects, in most of the cases, advance payment is made. These transactions do not materialise only by furnishing bank guarantee or letter of credit. The relevant paras thereof are extracted below:*

"100. The next question will be: what is the object in demanding security?

101. The deposit though called security deposit is really an adjustable advance payment of consumption charges. The payment is in terms of the agreement interpreting the conditions of supply. This security deposit is revisable from time to time on the basis of average consumption charges depending upon the actual consumption over a period. This is the position under the terms of supply of energy with reference to all the Boards.

102. As a matter of fact, electricity is supplied in anticipation of payment. In almost every case it takes nearly 2½ months for the recovery of the amount before action for disconnection could be taken. We will give one illustration as is in the case of Rajasthan. The following is the billing cycle:

(a) Consumption period.	*30 days*
(b) Period consumed after taking the meter readings to issue bills.	*10 days*
(c) Period allowed for payment.	*17 days*
(d) Notice for disconnecting supply if consumer fails to deposit energy bill in time.	*7 days*
(e) Period taken in actual disconnection after expiry of notice.	*10 days*
Total:	*74 days*

103. In practice, some time is also taken between the period allowed for payment and the notice of disconnection. At the same time, there is no obligation that the consumer must use only a particular quantum of electricity. He could even consume more than the average consumption. The Board after 2-1/2 months recovers amount for the electricity *supplied by it. It could charge late surcharge in case of high tension tariff after the expiry of the said period.*

104. Thus, it will be clear that the true nature of the transaction in these cases is one of advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, he could make good the shortfall in consumption charges and the security deposit before actual disconnection. Actually speaking, it is only after three months the disconnection takes place. Hence, it is like a running current account.

105. The cycle of billing by the Board demonstrates that in the very nature of things, the consumer is supplied energy on credit. The compulsory deposit in the context of billing cycle is hardly adequate to secure payments to the Board by the time the formal bill by the Board is raised on the consumer. In one sense, the consumption security deposit represents only a part of the money which is payable to the Board on the bill being raised against the consumer. Thus, the Board secures itself by resorting to such deposit to cover part of the liability.

106. For supply of electricity the Board needs finance for production, supply and other-charges necessary for supply of electricity. For this purpose, it takes loans from various financial institutions. This is best illustrated if one looks at the transactions of Punjab Electricity Board where electric energy is generated through hydro as well as thermal plants for ultimate sale to the consumers. Of the total power *generated about 50 per cent is through hydro plants. The remaining energy is generated through thermal power plants which are operated on coal/ oil. Due to limited hydro resources within the State of Punjab the dependency on power on thermal plants is on the increase. The present requirement for working of thermal plants is more than 52 lakh tonnes of coal per annum. In addition, 60 thousand kilo litre of furnace oil is required. The Coal Companies/Coal India Limited together with major suppliers of power plant like M/s. BHEL demand cost of coal/ spares/projects in advance for the supply of material. The Board is also required to purchase power from Central projects N.T.P.C., N.H.P.C. in order to meet the demand for power by the consumers. For purchase of such power again advance payment are made by the Board. On such advances the Board is not paid any interest. The effect is, the Board is obliged to bear the liability of hundreds of crores of rupees per annum. It has no option but to pay the charges and deposits in order to keep the power available at a level to meet with the demand of the consumers. It is the case of the Board that it has opened letters of credit by making advance deposits in favour of National Thermal Power Corporation and the suppliers. Coal India Limited has also asked the Board to open revolving letters of credit in favour of Coal companies/Coal India Limited. Despatch of coal is only against the letter of credit.*

107. From the above, it is clear that while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers, the consumers use and consume electricity on credit ranging from 2 to 3 months depending upon the category of consumers. To off-set part of the amount the consumer owes to the Board continually to ensure timely payment of bills by the Board to its *suppliers, the advance consumption deposit is required to be kept with the Board before commencing supply to the consumer. The clauses in the contract in relation to conditions of supply of electric energy enable the Board to adjust the bill against such deposits. Therefore, this is not a case of mere deposit of money as in commercial transaction......*

[Emphasis supplied]

xx xx xx

109. In these circumstances, we conclude that the object of security deposit is to ensure proper payment of bills

xx xx xx

17. Following para from the judgment of K. C. Works v. Secretary, A.P.S.E.B., Vidyut Soudha, AIR 1979 AP 291 was referred to:

> *"As a matter of fact it may be that the writ appellant and the writ petitioner before us are prompt in paying their electrical dues, but the Board deals with lakhs and lakhs of consumers and it should have a uniform policy in demanding security. It cannot make a distinction or discrimination from one consumer to another. That is why a uniform policy has been laid down by incorporating it in the conditions aforesaid. For these reasons we are satisfied that the requirement of security for three months' average consumption charges by way of cash deposit is reasonable."*

18. The aforesaid paragraph suggests that any licensee is required to take an over-all view of different types of consumers and frame a uniform policy for demand of security. There cannot be different para meters for different consumers. Security for average consumption of three months for cash deposit was found to be reasonable.

