

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 298 OF 2014,
APPEAL NO. 86 OF 2016 & IA No. 204 of 2016,
APPEAL NO. 87 OF 2016& IA NO.205 of 2016,
APPEAL NO. 89 OF 2016& IA NO.217 of 2016
&
APPEAL NO. 105 OF 2016& IA NO.253 of 2016**

Dated: 19th May, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

APPEAL NO. 298 OF 2014

In the matter of:

Punjab State Power Corporation Limited
The Mall, PATIALA-147 001
Punjab

....Appellant

VERSUS

M/s GNA Udyog Limited
GT Road Goraya, Distt. Jalandhar

Punjab State Electricity Regulatory Commission
SCO 220-221,
Sector 34A, Chandigarh, 160022

...Respondents

APPEAL NO. 86 OF 2016 & IA No. 204 of 2016

In the matter of:

Punjab State Power Corporation Limited
The Mall, Patiala-147 001
Punjab

....Appellant

VERSUS

1. SS Steel Industry
Tohra Road, Village Chanalon (Sirhind)
District Fatehgarh Sahib
Punjab

2. Punjab State Electricity Regulatory Commission
SCO 220-221,
Sector 34A, Chandigarh, 160022

.Respondents

APPEAL NO. 87 OF 2016 & IA No. 205 of 2016

In the matter of:

Punjab State Power Corporation Limited
The Mall, Patiala-147 001
Punjab

....Appellant

VERSUS

Amtek Railcar Industries Pvt. Limited,
Village PhatakMajri, P.O. Sadhugarh,
District Fatehgarh Sahib,
Punjab
Punjab State Electricity Regulatory Commission
SCO 220-221,
Sector 34A, Chandigarh, 160022

.Respondents

APPEAL NO. 89 OF 2016 & IA No. 217 of 2016

In the matter of:

Punjab State Power Corporation Limited
The Mall, Patiala-147 001
Punjab

....Appellant

VERSUS

1. Madhav Alloys Pvt. Ltd.,
Talwara Road, Sirhind Side,
MandiGobindgarh,
District Fatehgarh Sahib,
Punjab
2. Punjab State Electricity Regulatory Commission
SCO 220-221,
Sector 34A, Chandigarh, 160022

.Respondents

APPEAL NO. 105 OF 2016& IA NO.253 of 2016

In the matter of:

Punjab State Power Corporation Limited
The Mall, Patiala-147 001
Punjab

....Appellant

VERSUS

Arora Iron & Steel Rolling Mills Pvt Ltd
DhandariKhurd, Near Phase – VII,
Focal Point, Ludhiana
Punjab
Punjab State Electricity Regulatory Commission
SCO 220-221,
Sector 34A, Chandigarh, 160022

.Respondents

Counsel for the Appellant : Mr.Anand K. Ganesan
Mr.Amal Nair

Ms.SwapnaSeshadri

Counsel for the Respondent(s) : Mr.Tajender K. Joshi, for R-1
Mr.Sakesh Kumar
Ms.Gitanjali N. Sharma for R-2

J U D G M E N T

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. This Batch of Appeals has been filed under Section 111 of the Electricity Act, 2003 against respective Orders dated 17.09.2014 (in P. No. 45 of 2014), 20.01.2016 (in P. No. 67 of 2015), 03.02.2016 (in P. No. 80 of 2015), 13.01.2016 (in P. No. 65 of 2015) and 18.01.2016 (in P. No. 75 of 2015) passed by the Punjab State Electricity Regulatory Commission (hereinafter being referred to as the “**State Commission**”), whereby the State Commission directed the Appellant not to make any recovery of interest from Respondent No. 1 paid on the additional initial security deposited by the Respondent No. 1 for extension in load/demand and also to continue the payment of interest till release of extension in load/demand.
2. **FACTS OF THE CASE**
 - 2.1 The Appellant is the distribution licensee in the State of Punjab licensed under Section 14 of the Electricity Act to provide safe and secure supply of power to the consumers of Punjab. The Appellant is an unbundled entity of the erstwhile Punjab State Electricity Board and vested with the functions of generation and distribution of electricity in the State of Punjab.
 - 2.2 The first Respondents are the HT Industrial consumer of the Appellant.

2.3 The Respondent No. 2, the State Commission was constituted by the Government of Punjab under Section 17 of the Electricity Regulatory Commissions Act, 1998 vide its Notification dated 31.3.1999 to discharge the duties and perform the functions specified under Section 22 of the aforementioned statute. The State Commission presently discharges functions and exercises jurisdiction under the provisions of the Electricity Act, 2003.

2.4 The Respondents are required to pay the charges in terms of the Electricity Act.

One of the charges required to be deposited by the consumers including the Respondent No. 1 is the security deposit. The terms and conditions for the security deposit to be paid by the consumers is specified by the State Commission in terms of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2007 (**Supply Code**).

2.5 The Supply Code Regulations provide for payment of interest on security deposit to be paid by the Appellant after the load has been released by the Appellant to the consumers. There is no provision for payment of interest prior to the release of load where the amounts is paid as earnest money by the consumers for feasibility studies etc. to be conducted.

2.6 However, the Appellant had mistakenly paid the Respondent No. 1 an additional sum of Rs. 13,52,104/- on the additional initial security/earnest money paid in lieu of enhancement of Contract Demand. As payment of interest on initial security deposit, i.e. before release of load/extension was not envisaged under the Supply Code, the Appellant, immediately, upon the mistake being noticed on 09.07.2014,

issued a notice to the Respondent No. 1 requesting the Respondent No. 1 to refund a sum of Rs. 13,52,104/- within 10 days.

- 2.7 Pursuant to the above, the Respondent No. 1 filed a petition before the State Commission challenging the action of the Appellant seeking recovery of interest wrongfully paid as against the provisions of Section 47 (4) of the Electricity Act.
- 2.8 The primary contention of the Appellant was that the question of interest on earnest money/initial security does not arise as the provision for payment of interest on security deposit arises only after the load is released and not for the earnest money/initial security given for feasibility studies etc.
- 2.9 The State Commission has by the impugned order allowed the petition of the Respondent No. 1 and held that the Appellant was bound to pay interest on initial security deposit even prior to the release of load by the Appellant.
- 2.10 The relevant extracts of the Impugned Order is as below:

“All these regulations of the Supply Code are required to be read in conjunction with Section 47 of Electricity Act, 2003 (Act). Sub section (1) of Section 47 of the Act, empowers the distribution licensee to recover security from the person requiring supply of electricity for payment which may become due in respect of electricity supplied to such person and also for any electric line/plant or meter which is to be provided for supplying electricity to such person. Sub section (2) of Section 47 further empowers the distribution All these regulations of the Supply Code are required to be read in conjunction with Section 47 of Electricity Act, 2003 (Act). Sub section (1) of Section 47 of the Act, empowers the distribution licensee to recover security from the person requiring supply of electricity for payment which may become due in respect of electricity supplied to such person and also for any electric line/plant or meter which is to be provided for supplying electricity to such person. Sub section (2) of Section 47 further empowers the distribution Though as per Regulation 14 of the Supply Code, this amount recovered from the applicant has been termed as “Initial Security” but it is a security amount recovered as provided in Section 47 (1) of the Act and interest on such initial security is also payable. Since as per regulation 17.3 of the Supply Code, the interest is to be adjusted in the bills against the outstanding dues or any amount becoming due to licensee thereafter, so in case of a new connection although interest is payable from the date of deposit of such amount but

is actually paid to the consumer after release of connection through bills. However, for the existing consumers requiring additional load, the interest on Security (consumption) and the additional security deposited as initial security for additional load/demand, can be paid to the consumer as and when the same becomes due as per Supply Code even before the release of extension in load/demand.

In the instant case, since the petitioner is an existing consumer of PSPCL who has requested for extension in load/demand so the action of PSPCL of allowing interest to the petitioner on security including the initial security deposited against extension in load/demand in the first instance is perfectly as per the letter and spirit of the Act and the Supply Code. Thus PSPCL is accordingly directed not to make any recovery of interest paid on the additional initial security deposited by the consumer for extension in load/demand and also to continue the payment of interest till release of extension in load/demand. The Notice issued by AEE RurkaKalan, Sub-Division of PSPCL vide No. 976 dated 9.7.2014 for recovery of Rs. 13,52,104/- as interest in security is set aside."

- 2.11 Aggrieved by the impugned order, which is contrary to the Supply Code Regulations and places a substantial financial burden on the Appellant as well as making a wrongful precedent, the Appellant has preferred the present appeal before the Tribunal.

3. FACTS IN ISSUE

- 3.1 The Electricity Act at Section 47 (1) empowers the distribution licensee to demand security for release of electricity connection. Section 47(2) empowers the distribution licensee to recover additional security from the consumer when the security deposit provided under Section 47(1) has become insufficient or invalid. Section 47(4) provides for payment of interest on security deposited provided under Section 47(1) of the Electricity Act at a rate equivalent to the bank rate or more, as may be specified by the relevant 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. Section 47 is extracted as below:

"47. (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 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 persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to 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 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 subsection (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.”

