

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/Petition No. 63 of 2024

Date of Hearing : 19.03.2025

Date of Order : 25.03.2025

IN THE MATTER OF:

Complaint under Section 142, read with Section 146 & Section 149 of the Electricity Act, 2003 & Regulation 2.32 of HERC (Forum & Ombudsman) Regulations, 2020 For imposing penalty U/S 142 and institution of complaint U/S 146 of The Electricity Act, 2003 on account of non-compliance of the order/ direction passed by Ld. Corporate Forum For Redressal Of Consumer Grievances (CGRF) Gurugram as well as continuing failure to comply with the direction of order number 4697/2024 Dated 19-06-2024 by respondent(s) and for direction(s) to ensure strict compliance of the direction issued by the corporate CGRF DHBVN Gurgaon vide order dated 19-06-2024.

Petitioner:

Anjni Casting (P) Ltd. Regd. office 2/37, Ground Floor, Jangpura -A, New Delhi-110014 through its Director Mr. Dheeraj Aggarwal

VERSUS

Respondents:

1. SDO 'OP' Sub Division, DHBVN, Sohna, Distt-Nuh-122103
2. XEN 'OP' Division, DHBVN, Sohna, Distt-Nuh-122103.

Present

On behalf of the Petitioner

Sh. Akshay Gupta, Advocate

On behalf of the Respondent

Ms. Sonia Madan, Advocate

QUORUM

Shri Nand Lal Sharma, Chairman

Shri Mukesh Garg, Member

ORDER

1. Petition:

That I Dheeraj Aggarwal (hereinafter may be referred as complainant petitioner) is the Director of Anjni Casting P Ltd, Regd Office 2/37, Ground Floor, Jangpura-A, New Delhi -110014 and production unit as 126 Roz-Ka-Meo Industrial Area, Sohna Distt- Nuh-122103, Haryana, The company is the manufacturer of Plain & Alloy Steel, Casting and Industry spares etc and authorized by Board through a resolution for filing the present petition on behalf of our co Anjni Casting P Ltd .

Anjni casting P Ltd is having an electricity connection bearing account number 1850922000 (Old Account Number-INHT-0015) which falls under the jurisdiction of SDO op Sub Division Sohna , DHBVN.

I filed complaint before Corporate CGRF, DHBVN GURGAON on dated 18-05-2024 which was instituted on 20-05-2024 vide case number 4697/2024 and prayed:

- A. To direct the respondent to allow/adjust the due off-peak load/ TOU-TOD rebate (Which is pending from. 2017) along with 18% interest.
 - B. Pass any other or further order which this Hon'ble Forum may deem fit and proper in the facts and circumstances of the case in favor of appellatant petitioner in the interest of justice.
- 1.1 That the hearing was held at the Office of Corporate CGRF DHBVN Gurgaon and respondent SDO tendered his reply vide his office memo number " 1217 dated 12.06.2024, wherein he has submitted that " in the subject cited matter it is hereby submitted that the TOU-TOD benefits for the financial years of 2017-2018 & 2018-2019 is applicable to consumer. As per the sales circular No D 32-2019, the smart meter is pre-requisite for availing the benefit of TOU-TOD and the consumer is having AMR meter, and no smart meter is installed till date. Hence as per the Nigam's rule only the benefit of two financial years 2017-2018 & 2018-2019 is applicable. We are calculating the same and it will be submitted in 2 days.
- 1.2 That as per the submission before the CGRF on 12.06.2024 The respondent submitted his reply vide his office memo number 1276 dated 18.06.2024, wherein he has submitted that " in the subject matter it is hereby submitted that as per the consumer representation received the benefit of TOU-TOD is applicable for two financial years 2017-2018 & 2018-2019 as per Sales Circular D-29/2017 and D 32-2018. Similarly for the financial period 2019 onwards the benefit of TOU-TOD is not applicable since smart meter is pre-requisite as per sales circular D32-2019 and D30-2022. The calculation of TOU-TOD of the eligible financial years 2017-2018 and 2018-2019 is mentioned below. The total amount adjustable is Rs. 1150079. 77 (Rupees Eleven Lac Fifteen Thousand Seventy Nine and Seventy Seven Paisa) for FY 2017-2018 & Rs. 785441.64 (Rupees Seven Lac Eighty Five Thousand

Four Hundred Forty One and Sixty Four Paisa) for the FY 2018-2019. As such total amount comes to be Rs. 1935521.41 (Rupees Nineteen Lac Thirty Five Thousand Five Hundred Twenty One and Forty One Paisa).

