

BEFORE THE HIMACHAL PRADESH ELECTRICITY OMBUDSMAN, SHIMLA  
PHONE: 0177- 2624525



**CASE No. 35 of 2017**

**In the matter of:**

M/s S.K.Industries, Village Taliwala, Tehsill Nalagarh, Distt. Solan (HP), through its Managing Partner  
Shri S.K.Gupta.

....Applicant/Representationist

**Versus**

1. Executive Director (Personnel),H.P.State Electricity Board Ltd., Vidyut Bhawan, Shimla(HP)
2. Assistant Engineer, Electrical Sub Division No.II, HPSEBL, Nalagarh, Distt.Solan(HP)

.....Respondents

**And**

**In the Matter of**

Representation under Regulation 28 (1) (b) of HPERC(Consumer Grievances Redressal Forum and Ombudsman) Regulations,2013, against impugned Order dated 29.07.2017 passed by the FRGC through its authorized representative Sh.S.K.Gupta, Managing Partner filed by Sh.O.C.Sharma, Advocate.

**In presence:**

Applicants: Sh. O.C.Sharma, Counsel for Applicant/Representationist

Respondents : Sh. Bhagwan Chand, Counsel for Respondents.

Sh. Laxmi Chand, Sr. Assistant, ESD, HPSEBL, Barotiwala, Distt. Solan (HP)

**ORDER**

***(Last Heard on 27.11.2017)***

M/s S.K.Industries, Village Taliwala, Tehsill Nalagarh, Distt. Solan (HP), through its through its authorized representative Shri S.K.Gupta, hereinafter referred to as ( **“the Applicant/ Representationist”**) was issued PAC dated 31.07.2004 for sanctioned load of 489.4 kW with a Contract Demand of 500 kVA., after the firm deposited the Amount of Security Deposit Rs.4,25,000/- with the respondents. But actually the connected load of 490 kW with 500 kVA Contract Demand was released by the Electrical Sub Division, rH.P. State Electricity Board Ltd. (hereinafter referred to as **“the Respondent Board”**) in June,2008.

## Complainant's contention

1. That the Applicant/Representationist feeling aggrieved and dissatisfied with the findings of the impugned Order 29.07.2017 in Complaint No.1432/4/16/056 passed by the Consumer Grievances Redressal Forum, Shimla-171009, regarding considering the adjustment of Security Deposit of M/s S.K. Industries against the outstanding amount of M/s S.K.Magnese (P) Ltd., as all the Directors of M/s S.K. Industries were also the Directors of M/s S.K. Magnese (P) Ltd., and withholding the refund of ACD of M/s S.K. Industries.
2. That the appellant firm submitted A&A form and Test report of Wiring Contractor. The connected load of 490 kW with 500 kW was not released to the appellant firm after issuance of office order due to non-availability of required load in sub-station of respondents. The appellant firm deposited the sum of Rs.4,74,000/- (Rs.49,000/- + Rs.4,25,000/-) as Security Deposit with the respondents. The respondents released the connected load of 490 kW with 500 kVA contract demand in June, 2008.
3. The demand for the products of the appellant firm was reduced drastically and the firm considered it appropriate to close the entire manufacturing activities. The firm applied to the respondents for permanent disconnection of electricity supply and the PDCO was affected in August,2009. Respondents issued final bill for the consumption of energy and the entire amount stood paid by the appellant firm to the respondents. The agreement for supply of electricity stood terminated by the respondents in August,2009 itself.
4. That after termination of agreement for supply of electricity in August,2009, the respondents failed to refund the amount ACD Rs.4,74,000/- to the applicant despite repeated requests and personal visits. The appellant firm lastly wrote letter dated 17.05.2016 to respondents for refund of security.
5. That the respondents have indulged in unfair practices by way of withholding the refund of ACD Amt. Rs.4,74,000/- by adjusting the Security Deposit of M/S S.K. Industries against the outstanding amount of M/s S.K.Magnese (P) Ltd., keeping in view that the Directors of M/s S.K.Industries are also Directors of M/s S.K.Magnese (P) Ltd. As such the respondents are liable to refund the ACD alongwith 12% per annum interest and such acts of respondents are completely arbitrary, illegal, unjustified and contrary to the Security Deposit Regulation,2005 of HPERC.
6. That M/s SK.Industries is a partnership firm duly registered with the Registrar of Firms, situated at Village Taliwala, Tehsil Nalagarh, District Solan (HP) having its two partners i.e. Sh. S.K.Gupta and Smt. Jyotsna Gupta. M/s S.K. Magnese (P) Ltd. is a body corporate duly