3.2 Section 47 (4) of the Electricity Act only provides for interest to be paid on security deposit that becomes due to the Appellant in respect of the electricity supplied to a consumer or in respect of any electric line or electrical plant or electric meter is to be provided for supplying electricity to the consumer. Section 47(4) of the Electricity Act does not provide for payment of interest on additional security deposit recoverable from the consumer by the Appellant when the original security deposit under Section 47(1) becomes insufficient/invalid.

3.3 Regulation 13 of the Supply Code empowers the Appellant to recover security deposit from the consumers. Regulation 14 provides for payment of initial security deposit by the consumers to the Appellant. Regulation 15 provides for payment of security (consumption) deposit by the consumers after release of connection. Regulation 16 provides for recovery of additional security deposit if the security deposit under Regulation 15 becomes insufficient after a period of time. Regulation 17

provides for payment of interest by the Appellant on the security deposit paid by the consumers under Regulation 15 of the Supply Code. Regulation 17.1 of the Supply Code provides for interest on Security (consumption) at State Bank of India's (**SBI**) base rate prevalent on 1st of April of the relevant year plus 2%. This interest shall be credited to the account of a consumer annually on first day of April each year and will be adjusted on 1st May of every year against the outstanding dues and/or any amount becoming due to the licensee thereafter as per Regulation 17.3 of the Supply Code. The relevant regulations are extracted below:

“13. Power to require security

13.1 The Licensee may require any applicant, who requires supply of electricity to his premises to give security for the payment of all monies, which may become due and payable to the Licensee:

(a) in respect of the electricity supplied to such person ; and

(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.

13.2 If an applicant fails to furnish such security, the Licensee may refuse to give the supply/additional supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

13.3 The amount payable towards security will be deposited at the notified office in cash or by demand draft/local cheque/banker cheque drawn in favour of the Licensee.

14. Initial security

14.1 The applicant seeking supply of electricity as per Regulation 5 of these Regulations will be required to pay to the Licensee an amount as specified in the Schedule of General Charges approved by the Commission, as initial security towards supply of electricity.

14.2 The initial security will after release of connection be adjusted against Security (consumption) required to be deposited in accordance with Regulation 15.1.

14.3 The applicant seeking sanction of additional load/demand will be required to deposit initial security computed only for the additional load/demand.

15. Security (consumption)

15.1 Consumers will maintain with the Licensee an amount equivalent to consumption charges (i.e. fixed charges and variable charges as applicable) for three months where bi-monthly billing is applicable and two months in case of monthly billing as security during the period of agreement for supply of electricity. Consumption charges will be worked out on the basis of average monthly consumption of an existing consumer over a period of twelve months immediately before coming into force of these Regulations.

15.2 The Licensee will not be entitled to demand Security (consumption) from any consumer requiring supply of electricity through a prepayment meter as and when such a facility is provided.

Provided that in the case of an existing consumer who opts for supply of electricity through a pre-payment meter, the Licensee will refund the Security (consumption) of such consumer by adjustment against any outstanding dues and/or any amount becoming due to the Licensee immediately thereafter.

15.3 Whenever spot billing is introduced for any category of consumers in any area of operation of the Licensee, the Security (consumption) will be maintained on the basis of consumption charges for two months for bimonthly billing and one month for monthly billing categories.

Excess amount of Security (consumption) in respect of existing consumers will be refunded by the Licensee by adjustment against any outstanding dues and/or any amount becoming due to the Licensee immediately thereafter.

16. Review and payment of additional Security (consumption)

16.1 General Review

The adequacy of the amount of Security (consumption) computed in accordance with Regulation 15 of these Regulations will be reviewed by the Licensee after every three years (preferably after revision of tariff for the relevant year) based on the average monthly consumption for the twelve months period from April to March of the previous year.

For existing consumers, the Licensee will undertake the first such review of Security (consumption) (earlier called Advance Consumption Deposit), within twelve months after revision of tariff subsequent to the date of enforcement of the Supply Code.

16.2 Demand notice for additional Security (consumption)

(a) Based on a review as per Regulation 16.1, demand for shortfall or refund of excess Security (consumption) will be effected by the Licensee from/to the consumer.

Provided, however, that if the Security (consumption) payable by the consumer is short or in excess by not more than 10% of the existing Security (consumption), no demand for shortfall will be made and the consumer will also not be entitled to refund of the excess Security (consumption).

(b) If the required Security (consumption) of a consumer is found to be short by more than 10% of the existing Security (consumption), the Licensee will refund the excess amount to such consumer by adjustment against any outstanding dues and/or any amount becoming due to the Licensee immediately thereafter.

(c) Where the consumer is required to pay the additional Security (consumption), the Licensee will issue to the consumer a Demand Notice specifying the amount payable alongwith supporting calculations.

(d) The consumer will be liable to pay the additional Security (consumption) within thirty days from the date of service of the Demand Notice.

(e) In the event of any delay in payment, the consumer will for the actual period of default pay interest thereon at twice the State Bank of India's (SBI's) Short Term Prime Lending Rate (PLR) prevalent on first of April of the relevant year without prejudice to the Licensee's right to disconnect supply of electricity, under these Regulations.

17. Interest on Security (consumption)

17.1 The Licensee will pay interest on Security (consumption) at the SBI's Long Term PLR prevalent on first of April of the relevant year, provided that the Commission may at any time by notification in official Gazette of the State specify a higher rate of interest.

17.2 The Licensee will indicate the amount becoming due to a consumer towards interest on the Security (consumption) in the first bill raised after thirtieth of April every year.

17.3 The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/or any amount becoming due to the Licensee thereafter.

17.4 In the event of delay in effecting adjustments due to the consumer as per Regulation 17.3, the Licensee will for the actual period of delay pay interest at twice the SBI's Short Term PLR prevalent on first of April of the relevant year."

3.4 Regulation 17 of the Supply Code obligated the Appellant to pay interest on security (consumption) deposit and not on initial security deposit. Therefore, the Appellant is only liable to pay interest on security that becomes recoverable after release of connection and not before.

4. QUESTIONS OF LAW

The following questions of law arise in the present appeal:

- 4.1 Whether interest is payable by the Appellant on initial security deposited by an applicant/consumer under regulation 14 of the Supply Code?
- 4.2 Whether the State Commission was correct in ignoring the provisions of Regulation 17 of the Supply Code?

4.3 Whether Section 47 (4) of the Electricity Act provides for payment of interest on security deposit recovered from the consumer under both Section 47(1) and (2) of the Electricity Act?

5. GROUNDS RAISED WITH LEGAL PROVISIONS

5.1 The Impugned Order is misconceived and bad in law to the extent it compels the Appellant to pay interest on initial security deposit even when such payment is not supported by the Supply Code and the Electricity Act.

5.2 The State Commission has erred in not appreciating that Regulation 17 which provides for payment of interest by the Appellant on the consumer deposits, explicitly provides for payment of interest only on security (consumption) deposit and not on initial deposit. The State Commission has erred in holding that interest is payable on the initial deposit also, which is contrary to the provisions of the Supply Code Regulations.

5.3 The State Commission has failed to realize that in any event, Respondent No. 1 had paid additional consumer deposit for enhancement of load. Such a situation was envisaged under Regulation 16 of the Supply Code, i.e when additional security deposit becomes payable due to the original security deposit becoming insufficient. Regulation 17 of the Supply Code also does not provide for payment of interest on additional security (consumption) deposit.

5.4 The State Commission has failed to appreciate that Section 47 of the Electricity Act does not mandate the payment of interest on particular terms and conditions, but only states that the interest will be payable as per the Regulations to be specified by the State Commission. In the circumstances, the legal provisions for the payment of interest is to be

strictly governed by the provisions of the Supply Code Regulations. The reliance on Section 47 by the State Commission, contrary to the provisions of the Supply Code for payment of interest is bad in law.

- 5.5 The State Commission has misinterpreted the provisions of the Electricity Act. The Section 47(4) of the Electricity Act only provides for payment of interest on security recovered under Section 47(1) and not 47(2) of the Electricity Act.
- 5.6 The State Commission has gravely erred in holding that the Electricity Act provides for interest to be payable by the distribution licensee on security deposit whether the same has been recovered from the consumer before release of connection or thereafter during review while determining the adequacy of the amount of security deposited by the consumer.
- 5.7 The State Commission has failed to appreciate that the term - 'initial security' has deliberately not been used in Regulation 17.1 of the Supply Code. In situations wherein the State Commission has envisaged a particular regulation to apply to both 'initial deposit' and 'security (consumption)' it has explicitly mentioned both terms. Regulation 18 is one such example which mentions both terms and therefore applies to deposits made before and after release of connection/load.
- 5.8 The State Commission has interpreted Regulation 17.1 to allow payment of interest on initial deposit as Respondent No. 1 is an existing consumer requesting for additional load. The State Commission has erred by holding that for the existing consumers requiring additional load, the interest on security (consumption) and the additional security deposited as initial security for additional load/demand, can be paid to the consumer as and when the same becomes due as per Supply Code

even before the release of extension in load/demand. The State Commission has conveniently circumvented the clear language of the Regulation 17.1 which does not provide for payment of interest on either initial deposit or additional security (consumption).