- 1.3 The Ld. Corporate CGRF DHBVN Gurgaon disposed off the case. The order passed by the CGRF held as under :

The forum observed that the TOU-TOD benefit for the FY-2017-2018 and 2018-2019 is applicable but further onwards not applicable due to smart meter pre-requisite as per sales circular no 32-2019 & D 30-2022. The total amount adjustable us Rs. 1150079 for FY 2017-2018 and Rs. 785441 for FY 2018-2019. The forum directs the SDO to adjust/ refund the amount of Rs. 19,35,521 as per his office memo number 1276 dated 18.06.2024 to the complainant account with interest @ 9% as per sales circular No D 32-2019. The case is closed, No cost on either side”

As required under Haryana State Electricity Regulatory Commission (Forum & Ombudsman) Regulation No -HERC/48/2020/1st Amendment/2022 dated 6th April-2022 the implementation of this decision may be intimated to this office within 21 days from the date of its receipt.

- 1.4 Order dated 19th June-2024 is to be complied with in 21 days i.e by 10-07-2024, but the order was not complied with.
- 1.5 On 22-07-2024 we submitted an application to SDO op Subdivision Sohna and requested him to complied with the order and adjust the due refund.
- 1.6 That the bill issued to us for the month of Aug-2024 but the due refund as per CGRF order not adjusted.
- 1.7 That the order dated 19-06-2024 was to be complied within 21 days i.e by 10-07-2024 but it's been around 3 months since passing of order dated 19-06-2024 by Ld. Corporate CGRF DHBVN Gurgaon and the same has not been complied with by the respondent SDO as the amount of TOU-TOD rebate for the period 2017-2019 with 9% interest has not been adjusted in the bill as directed by the Ld. Corporate CGRF DHBVN Gurgaon and there has been deliberate and willful disobedience of order dated 19-06-2024 passed by Ld. Corporate CGRF DHBVN, Gurgaon. Respondent is required to refund/ adjust Rs. 19,35,521 with 9% P/a interest but nothing has been paid /adjusted in our electricity bill so far.
- 1.8 That the respondent has failed to comply with the order passed by Ld. Corporate CGRF DHBVN Gurgaon and forced complainant petitioner to file the complaint Before Hon'ble HERC under Section 142 Read with Section 146 & Section 149 of Electricity Act-2003 for non-compliance of order passed by Ld. Corporate CGRF DHBVN Gurgaon dated 05.06.2024.
- 1.9 Electricity Act, 2003- Section 142 “Punishment for Non-Compliance of directions by Appropriate Commission): in case any complaint is filed before the Appropriate Commission by any person or if that Commission by any person or if that Commission

is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made, thereunder; or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed One Lakh Rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to Six Thousand rupees for every day during which the failure continues after contravention of the first direction.

- 1.10 Section 146: “Punishment for Non-Compliance of orders or directions- Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, with both in respect of each offence and in the case of continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

(Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.)

- 1.11 Section 149 (1) Where an offence under this act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

(2) Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

- 1.12 Regulation 2.32 of HERC (Forum and Ombudsman) Regulations, 2020 (Regulation2.32):

“The decisions of the Forum will be recorded and duly supported by reasons. The Order of the Forum will be communicated to the complainant and the licensee in writing within 7 days of the passing of the Order. The licensee shall comply with the order of the Forum within 21 days from the date of receipt of the order. In appropriate cases, considering the nature of the case, the Forum, upon the request of the licensee, may extend the period for compliance of its order up to a maximum of three months. The aggrieved consumer may approach the Ombudsman who will provide the consumer as well as the licensee an opportunity of being heard and decide the appeal.