incorporated under the Companies Act and having its separate legal entity in the eyes of law. The said company is having its works and estate at Baddi, Tehsil Nalagarh, District Solan (HP). M/s S.K.Manganes (P) Ltd. is having its three directors i.e. Sh. S.K.Gupta, Smt. Jyotsna Gupta and Smt. Sunita Nagar. Both the said firms entered into an independent agreement with the Licensee for supply of electricity and thereby became an independent consumer of the licensee/respondents by getting the power for all intents and purposes. There is no privity of contract between M/s S.K.Industries with HPSEBL to the effect that M/s S.K.Industries would be liable to pay defaulted dues of M/s S.K.Manganes (P) Ltd., Baddi and M/s S.K.Industires has not furnished or executed any guarantee deed or undertaking for the payment of defaulted amount, if any, of M/s S.K.Magnese (P) Ltd., Manpura and as such, the amount for which M/s S.K.Industries is entitled as a refund of SecurityDeposit from HPSEBL cannot be adjusted towards the alleged outstanding dues of M/s Magnese (P) Ltd. by the HPSEBL.

7. That the Forum has gravely erred by not appreciating that there is no adjudication by the Civil Court for the alleged outstanding dues of M/s S.K.Magnese (P) Ltd. and in absence of there being any adjudication qua the alleged outstanding dues by the Civil Court, the findings for the adjustment of Security Deposits of the Appellant towards the alleged dues of M/s S.K.Magnese (P) Ltd., unsustainable and absurd.

**Respondents contention:**

1. That in reply 4 of the representation of the appellant, the respondents said that applicant submitted an application No.8438 L/S, dated 11.08.2004 to the respondents and it is denied that the appellant firm was ready to get the connection. The codal formalities for releasing electricity connection were completed by the appellant firm till May,2008. The appellant firm was asked through Demand Notice dated 11.08.2004 to submit requisite documents i.e. NOC from Water Pollution control Board, Shimla, NOC from BBNDA, Test report of approved contractor alongwith energization approval of Chief Electrical Inspector, which were supplied by the appellant firm till 17.05.2008. The appellant firm contention of non-availability of load at sub-station is wrong and hence denied.
2. That the connection was permanently disconnected against TDCO, the appellant did not deposit the bill amount after TDCO. The refund of Rs.1,01,250/- only was adjusted in the terms of order dated 25.05.2011 passed by the Forum in complaint No.1453/2/2010, but after that a sum of Rs.,1,59,808/- was outstanding against the appellant.

3. That after the permanent disconnection, no refund is liable to the appellant. It is pertinent to mention that a sister concern of appellant firm namely M/s S.K. Magnese (P) Ltd. Under Electrical Sub-Division, HPSEBL Baddi, was defaulted in payment of its dues and Directors of both the companies are same. The appellant firm has tried to mislead this Hon'ble authority by making a wrong and false averments, which is clear by intimation given by the AEE, ESD, HPSEBL Baddi and decision dated 11.12.2007 passed by this Forum.
4. That complainant firm is liable to pay outstanding amount in the name of sister concern (M/s S.K.Magnese (P) Ltd. ) bearing A/c No.LP-1620) under ESD, Baddi, as per decision passed by the Forum in case No.1462/07/033 on 11.12.2007 i.e. Rs.24,87,281/-.

S.No.	Name of Firm	Outstanding Amt.	Security Deposit	Balance
1.	S.K. Magnese (P) Ltd.	28,18,901/-	0	28,18,901/-
2.	S.K. Industries	1,68,380/-	5,00,000/-	-3,31,620/-
		Recoverable Amount:		24,87,281/-

**Forum's observations:**

We have gone through all the documents in detail and listened to the arguments of both the parties carefully. We find that the electricity connection of M/s S.K.Industries was permanently disconnected during August,2009. We agree with the contention of the complainant that the amount of Security Deposited by the complainant is refundable to the complainant immediately after termination of agreement. As per Standards of Performance Regulation, 2010, the refund of Security Deposit be made within one month from the date of termination of the agreement after making adjustments for the amounts outstanding from the consumer to the licensee. The complainant applied for refund of Security Deposit on 17.05.2016.