- 5.9 The State Commission has erred in coming to a finding which is contrary to the provisions of the Supply Code. The State Commission has failed to appreciate that the payment of initial security deposit as well as consumer deposit for consumption is in terms of the Supply Code Regulations and not contractual in nature. The payment of interest if any is to be governed strictly by the Regulations and if there is no provision for payment of interest, it is not payable. In the circumstances, the interest is to be paid strictly in terms of the Supply Code Regulations and to the extent the same is provided. The Supply Code Regulations provides the interest only on consumption deposit and not on initial security deposit, the question of payment of interest does not arise.
- 5.10 The State Commission has failed to appreciate that the purpose of the various security deposits are different. The State Commission has failed to appreciate that while the consumption security deposit is provided as security for the monthly tariff payable by the consumer. This amount is available for the working capital requirements of the Appellant and therefore interest is to be paid on the same in terms of the Supply Code Regulations. However, the initial security deposit is as a security that the consumer after seeking additional load for which the Appellant has to incur expenditure on feasibility studies and other activities, does not take the additional load and the Appellant incurs expenses which may be also capital in nature. Such activities to be taken by the Appellant cannot be compared to the supply of electricity for which monthly tariff is payable and against which consumption deposit is taken. The State

Commission has erred in holding that interest is payable by the Appellant on the initial security deposit also.

5.11 The Appellant craves leave to add to the grounds mentioned hereinabove and states that the grounds are in the alternative and without prejudice to one another.

6. RELIEFS SOUGHT.

In view of the facts mentioned in para 3 above, points in dispute and questions of law set out in para 4 and the grounds of appeal stated in para 5, the appellant prays for the following reliefs:

- (a) Allow the appeal and set aside the order dated 17.9.2014 passed by the State Commission to the extent challenged in the present appeal.
- (b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.

7. The issues involved in all these appeals are common in nature, therefore, we decide to adjudicate the batch of appeals by this common judgment.

8. Learned counsel, Mr.Anand K. Ganesan, appearing for the Appellant has filed his written submissions for our consideration as follows :-

8.1 By the impugned order, the State Commission has held that interest is payable on Initial Security collected from the consumers under

Regulations 14 of the Supply Code Regulations. The State Commission has held that Section 47 of the Electricity Act applies to such Initial Security and therefore interest is payable in terms of Section 47(4).

8.2 The State Commission has, inter-alia, held the following:

- (a) *The Regulations provide for Initial Security distinct from Security for electricity supplied [Security (consumption)];*
- (b) *Supply Code Regulations do not provide for interest on Initial Security. However, if there is ambiguity, the provisions of the Act shall prevail;*
- (c) *Interest is payable under Section 47 of the Electricity Act on Initial Security, though it becomes due prior to the release of connection to the consumer.*

8.3 The State Commission has held so even though there is no provision in the Supply Code Regulations for payment of interest on initial security under Regulation 14, the interest is payable under Section 47 of the Act and further that the Supply Code Regulations to that extent are inconsistent with the Regulations framed.

8.4 The following questions arise in the present case:

- (a) *Whether Section 47 of the Electricity Act is applicable at all to the initial security furnished under Regulation 14 of the Supply Code Regulations?*
- (b) *Whether interest is payable on the security deposit furnished in terms of Regulations 14 of the Supply Code Regulations, 2007?*

- (c) *Whether the State Commission has jurisdiction to entertain a dispute between an individual consumer and a licensee, particularly when the subject matter falls under Part VI of the Act?*

Re: Section 47 of the electricity act is not applicable at all to the security furnished under regulation 14 of the supply code regulations

- 8.5 Section 47 of the Act provides for security to be furnished solely in the case of the two specified purposes, namely,
- (a) to secure the dues for supply of electricity; and
 - (b) to secure the expenses towards electric line or plant or meter to be provided by the licensee. Section 47 of the Act does not apply to any other form of security for other purposes.
- 8.6 All other provisions with regard to the terms and conditions for providing connection, recovery of charges including security for other purposes etc. are to be dealt with under the Supply Code Regulations in terms of Section 43, 50 and other provisions of the Electricity Act. Regulation 13 of the Supply Code provides for the requirement of security as provided in Section 47(1) of the Act.
- 8.7 The security in terms of Section 47(1)(a) of the Act (for the electricity supplied) is provided in Regulation 15. Regulation 17 provides for payments of interest on security provided under Regulation 15. There is no dispute over the same. This security is to cover the monthly bill payments of the consumer and is termed as Security (Consumption) in the supply code Regulations.

- 8.8 The security in terms of Section 47(1)(b) of the Act is provided in Regulation 19. This is to secure the investments to be made for infrastructure in the form of line, meter, sub-station etc. for the consumer. Regulation 19.3 provides for payments of interest on security provided under Regulation 19.1 and 19.2. This is also not an issue.
- 8.9 Thus, the security under Section 47(1)(a) and (b) are provided in Regulation 15 and Regulation 19 respectively, with corresponding provision for payment of interest, which satisfies Section 47(4). However, there could be other security deposits to be made by the consumers, which are not covered by Section 47. Section 47 does not provide that no other security other than as provided in Section 47(1)(a) and (b) are applicable.
- 8.10 The Security under Regulation 14 (Initial Security) is different from the security contemplated under Section 47 of the Act and dealt with under Regulation 15 and Regulation 19. The purpose behind the Initial Security under Regulation 14 is to ensure seriousness of the consumer after the initial feasibility and to secure any other expenses to be incurred by the Appellant studies, load availability etc. prior to release of connection. This security is neither for supply of electricity or for providing line, plant or meter.
- 8.11 The Supply Code Regulations, as existing then, provided for four kinds of securities. This was the Earnest Money deposit (Regulation 5.5), Initial Security (Regulation 14), Security (Consumption) (Regulation 15) and Security for line or plant or meter (Regulation 19). Out of the above, only the security provided in Regulation 15 and 19 are under Section 47 of the Electricity Act.

- 8.12 The Electricity Act in Section 43 provides for charges to be paid for by the consumer for release of connection. This would obviously include all such charges as specified by the State Commission, including initial security, earnest money etc. In addition, Section 50 also enables the State Commission to provide for terms and conditions for such other matter.
- 8.13 The only reason given by the State Commission for grant of interest is that it is covered by Section 47(4) of the Act. It is submitted that the basic premise of the above decision is erroneous. As submitted hereinabove, the security contemplated under Section 47(1)(a) and (b) of the Act is provided in Regulation 15 and 19 respectively and correspondingly the interest contemplated under Section 47(4) of the Act is provided for in Regulation 15 and Regulation 19.3 respectively. There is no application of Section 47(4) of the Act in regard to the initial security under Regulation 14.
- 8.14 The contention of the State Commission that Section 47(1) provides for three kinds of securities, one under the main sub-section, and two as sub-clauses (a) and (b) is misconceived. The plain reading of Section 47(1) as a whole provides for only securities against two aspects, one for the electricity supplied and the other for the infrastructure created by the licensee. There is no third security provided for, nor can it be read into the provision as is sought to be contended by the State Commission.
- 8.15 In the above circumstances, the impugned order relying on Section 47(4) of the Act to justify the grant of interest on the initial security furnished under Regulation 14 is erroneous and is liable to be set aside.

Re: Interest is otherwise not payable on the security deposit furnished in terms of regulations 14 of the supply code regulations, 2007

8.16 The interest is a substantive right and can be granted only in case there is a specific provision in law or under a contract or otherwise if the conditions for grant of interest in equity are satisfied. Grant of interest in equity arises only if there is a default by one party, such as breach of contract, wrongful detention of money etc. The grant of interest in equity does not arise when the amounts are payable as security by application of law, without there being a specific provision in law for payment of interest. In this regard, the following authorities are relevant:

(a) National Thermal Power Corporation Ltd. v. Madhya Pradesh State Electricity Board & Ors., (2011) 15 SCC 580; Para 30, 31 and 34

(b) Union of India v. Watkins Mayor & Ors., AIR 1966 SC 275; para 5, 6 and 7

(c) Food Corpn of India v State of Haryana, (2000) 3 SCC 495, para 10 and 13

8.17 In the present case, neither the collection of Initial Security is a default nor is a wilful act on the part of the Appellant. The Regulations otherwise provide for such security to be paid by the consumers. The Appellant as a licensee is not at fault and there is also no finding that there is any default on the part the Appellant.

8.18 Further, in the present case, the State Commission itself acknowledges that there is no provision in the Supply Code providing for interest on the Initial Security as per Regulation 14. The interest is only on the Security (consumption) under Regulation 15 and on the security for electric line, plant or meter as per Regulation 19.

8.19 Regulation 18 provides for interest payable on Initial Security in case it is to be refunded, subject to certain conditions to be fulfilled. Regulation 18 has no application to the present case as there is no refund of Initial Security. There is no other provision for interest on Initial Security. Assubmitted hereinabove, Section 47(4) of the Act does not deal with the Initial Security or any other security not covered by Section 47(1)(a) or (b).