In case of non-compliance of the order of the appropriate Forum, the aggrieved consumer may approach the Commission who will provide the consumer as well as the Licensee an opportunity of being heard. The Commission may initiate proceedings under section 142 of the Act for violation of the Regulations framed by the Commission.”

1.13 That as per HERC (Standard of Performance of Distribution Licensee and determination of compensation) Regulation, 2020 Schedule – II Sub Clause 20 provides that in case of compliance of CGRF is not made within the time framed defined in such order or the regulations specified by the commission in this regard, the compensation of Rs.100/- per day or part thereof is payable.

Prayer:-

It is, therefore, most humbly prayed that considering the submissions brought out above, this Hon'ble Commission may kindly be pleased to:

- i. Direct the respondent(s) to comply with order passed by the Ld. Corporate CGRF DHBVN vide order dated 19.06.2024
And:
- ii. To impose penalty of Rs. 1 Lakh on respondent(s) under Section 142 of Electricity Act 2003 for failure to comply with the order / direction passed by Ld. CGRF on 19.06.2024 as well as continuing failure to comply with the directions and pay the dues to the complainant.
And:
- iii. To direct institution of complaint under Section 142 RW Section 146 of Electricity Act,2003 for failure to comply with the order / direction passed by the Ld. CGRF on dated 19-06-2024 as well as continuing failure to comply with the directions against the respondent SDO.
And:
- iv. To direct the respondent(s) to pay compensation @ Rs.100/ Day for non-compliance of order passed by CGRF within 21 days.
And:
- v. To award the penalty imposed on respondent(s) in favour of the complainant- petitioner.
And:
- vi. Direct respondent(s) to pay Rs. 1,00,000/- (Rs. One Lac only) as court fee and litigation expenses.
And:
- vii. To allow any other relief as deemed fit by the hon'ble Commission.

2. The case was heard on 13/01/2025. None appeared on behalf of respondent. Sh. Akshay Gupta counsel for the petitioner submitted that petition has been filed due to non-compliance of the orders of the CGRF dated 19/06/2024 and re-iterated the contents of the petition. The Commission took serious note of the non-appearance of the respondents and decided to impose penalty of Rs. 5000/- on the respondents. The commission directs respondents to submit its reply/ compliance of the orders before next date of hearing and to remain present in the court on next date of hearing.
3. The case was heard on 20/02/2025. Ms. Sonia Madan counsel for the respondent submitted that the order of the CGRF has been complied with and submitted a compliance report to this effect. She further added that the cost imposed during last hearing has been deposited. Sh. Akshay Gupta counsel for the petitioner submitted that the compliance report has been received yesterday only, so he could not go through it. However, prima facie there is an error in the calculation sheet and requested to grant time to file rejoinder The Commission directed the petitioner to file rejoinder within two weeks with an advance copy to the respondent and the respondent may file its reply, if any, within a week time. The Commission observed that the parties are submitting their averments during court proceedings bypassing the procedure laid down to submit all documents through registry before 3 days of hearing and directed to submit all documents 3 days before hearing date to registry in future.
4. **Compliance report on behalf of the respondents submitted on 20/02/2024:**
 - i. The present compliance submissions are being filed through SDO/Operations, Sub-Division, DHBVN, Sohna, who is competent to file the present submissions as well as fully conversant with the facts and circumstances of the case on the basis of knowledge derived from the record, on behalf of Respondents.
 - ii. The Petitioner has filed the present petition seeking compliance of the direction(s) issued by the Corporate CGRF, DHBVN, Gurgaon vide Order dated 19.06.2024, wherein it was directed as under –
“The Forum observed that TOU/TOD benefit for FY 2017 to 2018 & 2018-19 is applicable on consumer onwards not applicable due to smart meter pre-requisite as per the sales circular no. D-32/2019 & D-30/2022. The total amount is adjustable Rs. 11,50,079/ for FY 2017-18 & Rs. 7,85,441/- for FY 2018-19. The Forum direct the S/Divn. to adjust refund the amount of Rs. 19,35,521/- as per his office memo no. 1278 dated 18.06.2024 in the complainant account with interest @9% as per sales circular no. D-32/2019.”
 - iii. With respect to the foregoing directions, it is submitted that a refund of Rs. 19,35,521/-, as directed by the CGRF has been initiated by the Respondent. The said refund has been approved by the office of the CBO, DHBVN, Hisar and the same will be reflected in the account of