19. In ***Mandi Gobindgarh Induction Furnace Association's case*** *(supra), a Division Bench of this court upheld similar Regulations framed by Punjab State Electricity Regulatory Commission with reference to demand of security. In M/s Anil Spinners' case (supra) as well, the Regulations in question were upheld, though the issue regarding the security being in cash or in the form of bank guarantee was not raised, which is sought to be raised in the present petitions, terming the same to be unreasonable and unfair to the consumer. The issue raised therein was regarding the amount of security demanded, which was upheld.*

20. The validity of any Regulation is to be examined in the light of the provisions of the statute, under which those Regulations have been framed. The scope of power in the case in hand is Section 47 of the Act. From a bare perusal thereof under the scheme of the Act, it is plain and evident that security has to be in cash as the licensee has been mandated to pay interest equivalent to the bank rate or more, as may be specified by the State Commission, on such security deposit. No security is to be demanded from a consumer, who is prepared to take supply through a pre-paid meter.

21. As far as safeguarding the interest of the consumers is concerned, in our opinion, that has been appropriately taken care of by the provisions of the Act and the Regulations framed thereunder. Firstly, the same is by way of payment of interest on such deposit at the rate to be determined by the Commission, which in the year 2015-16 was stated to be @ 8.5% per annum, which is quite reasonable and apparently maximum rate of interest for deposit in a bank.

*22. Further, as has been discussed in the judgment of Hon'ble the Supreme Court in **Ferro Alloys Corpn. Ltd.'s case** (supra) that the licensee requires money for the purpose of generation, purchase and supply of electricity to the consumers in advance and the bills are raised later on. It is a kind of working capital. After major reforms were carried out in electric supply system, the Commission was constituted with an object to over-see fixation of tariff for supply of electricity. The exercise is done after affording due opportunity to the consumers as well. For the purpose, the Commission framed Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution and Retail Supply under Multi Year Tariff Framework) Regulations, 2012. Clause 22.1 thereof provides for components of working capital and one of the components of working capital for retail supply of electricity is the consumer security/ advance consumption deposit. Meaning thereby, the amount of advance consumption deposit deposited by the consumer with the licensee, on which provision for payment of interest has been made, is taken care of by the Commission for considering the requirement of working capital of a licensee. The tariff is finally determined keeping in view the cost to be incurred for generation, purchase and supply of electricity.*

23. Any relaxation given by the State of Maharashtra cannot be a ground to strike down the Regulations in the State of Haryana, which have been framed in exercise of powers conferred under the Act. The argument is merely to be noticed and rejected.

24. Section 61 of the Act has relevance for determination of tariff and for advance consumption deposit separate Section 47 of the Act is there.

25. It cannot be opined by any stretch of imagination that the Regulations are beyond the provisions of Section 47 of the Act, which itself suggest that security has to be in cash. The Regulations are in line thereof, hence, cannot be said to be beyond the provisions of the Act."

It is thus evident that the issue regarding the entitlement of the Distribution Licensee to revise the ACD and to demand the same from the consumers is well founded in the Statute and has already been considered by the Division Bench judgment of this Court and it was held to be within the domain of the Distribution Licensee.

The Regulation 5.6 read with Regulation 5.9 and Section 47 of the Electricity Act, 2003 conjointly empower the Distribution Licensee to review the consumption pattern of the consumer for adequacy of the security deposit and thereafter to revise the security deposit for power consumption. The interest of the Consumer is well protected by compensating the consumer by award of interest on the ACD.

It is not the case of the petitioners that the computation of the demand is not in accordance with the Regulations. Consequently, the assessment of the amount demanded remains undisputed. Resultantly the present petitions are dismissed and the COCP stands disposed of as not pressed.

The respondent-Distribution Licensee is held entitled to raise the demand of ACD after reviewing the same in accordance with the Provisions of the Electricity Act, 2003 read with Regulation No.HERC/34/2016 dated 11.07.2016 (supra).

Pending misc. application, if any, shall also stand disposed of accordingly.

A photocopy of the order be placed on the file of each connected case.

February 14, 2023. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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