8.20 Even assuming (but not admitting) the premise of the impugned order that the Section 47(4) of the Act applies, there is no automatic grant of interest. Section 47(4) of the Act only provides for interest as may be 'specified' by the State Commission. 'Specified' as per Section 2(62) of the Act means as specified by Regulations. Thus, only if Regulations are framed to this effect and to the extent Regulations are framed under Section 47 of the Act. It is not that de-hors the Regulations, interest is payable.

8.21 The Regulations framed are in the form of delegated legislation and are binding on all including the State Commission. The State Commission has the legislative power to frame the Regulations and to amend or repeal the Regulations. But once Regulations are framed, the State Commission has to exercise its adjudicatory and decision-making powers strictly in terms of the Regulations and not contrary thereto. [*PTC India Ltd. v. Central Electricity Regulatory Commission (2010) 4 SCC 603*]

8.22 It is also not open to the State Commission to hold in adjudicatory proceedings that Regulations are bad in law or contrary to the Act and

are to be set aside, quashed or otherwise decide contrary to the Regulations. Further, when the Regulations itself mandate the furnishing of Initial Security there can be no question of the Appellant being in default or breach of its obligations in holding such security for grant of interest on grounds of equity. For grant of interest in equity, there has to be a default by one party.

8.23 In the circumstances, in the present case there is neither any provision in law for grant of interest on Initial Security as per Regulation 14 or otherwise any ground in equity on account of any default or breach by the Appellant for grant of such interest. In view of these facts, the Impugned Order is liable to be set aside.

RE: jurisdiction of the state commission

8.24 Under the provisions of the Act, the State Commission does not have any jurisdiction to entertain disputes between a consumer and a licensee. The State Commission is a statutory authority and has to trace its powers and jurisdiction to the specific provisions of the Act. The adjudicatory powers of the State Commission are only as provided in Section 86 of the Act, which falls under Part X of the Act. The Tariff provisions are under Part VII of the Act, which provides for the powers of determination of tariff.

8.25 The Part VI of the Act deals with Distribution of Electricity. The powers of the State Commission under Part VI are only legislative powers i.e., powers for framing of Regulations. This power includes framing of Regulations for Open Access [Section 42(2) of the Act], framing of

Regulations providing for Guidelines for establishing Consumer Grievance Redressal Forum [Section 42(5) of the Act], framing of Regulations providing for the time period and manner of adjudication of disputes by Ombudsman [Section 42(7) of the Act], framing of Regulations on the Duty to Supply in terms of Section 43 of the Act, framing of Regulations on Power to Require Security in terms of Section 47 of the Act, framing of the Electricity Supply Code under Section 50 of the Act, framing of the Regulations providing for technical requirements, capital adequacy and credit worthiness of trading licensee under Section 52 of the Act etc. A dispute raised by a consumer against a licensee does not fall within the adjudicatory jurisdiction of the State Commission. This is particularly of the issues that fall under Part VI of the Electricity Act.

8.26 The above proposition has been settled in the following decisions:

- (a) *Maharashtra Electricity Regulatory Commission v. Reliance Energy Limited*, (2007) 8 SCC 381; [Para 31 to 35]
- (b) *Himachal Pradesh State Electricity Board v. Gujarat Ambuja Cements Ltd.*, Civil Appeal No. 2005 of 2011 dated 22/02/2011;
- (c) *Himachal Pradesh State Electricity Board v. Emm Tex Synthetics Ltd. &Anr.*, Appeal No. 117 of 2007 dated 05/11/2007;
- (d) *BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission*, Appeal No. 181 of 2008 dated 30/03/2009;
- (e) *Dakshin Haryana Bijli Vitran Nigam Limited v. DLF Services Ltd.*, 2007 APTEL 764;

- (f) *Polyplex Corporation Limited v. Uttaranchal Power Corporation Ltd. &Ors.*,**2007 APTEL 115**;
- (g) *Chattisgarh State Electricity Board v. Raghuvir Ferro Alloys Ltd.*,**2007 APTEL 565**
- (h) *Reliance Energy Limited v. Maharashtra Electricity Regulatory Commission*, **2007 APTEL 543**
- (i) *U.P. Power Corporation Ltd. V. M/s Jagannath Steel Pvt. Ltd.*,**Appeal No. 153 of 2011 dated 19.07.2012**
- (j) *U.P. Power Corporation Ltd. V. Premier Ispat (Pvt) Ltd.*, **2010 ELR (APTEL) 124.**
- (k) *Suresh Jindal v. BSES Rajdhani Power Ltd*, **(2006) 132 DLT 339**
- (l) *Dheeraj Singh v. BSES Yamuna Power Ltd.*, **(2006) 127 DLT 525**

8.27 The above judgments settle the proposition that individual disputes between a consumer and a licensee is not within the jurisdiction of the State Commission and that the sole and exclusive jurisdiction is that of the forum created under Section 42(5) of the Act subject to appeal by the consumer under Section 42(6) of the Act.

8.28 It is relevant to mention that the right of appeal is granted only to the consumer under Section 42(6) of the Act and not to the licensee. In case the licensee is aggrieved by the decision of the forum, there is no appellate remedy. Further, the decision of the Ombudsman is final without any appellate remedy, only subject to the jurisdiction of the High Court under Article 226 of the Constitution of India.

8.29 In the present case, the Respondent No. 1 had raised the dispute on the bills raised by the Appellant and approached the State Commission claiming payment of interest on initial security deposit made under Regulation 14 of the Supply Code Regulations, in view of Section 47 of the Act.

8.30 Both Section 50 of the Act under which the Supply Code Regulations are framed as well as Section 47 of the Act under which the interest is claimed, fall under Part VI of the Act. The role of the State Commission is restricted to framing of Regulations, which is a legislative power. There is no power of the State Commission to adjudicate upon disputes of consumers, which is the sole jurisdiction of the forum created under Section 42(5) of the Act, subject to appeal by the Ombudsman under Section 42(6) of the Act, as has been settled by the decision of the Hon'ble Supreme Court and this Tribunal referred to above.

It is also a settled principle of law that the issue of jurisdiction goes to the root of the matter and further can be raised at any stage, including in execution proceedings or collateral proceedings. The reliance by the State Commission on the decision of the Hon'ble Tribunal in the *Brihanmumbai Electric Supply and Transport Undertaking* case is misconceived. The said decision was in the context of open access involving two licensees and which is to be adjudicated by the State Commission. In the circumstances, it is submitted that the impugned order is liable to be set aside on the ground of lack of jurisdiction of the State Commission.

9. **Learned counsel, Mr.Sakesh Kumar, appearing for the Respondent No.2 has filed his written submissions for our consideration as follows :-**

9.1. By way of the present appeal the appellant has challenged the order of the Commission dated 17.09.2014 in Petition No.45 of 2014. The Petitioner, before the Commission, sought restraining the Appellant from recovery the amount, which the Appellant had paid to it as interest on security and to continue to be paid interest on security deposit, till release of the extension in load. **The issue before the Commission was whether interest on initial security deposited by the consumer under Regulation 14 of the Supply Code is payable or not.**

9.2. Vide the impugned judgment and order the Commission held as under;

“As per Regulation 14 of the Supply Code, an applicant requiring new connection or extension in load/demand is required to pay initial security which is adjusted against Security (consumption) after release of the connection. Payment of interest on security is governed by Regulation 17.1 of the Supply Code which provides for interest on Security (consumption) at SBI’s base rate prevalent on 1st of April of the relevant year plus 2%. This interest shall be credited to the account of a consumer annually on first day of April each year and will be adjusted on 1st May of every year against the outstanding dues and/or any amount becoming due to the licensee thereafter as per Regulation 17.3 of the Supply Code. Since two different terms i.e ‘initial security’ and ‘Security (consumption)’ have been used in the Supply Code for security deposit required to be deposited by the consumer so these regulations are being misinterpreted by PSPCL.

All these regulations of the Supply Code are required to be read in conjunction with Section 47 of Electricity Act, 2003 (Act). Sub section (1) of Section 47 of the Act, empowers the distribution licensee to recover security from the person requiring supply of electricity for payment which may become due in respect of electricity supplied to such person and also for any electric line/plant or meter which is to be provided for supplying electricity to such person. Sub section (2) of Section 47 further empowers the distribution licensee to recover additional security through a notice if the security deposit has become invalid or insufficient. Sub section (4) of Section 47 provides for payment of interest on security by the distribution licensee at the rates as may be specified by the Commission on security amount recovered from the person. So the security recovered from the person both under sub section (1) and sub section (2) of Section 47 of the Act qualifies for interest as per subsection (4) of section 47. Thus the Act is very clear that interest is payable on security whether the same has been recovered from the person before release of connection or thereafter during review while determining the adequacy of the amount of security deposited by the consumer. Moreover, it is an established law that regulations framed by the

Commission under an Act of the Parliament are sub-ordinate legislation and in case of any ambiguity or in-consistency, the Act shall prevail.