- the Petitioner on the next billing cycle. An intimation in respect of the same has also been made to the Petitioner vide letter dated 03.02.2025.
- iv. It is further submitted that as regards payment of 9% interest on the refunded amount as per sales circular no. D-32/2019, a computation of the same has been made as under –

Description	Amount
Amount to be refunded as directed by CGRF	19,35,521/-
Interest rate	9% per annum
Delay period	241 days (19.06.2024 - 15.02.2025)
Interest Amount (INR)	115,017.67 (477.25 per day)
Total Payable Amount (INR)	20,50,538.67/-

- The foregoing amount of interest has also been initiated and pursuant to the approval from the office of CBO, DHBVN, Hisar, the same will be reflected in the account of the Petitioner within a month.
- v. The Respondent further humbly submits that there is no deliberate action on the part of the Respondents to cause any inconvenience to the Petitioner. The process of refund entails certain procedural approvals and therefore, the time taken for processing the refund is on account of the same. The Respondents are bound to comply with all the Regulations/ Orders/ Directions of this Hon'ble Commission.

PRAYER

In view of the foregoing, it is most humbly prayed that the present petition may kindly be disposed off in light of foregoing submissions.

5. Rejoinder of petitioner against the reply submitted by the respondent:

The reply submitted by the respondent is irrelevant and not based on the directions given by Corporate CGRF DHBVN Gurgaon and regulations/ direction of HERC.

The Para wise rejoinder against the reply submitted by the respondent is as under:-

- i) This para needs no reply.
- ii) Para Number -2 The CGRF order (Case number 4697-2024) had held as under:

“The forum observed that TOU/TOD benefit for the FY 2017 to 2018 and 2018-2019 is applicable but further onwards not applicable due to smart meter pre-requisite as pr the Sales Circular No D 32-2019 & D 30-2022. The total amount adjustable is Rs. 11,50,079 for FY 2017-2018 and Rs. 7,85,441 for FY 2018-2019. The forum directs the S/Divn to adjust/ refund the amount of Rs. 19,35,521/- as per his office memo number 1276 dated 18.06.2024 to the complainant account with interest @ 9% as per Sales Circular No D32-2019.”

The order of CGRF is clear that the TOU-TOD rebate Rs. 19,35,521 is to be given along with the 9% interest as per Sales Circular D 32-2019.

- iii) Para Number -3 – As per the reply submitted by respondent SDO vide his office memo number 1276 dated 18.06.2024. The Corporate CGRF DHBVN passed the order on dated 19th June-2024 The order passed by the CGRF should be complies with by 11th July-2024 (within 21 days) but the respondent deliberately delayed the due refund and initiated the refund process after a period of more than 7 months that too after filing the non-compliance petition by complainant before the Hon'ble commission in Dec-2024.
- iv) Para Number-4- Respondent in this para calculated the interest @ 9% as per the Sales Circular D 32-2019, the computation made by the respondent is wrong and not as per the regulations of HERC.

That the contention of respondent for not allowing the interest on TOU -TOD rebate for the period 2017-2018 and 2018-2019 adjusted in Feb-2025 is wrong and against the regulation.

As per Sales Circular D-32-2019 (which superseded the Sales Circular D32-2018) “ There should not be any arrear in respect of such rebate, pending for settlement .in case of arrears of such rebate, the responsibility of concerned officer/official shall be fixed and the consumer shall be given the rebate along with the interest @ 9% P/annum

In this regard reliance is placed on the finding and order passed by Hon'ble HERC in similar matter titled as Nitin Kanodia, M/s Ram Oil Mill Versus DHBVN (Appeal Number 06-2023) wherein it has been held that the interest on TOU/TOD rebate for the period 2017-2018 and 2018-2019 shall be given with 9% P/a interest. Para 2 of the said order is extracted hereunder:

“2. Ms. Sonia Madan, counsel for the respondent DHBVN submitted that the benefit of TOD/TOU has already been given to the petitioner in August 2022 for the year 2017-18 and in Sept, 2022 for the year 2018-19. Further The benefit of the ED amounting to Rs 4,82,076/-, also adjusted in the consumer account. She submitted that no interest was paid to the consumer due the facts that the CGRF had not mentioned the rate of interest to be paid to the consumer in his order. However, the interest @ 9% has also been adjusted through sundry, which will be reflected in the next bill of the consumer. She requested for time to file the written submission in this matter.