We also find that there is another company named as M/s S.K.Maganese (P) Ltd., Baddi. The respondents pleaded that M/s S.K.Magnese (P) Ltd. is the sister concern of M/s S.K.Industries and M/s S.K.Maganese (P) Ltd. has defaulted in payments of its dues to the licensee. The respondents pleaded that the complainants are liable to pay the outstanding amounts of its sister concern i.e. M/s S.K.Maganese (P) Ltd. As per respondents reply an amount of Rs.28,18,901/-

was payable by M/s S.K. Maganese (P) Ltd. and after adjusting the Security Deposit of M/s S.K.Industries an amount of Rs.24,87,281/- is still payable by M/s S.K.Magnese (P) Ltd.

After looking into all the facts and listening to the arguments of both the parties we observed that M/s S.K.Magnese (P) Ltd. was having three Directors i.e. Sh. S.K.Gupta, Smt. Jyotsna Gupta and Smt. Sunita Nagar. M/s S.K.Industries is having only two Directors i.e. Sh.S.K.Gupta and Smt. Jyotsna Gupta. As such both the Directors of M/s S.K.Industries are also responsible to make the payment of outstanding dues of M/s S.K.Magnese (P) Ltd. We feel that the respondents are right in adjusting the Security Deposit of M/s S.K.Industries against the outstanding amount of M/s S.K.Magnese (P) Ltd. As all the Directors of M/s S.K.Industries were also the Directors of M/s S.K. Magnese (P) Ltd. We are, therefore, of the opinion that it will not be proper to allow refund of Security Deposit at this point of time. However, the issue can be raised again by the complainants in case the outstanding amount against M/s S.K.Magnese (P) Ltd. Is struck down by any competent Court of law. Thus, the complaint for refund of Security Deposit of M/s S.K. Industries Ltd. is dismissed. The case is decided in favour of the respondents.

#### **Electricity Ombudsman findings and Order:**

From the submissions made by the parties, the main issue comes for discussion whether withholding and adjusting the Security Deposit of M/s S.K.Industries against the outstanding amount of M/s S.K.Magnese (P) Ltd., because all the Directors of M/s S.K. Industries were also the Directors of M/s S.K.Magnese (P) Ltd. Is appropriate and justified or not.

On going through the submissions, reply and contentions of the parties, it is observed that :-

H.P. Electricity Regulatory Commission (Security Deposit) Regulations,2005, stipulates the refund of Security Deposit within one month from the date of termination of the agreement after making adjustments for the amounts outstanding from the consumer to the licensee. As the agreement for supply of electricity stood terminated by the respondents in August, 2009 itself and the bills of energy after PDCO stood paid by the appellant firm, the respondents Board is liable to refund the Security Deposit . Whereas the respondents Board have failed to refund despite repeated requests and personal visits and the firm lastly wrote letter dated 17.05.2016 to the respondents for refund of ACD.

Withholding the refund of ACD by adjusting the Security Deposit of M/s S.K. Industries against the outstanding amount of M/s S.K.Magnese (P) Ltd., being Sh. S.K.Gupta and Mrs. Jyotsna Gupta Directors of M/s S.K.Industries also Directors of other Company M/s S.K.Magnese (P) Ltd. as well, is inappropriate, unjustified and totally illogical.

It is pertinent to mention that M/s S.K.Industries is partnership firm registered with the Registrar of Firms and M/s S.K.Magnese (P) Ltd. Is a body Corporate incorporated under the Companies Act, having their separate entity. Moreover, both the firms were allowed the electricity connections after execution of separate agreements with the licensee and thereby they become independent consumers of the licensee.

Further the respondents Board could not prove that both the companies are bound to bear any liability arising between these two industrial Electric connections.

Keeping in view the above facts and observations, it is found that the respondents Board cannot withheld the refund of ACD to M/s S.K.Industries by way of making adjustment of outstanding dues of M/s S.K.Magnese (P) Ltd. merely on the basis that all the Directors of M/s S.K. Industries are also Directors of other Company i.e. M/s S.K.Magnese (P) Ltd. and interlinked/associated with each other companies and assuming them as sister concerns.

The impugned order dated 27.07.2017 of the Forum stands quashed and set aside. The respondents Board is directed to refund the ACD to the complainant/representationist within a month from the issuance of this order in line with the provision contained in HPERC (Security Deposit) Regulations,2005.

Dated: 30.11.2017

**ELECTRICITY OMBUDSMAN**