Though as per Regulation 14 of the Supply Code, this amount recovered from the applicant has been termed as "Initial Security" but it is a security amount recovered as provided in Section 47 (1) of the Act and interest on such initial security is also payable. Since as per regulation 17.3 of the Supply Code, the interest is to be adjusted in the bills against the outstanding dues or any amount becoming due to licensee thereafter, so in case of a new connection although interest is payable from the date of deposit of such amount but is actually paid to the consumer after release of connection through bills. However, for the existing consumers requiring additional load, the interest on Security (consumption) and the additional security deposited as initial security for additional load/demand, can be paid to the consumer as and when the same becomes due as per Supply Code even before the release of extension in load/demand.

In the instant case, since the petitioner is an existing consumer of PSPCL who has requested for extension in load/demand so the action of PSPCL of allowing interest to the petitioner on security including the initial security deposited against extension in load/demand in the first instance is perfectly as per the letter and spirit of the Act and the Supply Code. Thus PSPCL is accordingly directed not to make any recovery of interest paid on the additional initial security deposited by the consumer for extension in load/demand and also to continue the payment of interest till release of extension in load/demand. The Notice issued by AEE RurkaKalan, SubDivision of PSPCL vide No.976 dated 09.07.2014 for recovery of Rs.13,52,104/- as interest on security is set aside."

- 9.3. The appellant has raised the following grounds in the present appeal;
- i. Regulations 17 of the Supply Code provides for payment of interest on Security (consumption) only and not on initial deposit.
 - ii. There is no provision in the Supply Code for payment of interest prior to release of load where the amount is paid as earnest money by the consumer for feasibility study etc. The Supply Code only provides payment of interest on security deposited submitted after the release of extension/load.
 - iii. Section 47 of the Act does not mandate the payment of interest on particular terms and conditions but only states that the interest will be payable as per regulations to be specified by the State Commission. Hence, the reliance of the Commission on section

47 is contrary to the provisions of the Supply Code and as such the payment of interest is bad in law. Whereas the security (consumption) is provided as security for the tariff payable by the consumer. The initial security deposited is a security to cover expenditure on feasibility studies and other activities in case the consumer fails to avail the additional load.

- iv. Section 47(4) of the Act does not provide for payment of interest on additional security deposited/recoverable from the consumer when the original security deposit under section 47(1) becomes insufficient/invalid.
- v. Section 47(4) only provides for payment of interest in case of section 47(1) and not in case of section 47(2).

Section 47 of the Electricity Act and Supply Code Regulation:

- 9.4. We need to construe the language used in Section 47(1) harmoniously, and it needs to be given a meaningful and purposive construction. (i) The starting words “who requires a supply” indicates security for intended supply. (ii) However the later part which is more of a proviso use the words “in respect of the electricity to such person”, which indicates to security for the power supplied. The argument that the pre-supply security is not covered by Section 47 and thus not entitled for interest under Sub Section 4 is misplaced. Section 47 covers both pre and post supply securities.
- 9.5. The Act provides for payment of interest on security irrespective of the time of deposit i.e whether deposited before or after release of

connection and this interest liability of the distribution licensee is allowed as a pass through in the ARR,.

- 9.6. In PSERC (Electricity Supply Code & Related Matters) Regulations, 2007, two terms i.e initial security and security (consumption) have been used because initial security is calculated on the basis of applied load/demand whereas security (consumption) is determined on the basis of actual consumption pattern of the consumers after release of connection. However, to remove this ambiguity created in Supply Code 2007 due to use of two different terms i.e. initial security and security (consumption) to describe security as permissible under section 47 of the Act, the Commission has removed this ambiguity in Supply Code 2014 (by repealing Supply Code 2007) and now a single term i.e. Security (consumption) has been used to describe security recovered from the consumers before release of connection and also maintained after release of connection under section 47 of the Act.
- 9.7. As per regulation 5.5 of the **Supply Code**, where the new or additional load/demand exceeds 500 kW/500 kVA, the consumer first obtains the feasibility clearance after depositing **earnest money @ 10%** of the initial security amount specified by the Commission. No interest is payable on this earnest money. In case the applicant fails to submit A&A form and/or to complete other formalities within the stipulated time after getting the feasibility clearance, this earnest money is forfeited. However, if the consumer after getting the feasibility clearance, submits the application complete in all respect, this earnest money is adjusted towards initial security as per regulation 5.6 of the Supply Code. This initial security is calculated on the basis of sanctioned load/demand. ***Thus there is clear demarcation between the earnest money***

required to be deposited by the applicant and the initial security payable by the applicant.

- 9.8. The initial security is not a cover to the expenditure incurred or which might be incurred by the distribution licensee on feasibility studies etc., in case the applicant does not take the additional load. To cover such an eventuality, earnest money is got deposited as explained above. Moreover, regulation 18.1 of the Supply Code provides that in case an applicant withdraws his application for supply of electricity/extension in load, 10% of the initial/additional security shall be deducted by the distribution licensee and the balance can be refunded to the applicant without payment of any interest. **Thus it is wrong to state that initial security is got deposited to cover expenses that might be incurred by the distribution licensee on feasibility studies etc.**
- 9.9. It has generally been seen that the distribution licensee takes long time to release Large Supply Industrial connections particularly where erection of 33/66 kV lines or grid sub-station works are involved. It is against the letter and spirit of the Act to deny interest on security deposited by the applicants before release of connection.
- 9.10 Section 3 of the Interest Act, 1978, Section 34 of the Code of Civil Procedure and Sections 70 and 72 of the Indian Contract Act, 1872 are the relevant provision, which authorize courts to levy interest on the debt or damages. As per the accounting standards, the security repayable in a year is "short term' asset" and returnable beyond a year is called "long term asset". An asset is presumed to have an income out of it, which might have go back to depositor unless otherwise prescribed by law or usage.

9.11 A Constitution Bench of Hon'ble Supreme Court in **Central Bank of India Versus Ravindra and others**, (2002) 1 SCC 367 discussed the element of interest in detail. It adopts the concept of interest and its articulation from judgment of Punjab and Haryana High Court in **CIT Versus Dr. Sham LalNarula** AIR 1963 Punj 411 at 414 as follows;

"8. The words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owned to another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money..... In whenever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."

The Constitution Bench formulates it as follows;

"37. Black's Law Dictionary (7th Edition) defines "interest" inter alia as the compensation fixed by agreement or allowed by law for the used or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to Stroud's Judicial Dictionary of Words and Phrases (5th edition) interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In Secretary, Irrigation Department, Government of Orissa &Ors. v. G.C. Roy, [1992] 1 SCC 508, the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.....this is the principles of Section 34, Civil Procedure Code. In Dr. ShamlalNarula v. C.I.T., Punjab, [1964] 7 SCR 668, this Court held that interest is paid for the deprivation of the use of the money. The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank Ltd., [1947] 1 All ER 469, 472, is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute."

While defining the penal interest it further says;

“38. However ‘penal interest’ has to be distinguished from ‘interest’. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrong-doer by having committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once for one period of default and, therefore, cannot be permitted to be capitalised.”

9.12 Further, this Tribunal considered and applied the above judgment of Hon’ble Supreme Court in **Maharashtra State Elec. Dist. Co. Ltd. Versus Maharashtra Electricity Regulatory Commission and Ors.** in Appeal No.15/2007, dated 05.02.2008.

9.13 The interest has to be awarded under the Interest Act 1978 and in equity, and also under the principle of unjust enrichment. The principle of unjust enrichment has been recognized in India under Indian Contract Act, 1872. (Ss. 70 and 72). The state distribution utility has security as “deposit-in-trust” on behalf of the consumer. It may use the money, so entrusted with and derive benefit out of the same. Even, if the appellant does not use the security money, it is duty bound to pay the interest on normal rate, since it was entrusted with the money and it could use it as a prudent man. Hon’ble Supreme Court applied this principle in **HukumchandGulabchand Jain Versus FulchandLakhmichand Jain &Ors.** (1965) 3 SCR 91 as follows;

“Two questions arise for consideration and they are whether the trustee is liable to pay simple interest on the trust capital in his hands and if he is so liable what rate of interest be charged from him in the present case. Interest can be allowed on equitable grounds only as no statutes in force during the period in suit and dealing with public charitable trusts made the trustee liable to pay interest. The Indian Trusts Act does not apply to public or private religious or charitable endowments and therefore the provisions of s. 23 thereof cannot be used for charging interest from the appellant trustee. The Charitable and Religious Trusts Act has no provision which provides for charging the trustee with interest.

Subject to this, or unless a trustee is expressly otherwise authorised or required under the terms of his trust. he must duly and promptly invest all capital trust money coming to his hands, and all income which cannot be immediately applied for the

purposes of the trust; and he is liable for any loss which may result from its being improperly invested or being left uninvested for an unreasonable length of time, and for interest during the period of its being so left.

This is so because the trustee has to conduct the affairs of the trust in the same manner as an ordinary prudent man of business would conduct his own affairs. In para 1812 are set out the circumstances in which a trustee, besides being required to account for the principal trust money, can also be charged with interest on it and one of the circumstances is when the Court considers that the trustee ought to have received interest. Such could be the case when the trustee, in breach of his duty, retains the trust money in his own hands uninvested or mixes it with his own money or property.

It appears from the Commissioner's report that the trustee in this case had over Rs. 10,000 in his hands from samvat year 1988 commencing from November 10, 1931, upto February 17, 1954, when this suit was instituted. The trustee kept such a large sum uninvested for a long time extending over 22 years. The accounts show that reasonably he could not have expected to require this amount for any current purpose of the trust during these years. He should have invested the amount. His failure to do so makes him liable to pay interest.

It appears from what is said in para 1814 of Halsbury's Volume 38 that where a trustee simply fails to invest trust money which he ought to have invested or there are no other special circumstances in the case, he is in general charged simple interest at the rate of 4 per cent per annum. We consider it reasonable to charge interest at 4 per cent per annum in this case."

(Emphasis supplied)

- 9.14 The appellant did not take a ground before the Commission or before this Tribunal in its appeal that the Commission did not have jurisdiction to decide the issue in controversy and only first time, while canvassing the oral arguments tendered the written submissions wherein the plea of lack of jurisdiction was first time raised.
- 9.15 The relief sought before the Commission was a declaration, that consumer is entitled to receive interest on the initial security deposited by him. Hence, the petition filed before the Commission is not covered by part VI of the Act. The respondent No.1 alleged the violation of Section 47(4) of the Electricity Act by the appellant and sought the redressal. The Commission used its power to remove difficulties under

the Regulations, for general good of all the consumers who might have been affected by denial of interest on initial security.

9.16. The issue before the Commission was as to whether interest on initial security deposited by an applicant/consumer under Regulation 14 of the Supply Code is payable or not? Thus the issue was a matter of fact not a lis between an individual consumer and licensee. The issue was of much far reaching importance affecting large number of consumers. It is submitted that the issue could only be set at naught by the commission, and not by dispute redressal mechanism.

9.17 The action of the Commission is required to be in consonance with the Act and the Regulations made therein. Regulation 49 of the Supply Code prescribe the power of the Commission to take up type of issue, in controversy in the present matter. Regulation 49 of the Supply Code is quoted below for ready reference;

“49. Powers to remove difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may do or undertake things or by a general or special order, direct the Licensee, to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties.”

9.18 The dispute raised in the instant petition was not a billing dispute confined to one individual consumer but it was a case of wrong application of Supply Code regulations by the distribution licensee affecting more than 60 lac consumers of the State since interest on Security amount deposited by the applicants/consumers was being denied, across the board and consumers were facing difficulty. The powers to remove difficulties under Regulation 49 of the Supply Code, 2007 only rest with the Commission and not with the Consumers

Grievances Settlement Mechanism set up under Section 46(5) of the Electricity Act, 2003.

9.19 The powers to remove difficulties are not an ample formality but prescribed to ultimately ensure enforcement of rule of law and to reach the benefits of a particular legislation to all and to apply it universally. It is a significant provision for safe guarding of the interest of people.

9.20 The Hon'ble Supreme Court in **Madeva Upendra Sinai & Ors. Vs. U.O.I. & Ors.**, (1975) 3 SCC 765 has demonstrated the purpose and intent of removal of difficulties clause and its importance thereof;

“39. To keep pace with the rapidly increasing responsibilities of a Welfare democratic, State, the legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the legislature and the endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socioeconomic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the "removal, of difficulty clause", once frowned upon and nick-named us "Henry VIII Clause" in scornful commemoration of the absolutist ways in which that English King got the "difficulties" in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post independence era.”

9.21 This Tribunal vide order dated 24.03.2015, while allowing the exercise of 'power to remove difficulties' by CERC in **BSES Yamuna Power Ltd. Versus Central Electricity Regulatory Commission & Ors.**, Appeal Nos. 55 of 2013, 77 of 2013, 194 of 2013, 259 of 2012, 63 of 2013, 143 of 2013, 158 of 2013 & 43 of 2014 held;

“18.6. We have gone through the proposition of law settled by the Hon’ble Supreme Court of India in West Bengal Electricity Regulatory Commission Vs. CESC Limited (2002) 8 SCC 715 in which the Hon’ble Apex Court had observed that the employees cost prudently incurred needs to be reimbursed to the Utility. The Hon’ble Supreme Court expressing agreement with the finding of the High Court held that since it is not disputed that the payments made to the employees are governed by the terms of the settlement form which it will not be possible for the Company to wriggle out during the existence of the settlement, therefore, the actual amounts spent by the Company as employees’ costs will have to be allowed. In these matters in hand, after careful and deep scrutiny of the rival submissions made by the parties, we do not find any force in the submissions/contentions made on behalf of the appellants. Rather, the submissions of the respondent power generators/corporations have legal force to which we agree.

18.7. The ‘power to remove difficulties’ and the ‘power to relax’ provided in the 2004 Tariff Regulations supplement each other to deal with the situations which may arise from time to time. In the present matters, the learned Central Commission has exercised these powers correctly, properly and legally in allowing the impact of the 6th Pay Commission’s Recommendations regarding increase in employees cost including increase in salaries of the employees and wages of the workmen. Apart from it, from the Regulations 12 and 13 conferring ‘Power to remove difficulties’ and ‘Power to relax’ upon the Central Commission in 2004 Tariff Regulations, the Central Commission has retained the powers such as savings of inherent powers of the Commission (Regulations 111, 113, 114) & power to remove difficulties (Regulation 115).”

9.22 The judgment of Hon’ble Supreme Court, **Maharashtra Electricity Regulatory Commission Versus Reliance Energy Ltd. &Ors.**, (2007) 8 SCC 381 relied upon by the Appellant has no bearing in the facts of the present case. The Reliance Energy judgment essentially relates to a billing dispute. Having held that the Commission has power to issue general directions to licensees Hon’ble Court held that individual consumer cases (essentially billing, refusal for connection etc) would fall under Section 42(5) to be decided by the forums, so established by the Commission. However, the present case is about issuance of general directions pertaining to the application and interpretation of the Electricity Act and the Regulation made under it, which shall be applicable to all consumers in the state. Hence, it is not a consumer dispute in that sense.

9.23 The Act does not preclude an individual consumer to approach the Commission, for such a direction to the utility. The Reliance Energy Judgment of Hon'ble Supreme Court has been thoroughly discussed and applied by this Tribunal, approving this submission, in **Brihanmumbai Electricity Supply and Transport Undertaking Versus Maharashtra Electricity Regulatory Commission &Ors.**, Appeal No.149/2010, Judgment dated 04.04.2012 (hereinafter called Best Judgment). It held;

“51. Further as indicated above, the prayer contemplated in the complaints filed by the consumers with reference to the dispute between the two distribution licensees and the noncompliance of the mandatory provisions by the Tata Power, the parallel licensee. As mentioned earlier, the judgment in *Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd (2007) 8 SCC 381* the Hon'ble Supreme Court held that only billing disputes have to be decided by the Consumers Forum but the State Commissions alone have got the jurisdiction to deal with the other situations where the non-compliance of the condition of licence or Rules and Regulations by licensees are reported. The relevant observations are as follows:

“14. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub section (6) of Section 128.

15. Thus, insofar as the first contention of the Learned Counsel for the Respondents that the Commission has no power is concerned, we are of the view that the same is wrong. In this behalf the provisions of the Electricity Act, 2003 are quite clear and categorical and Section 128 (6) empowers the Commission to get the conditions of licence enforced. But the question is whether the said power under Section 128 (6) has been rightly exercised by the Commission or not. After clearing the first hurdle, that the Commission has power to issue directions, we shall now examine whether the direction given by the Commission in the present case is correct or not.

16. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3.8.2004. There can be no manner of doubt that the Commission has full powers to pull up any of its licensee or distribution company to see that the Rules and Regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45 (5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.” (Emphasis supplied).

52. *It is clear from the above Judgment that the Hon'ble Supreme Court upheld the power of the State Commission to ensure compliance and the provisions of the Act, Regulations and Licence Condition. However, the Hon'ble Supreme Court in that matter found as a point of the fact that the direction given by the State Commission in that matter were not the result of the proper investigation U/S 128 and thereby the Hon'ble Supreme Court was pleased to set aside the same. In other words the Hon'ble Supreme court has held that there can be no manner of doubt that the State Commission has got full powers to pull-up any of its licensee and distribution Company to ensure that the Rules and Regulations are properly complied with."*

The view taken by this Tribunal in Appeal No.149/2010, Brihanmumbai Electricity Supply and Transport Undertaking Versus Maharashtra Electricity Regulatory Commission &Ors. got approved by the Hon'ble Supreme Court in Brihanmumbai Electricity Supply and Transport Undertaking Versus Maharashtra Electricity Regulatory Commission &Ors., (2015) 2 SCC 438. It is held by the Hon'ble Supreme Court that the Commission has the power to require a licensee to fulfil its obligation under the Act. The present case also pertains to a general direction to the utility, governing all the consumers.

It is most respectfully submitted that there is no substance in the present appeal and the same may kindly be dismissed with cost in the best interest of the consumers.

- 10. We have heard learned counsel appearing for the Appellant and the learned Counsel appearing for the Respondent Commission at considerable length of time and gone through their written submissions carefully and after thorough critical evaluation of the relevant material available on records, the issues that arise for our consideration are as follows:-**

Issue No.1: Whether the State Commission is justified in holding that the interest is payable on the security deposit

furnished by consumers in terms of Regulation 14 of the Supply Code Regulations, 2007?

Issue No.2: Whether the State Commission is justified to entertain the dispute between an individual consumer and the licensee particularly when the subject matter falls under part-VI of the Electricity Act, 2003 ?

11. **Our Analysis & Findings:-**

Issue No.1:-

11.1 Learned counsel for the Appellant submitted that the State Commission has erroneously held that even though there is no provision in the Supply Code Regulations for payment of interest on initial security under Regulation 14, the interest is payable under Section 47 of the Act and further that the Supply Code Regulations, to that extent, are inconsistent with the Regulations framed. He further submitted that Section 47 of the Act provides for security to be furnished only in the case of two specified purposes, namely—(i) to secure the dues for supply of electricity and (ii) to secure the expenses towards electric lines or plant or meter to be provided by the licensee. Section 47 of the Act does not apply to any other form of security and all other provisions relating to the terms and conditions for providing connection, recovery of charges including security for other purposes etc are to be dealt with under the Supply Code Regulations in terms of Sections 43, 50 and other provisions of the Electricity Act. Further, Regulation 13 of the Supply Code Regulations provides for the requirement of security as provided in Section 47 (1) of

the Act. Further, the security in terms of Section 47(1)(a) of the Act (for the electricity supplied) is provided in Regulation and Regulation 17 provides for payments of interest on security provided under Regulation. In fact, there is no dispute over the same and this security is to cover the monthly bill payments of consumer and is termed as security (consumption) in the supply code Regulations.

11.2 The learned Counsel for Appellant contended that the security in terms of Section 47(1)(b) of the Act is provided in Regulation 19. This is to secure the investments to be made for infrastructure in the form of line, meter, sub-station etc to be created for the consumer. Regulation 19.3 provides for payments of interest on security provided under Regulation 19.1 and 19.2. The learned Counsel vehemently submitted that in view of the above, the security under Section 47(1)(a) & (b) is provided in Regulation 15 and Regulation 19 respectively, with corresponding provision for payment of interest which satisfies Section 47(4). Section 47 does not provide for any other security. The Security under Regulation 14 (Initial Security) is different from the security contemplated under Section 47 of the Act and dealt with under Regulation 15 and Regulation 19. The purpose of initial security under Regulation 14 is primarily to ensure seriousness of the consumer after the initial feasibility and to secure any other expenses to be incurred for making studies, load availability etc prior to release of connection. It would, thus, appear that this security is neither for supply of electricity or for providing line, plant or meter.

11.3 The learned counsel for the Appellant was quick to point out that the security contemplated under Section 47(1)(a) & (b) of the Act is provided in Regulations 15 & 19 respectively and correspondingly the interest applicable u/s 47(4) of the Act is provided for in Regulations 15 and 19.3

respectively. However, there is no application of Section 47(5) of the Act in regard to the initial security under Regulation which is meant for all along a separate purpose. As such, the decision of the State Commission to grant interest on the initial security submitted under Regulation 14 is erroneous and is liable to be set aside.

11.4 Advancing his arguments further, the learned counsel for the Appellant submitted that the interest is a substantive right and can be granted only in case there is a specific provision in law or under a contract or otherwise if the conditions for grant of interest in equity are satisfied. Further, grant of interest in equity arises only if there is a default by one party, such as breach of contract, wrongful detention of money etc. In other words, the grant of interest in equity does not arise when the amounts are payable as security by application of law, without there being a specific provision in law for payment of interest. To substantiate his submissions, the learned counsel placed reliance on the following judgments of the Hon'ble Supreme Court :

(a) National Thermal Power Corporation Ltd. v. Madhya Pradesh State Electricity Board & Ors., (2011) 15 SCC 580; Para 30, 31 and 34;

(b) Union of India v. Watkins Mayor & Ors., AIR 1966 SC 275; para 5, 6 and 7; and

(c) Food Corpn of India v State of Haryana, (2000) 3 SCC 495, para 10 and 13.

11.5 The learned counsel emphasised that in the present case, neither the collection of Initial Security is considered a default nor any wilful act on

the part of the licensee and as such it is not liable to pay any interest on the Initial Security which is also not covered under any of the Regulations framed by the State Commission. It is a set position of law that the State Commission has powers to frame or amend the Regulations but once Regulations are framed, the same has to be complied with by all concerned including the State Commission itself. In this regard, the judgment of the Apex Court in PTC India Ltd Vs. CERC 2010(4)SCC 603 is quite relevant. Further, it is also not open to the State Commission to hold any adjudicatory proceedings that Regulations are bad in law or contrary to the Act and are to be set aside, quashed or otherwise decide contrary to the Regulations. On this count too, the impugned order of the Commission deserves to be set aside.

- 11.6 ***Per contra***, the learned counsel for the respondent Commission submitted that the Act provides for payment of interest on security irrespective of the time of deposit, i.e., whether deposited before or after the release of connection and this interest liability of the distribution licensee is allowed as a pass-through in the ARR. The learned counsel further submitted that in the Electricity Supply Code and Related Matters Regulations, 2007, two terms, i.e., initial security and security (Consumption) have been used because initial security is calculated on the basis of applied load/demand whereas security (Consumption) is determined on the basis of actual consumption pattern of the consumer after release of connection. However, to remove this ambiguity created in Supply Code Regulation, 2007, the Commission has repealed the Supply Code, 2007 and in the Supply Code, 2014, a single term, i.e., Security (Consumption) has been used to describe security recovered from the consumers before release of connection and also maintained after release of connection under Section 47 of the Act.

11.7 However, as per Regulation 5.5 of the **Supply Code**, where the new or additional load/demand exceeds 500 kW/500 kVA, the consumer first obtains the feasibility clearance after depositing **earnest money @ 10%** of the initial security amount specified by the Commission. No interest is payable on this earnest money. In case the applicant fails to comply with other formalities within the stipulated time, this earnest money is forfeited. The learned counsel for the Respondent Commission contended that, thus, there is clear demarcation between the earnest money required to be deposited by the applicant and the initial security payable by the applicant. Further, it is also wrong to state that initial security is got deposited to cover expenses that might be incurred by the distribution licensee on feasibility studies etc. The learned counsel further submitted that Section 3 of the Interest Act, 1978, Section 34 of the Code of Civil Procedure and Sections 70 and 72 of the Indian Contract Act, 1872 are the relevant provision, which authorize courts to levy interest on the debt or damages. The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in Central Bank of India Vs. Ravindra and others, (2002) 1 SCC 367 to contend that the authority of the State Commission for payment of interest on initial security by distribution licensee is well-justified. This Tribunal also considered and applied the above judgment of Hon'ble Supreme Court in MSEDCL Vs. MERC & Ors in A. No. 15 of 2007 dated 05.02.2008.

11.8 The learned counsel for the Respondent Commission highlighted that the distribution licensee has security as "deposit-in-trust" on behalf of the consumer which may be used to derive benefit out of the same and hence, the licensee is duty-bound to pay interest on normal rate since it was entrusted with the money which can be used by the licensee in a prudent manner. To fortify his contention, the learned counsel further relied upon the judgment of the Apex Court applying the same principles

in the case of HukumchandGulabchand Jain Vs. FulchandLakhmichand Jain &Ors. (1965) 3 SCR 91. He reiterated that in the light of the above, the findings of the State Commission in the impugned order are justified in the eyes of law and there is no merit in the appeal of the Appellant.

Our findings :

11.9 We have carefully considered the submissions of learned counsel for the Appellant as well as learned counsel for the Respondent Commission and also taken note of various judgments relied upon by the parties. It is not in dispute that whatever securities are deposited u/s 47 of the Act, the interest is liable to be paid on the same by the distribution licensee as per applicable Regulations framed by the State Commission. The initial security which is deposited by the consumers in terms of Regulation 14 of the Supply Code Regulations, 2007, is all along a different security to be deposited, along with the application for connection. The basic purpose for such an initial security under Regulation 14 is to ensure the seriousness of the consumer once the initial feasibility in connection is established and also to secure any other expenses to be incurred by the licensee including system and feasibility studies etc. Admittedly, the initial security is neither for supply of electricity nor for providing line, plant or meter. It is the contention of the Appellant that whatsoever provisions for payment of interest on security are covered under the Regulations specified by the State Commission are being duly paid to the consumers. However, the initial security which is being deposited for separate and distinct purpose, there is not any stipulation in the Regulations to pay any interest.

11.10 On the other hand, the learned counsel for the Respondent Commission reiterated that money obtained by the licensee in the form of securities on any count, is a 'deposit-in-trust' and the same is available to the licensee for further use and receive returns/revenue out of the same and hence, in terms of various rulings of the Hon'ble Courts, the distribution licensee is liable to pay interest thereon whether it is an initial security or other securities.

11.11 After critical analysis of the submissions of both the parties and after considering the rulings under the various judgments of the Apex Court as well as this Tribunal, what thus transpires is that the interest is a substantive right and can be granted only in cases where there is specific provision in law or under a contract or otherwise if the conditions for grant of interest in equity are justified. In other words, grant of interest in equity arises only if there is a default by one party, such as breach of contract, wrongful detention of money etc. In the instant case, the initial security deposit is not covered under any Regulations of the State Commission and is all along separate and distinct security meant for specific purpose before the release of connection. After release of connection, the applicable two securities, namely, security (consumption) and security for line/plant/meter are entitled for interest and so the same is being paid by the distribution licensee. Further, in the present case, even the State Commission has itself maintained that there is no provision in the supply code for payment of interest on initial security as per Regulation 14. Moreover, Regulation 18 provides for interest payable on the initial security in case it is to be refunded, subject to certain conditions to be fulfilled and admittedly, this regulation is not applicable to the present case as there is no refund of initial security.

11.12 In view of the above facts, we are of the opinion that the State Commission ought not to have granted interest on the initial security to the consumers merely because it is a security. Moreover, the Commission is bound to comply with its own Regulations in this regard as held under various Authorities.

Issue No. 2 :

11.13 Learned counsel for the Appellant submitted that under the provisions of the Act, the State Commission does not have jurisdiction to entertain disputes between a consumer and a licensee. He further submitted that the State Commission is a statutory authority and it has to trace its powers and jurisdiction under the specific provisions of the Act. The adjudicatory powers of the State Commission are only as provided in Section 86 of the Act, which falls in Part X of the Act and the tariff provisions are under Part VII of the Act, which provides for the powers to the Commission for determination of tariff. Part VI of the Act deals with distribution of electricity whereas the powers of the State Commission under Part VII are only legislative powers, i.e., for framing of regulations, providing for technical requirements, capital adequacy, credit-worthiness of trading licensees etc. The learned counsel vehemently submitted that a dispute raised by a consumer against licensee does not fall within adjudicatory jurisdiction of the State Commission.

11.14 The learned counsel highlighted that the above position had been settled in a host of judgments of Hon'ble Supreme Court as well as this Tribunal. This ruling has categorically held that the dispute between a consumer and the licensee is not within the jurisdiction of the State Commission and that the sole and exclusive jurisdiction is that of the

forum constituted u/s 42(v) of the Act subject to Appeal by the Consumer u/s 42(vi) of the Act. The learned counsel further contended that the right of Appeal has been granted only to the consumer u/s 42(vi) of the Act and not to the licensee. Therefore, the decision of the Ombudsman is final without any appellate remedy and is only subject to the jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India. The learned counsel alleged that the Respondent Commission has without jurisdiction entertained the dispute raised by the first Respondents claiming payment of interest on initial security deposit made under Regulation 14 of the Supply Code Regulations, in view of Section 47 of the Act.

11.15 The learned counsel for the Appellant alleged that the reliance placed by the State Commission on the decision of this Tribunal in BEST case is misconceived as the said decision was in the context of open access involving two licensees and this was to be adjudicated by the State Commission. Summing up his arguments, the learned counsel reiterated that the State Commission has acted beyond its jurisdiction and on this account too, the impugned order is liable to be set aside.

11.16 **Per contra**, the learned counsel for the Respondent Commission vehemently submitted that the Appellant had not taken a ground before the State Commission or before this Tribunal in its Appeal that the Commission did not have jurisdiction to decide the issue in controversy and only for the first time during the argument, has tendered the written submissions wherein the plea of lack of jurisdiction was first time raised. The learned counsel further contended that the relief sought before the Commission was a declaration that the consumer is entitled to receive interest on the initial security deposited by him and hence, the petition

filed before the Commission is not covered by part VI of the Act. The respondent alleged the violation of Section 47(4) of the Electricity Act by the appellant and sought the redressal before the Commission. Accordingly, the Commission used its power to remove difficulties under the Regulations, for general good of all the consumers who might have been affected by denial of interest on initial security. Keeping this in view, it cannot be concluded that the issue was a matter of fact between an individual consumer and a licensee. The issue was of much far reaching importance affecting large number of consumers and as such the issue could only be set at naught by the Commission and not by dispute redressal mechanism.

11.17 The learned counsel for the Respondent Commission drew our attention to Regulation 49 of the Supply Code which prescribes the powers of the Commission to take up such type of issue. Regulation 49 of Supply Code reads as under :

“49. Powers to remove difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may do or undertake things or by a general or special order, direct the Licensee, to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties.”

11.18 The learned counsel further submitted that the The powers to remove difficulties are not an ample formality but prescribed to ultimately ensure enforcement of rule of law and to reach the benefits of a particular legislation to all and to apply it universally. The learned counsel for the Respondent Commission placed reliance on the judgment of Hon'ble Supreme Court in *Madava Upendra Sinai & Ors Vs. U.O.I. & Ors* (1975) 3 SCC 765 to demonstrate the purpose and intent of removal of difficulties clause and its importance.

11.19 Regarding reliance of the Appellant on the judgment of Hon'ble Supreme Court in the case of MERC Vs. Reliance Energy Ltd &Ors., (2007) 8 SCC 381, the learned counsel for the Respondent Commission contended that the same has no bearing on the facts of the present case as the said case relates to a billing dispute. However, the present case is about issuance of general directions pertaining to the application and interpretation of the Electricity Act and the Regulation made thereunder. Moreover, the Act does not preclude an individual consumer to approach the Commission for such a direction to the Utility. The said judgment of the Apex Court has been thoroughly discussed and applied by this Tribunal in the BEST case in Appeal No. 149 of 2010 on 04.04.2012. In the said judgment, this Tribunal as well as the Hon'ble Supreme Court held that the Commission has the power to make a licensee to fulfil its obligations under the Act and the present case is also pertains to a general directions to the distribution licensee governing all the consumers. The learned counsel reiterated that there is no substance in the present Appeal and the same deserves to be dismissed.

Our Findings:-

11.20 We have carefully considered the rival submissions of the parties and also perused the texts of various judgments relied upon by the parties. The dispute of jurisdiction is mainly due to the question whether the State Commission can attain jurisdiction to adjudicate the dispute arising between a consumer and the distribution licensee. While it is the contention of the Appellant that as per the Act, the State Commission is no empowered to look into the disputes between a consumer and the distribution licensee and the same has to be adjudicated by the CGRF / Ombudsman constituted u/s 46(v) and 46(vi) of the Act. The

Respondent Commission, on the other hand, considered that the issue in question is of general nature and applicable to a number of consumers in the State and keeping this in view, the Commission under Regulation 49 of the Supply Code, “powers to remove difficulties”, has adjudicated the case and came out with general instructions applicable to numerous consumers in the State. Before taking up the analysis of the issue regarding jurisdiction of the State Commission, we refer to the functions of the State Commission enshrined under Section 86 of the Act under which the State Commissions are required to discharge various functions including the one to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration.

11.21 It would be seen from the above that the State Commission is required to adjudicate upon the disputes between licensees and generating companies only and not pertaining to consumers and any licensee otherwise. Further, Regulation 49 of the Supply Code provides that if any difficulty arises giving effect to the given provisions of this Regulation, the Commission may do or undertake things or by a general or special order, direct the Licensee, to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties. While analysing the case in dispute, it does not emerge that there is any difficulty in implementing the provisions of the Regulation specified by the State Commission. In fact, the deposit of initial security itself is not covered under the specified Regulations of the Commission as far as it relates to the payment of interest. In view of these facts, we are of the opinion that neither the case is governed by Section 86 (i)(f) of the Act nor Regulation 49 of the Supply Code. As such, such grievances/claims

ought to be adjudicated at the forum created under the Act u/s 46(v) and 46(vi) respectively. Therefore, the State Commission in the extant circumstances ought not to have exercised its jurisdiction to adjudicate the case arising between consumers and the distribution licensee.

ORDER

For the foregoing reasons stated supra, we are of the considered opinion that the issues raised in the instant Appeal No. 298 of 2014 and batch have merits and hence the Appeals are allowed. The impugned orders dated 17.09.2014 (in P. No. 45 of 2014), 20.01.2016 (in P. No. 67 of 2015), 03.02.2016 (in P. No. 80 of 2015), 13.01.2016 (in P. No. 65 of 2015) and 18.01.2016 (in P. No. 75 of 2015) respectively passed by the PSERC are hereby set aside to the extent challenged in the Appeals and our findings indicated above under para 11.

In view of the disposal of the Batch of Appeals, the reliefs sought in the IA Nos. 204 of 2016, 205 of 2016. 217 of 2016 and 253 of 2016 do not survive for consideration and accordingly stand disposed of.

No order as to costs.

Pronounced in the Virtual Court on this **19th day of May, 2020.**

(S.D. Dubey)
Technical Member

(Justice ManjulaChellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

Bn