“The Commission observed that non-payment of interest to the consumer, since it was not specified in CGRF order is not justified, as the DHBVN vide sale circular D-32 of 2019 dated 18.09.2019 issued on TOU/TOD tariff in pursuance of tariff order dated 07.03.2019 issued by the Commission inter- alia specifies- “There should not be any arrear in respect of such rebate, pending for settlement. In case of arrears of such rebate, the responsibility of concerned officer/official shall be fixed and the consumer shall be given the rebate along with interest @ 9% per annum.”

The Commission further observed that there is inordinate delay in implementation of the order of CGRF, as there is specific provision to pay interest @ 9% in sales circular of respondent company and decided to issue show cause notice to SDO OP City S/Divn, Narnaul as to why action should not be taken against him under Section 142 r/w S.146 of the Electricity Act 2003 for non-compliance of the order of CGRF.

As per the directions given by Hon'ble Commission in appeal number 6-2023, the respondent SDO made the refund vide sundry number 466 (Copy of the sundry is attached as PR-2). On perusal of the sundry made by the respondent it is clear that TOU TOD rebate is to be given along with 9% interest and the interest it to be calculated from the date the rebate was due i.e 2017.

- v) The total rebate in present matter payable to complainant petitioner along with interest is Rs. 3372593 (INR Thirty Three Lac Seventy Two Thousand Five Hundred Ninety Three).
- vi) It is further submitted that the cases of identical nature stands disposed by the Ombudsman/ HERC as mentioned below.
 - i. Appeal Number 12/2022 titled as Santosh Kumar, M/s Maruti Enterprises, Dholera Road Narnaul Versus DHBVN
 - ii. Appeal Number 24-2022 titled as Sh. Krishan Goyal , M/s Deepak Cotton, Adampur Versus DHBVN
 - iii. Appeal Number 21-2023 titled as Sh. Sanjay Bansal C/o M/s Hunta Ram Gupta Versus DHBVN.
 - iv. Appeal Number 9/2023 titled as Ankit Bansal C/o M/s S.A Cottex Versus DHBVN.
 - v. Petition Number 6-2023 titled as Ram Oil Mill Versus DHBVN.
 - vi. Petition Number 5-2024 titled as Suresh Cotton Oil Gen Mills Versus DHBVN.
 - vii. Petition Number 41-2024 titled as M/s Bansal Cotton Oil & Gen Mills Versus DHBVN.
- vii) That after covid-19 the complainant was facing the financial hardship and complainant was expecting that his due refund on account of TOU TOD rebate will be adjusted owing to the order passed by CGRF.
- viii) The complaint submitted an application on 20.07.2024 requesting therein to comply with the order passed by CGRF.
- ix) Reasoned by non-compliance of order passed by CGRF on dated 24.06.2024 the complainant petitioner had to suffer a heavy loss on account of delayed payment surcharge, because June-2024 onwards the respondent SDO always use to accept the payment of current month energy bill with an assurance the balance will be waived off/ adjusted against the refund of TOU-TOD with interest.
- x) A sum of Rs. 63325 is charged as LPSC due to non-adjustment of TOU-TOD rebate which was supposed to be adjusted in June-2024 bill.
- xi) It is respectfully and humbly submitted that from the detailed explained above it is crystal clear that there is deliberate and wilful disobedience of order dated 19.06.2024 passed by Ld. CGRF DHBVN Gurgaon. Respondent is required to refund/ adjust the TOU TOD rebate for the period 2017-2018 and 2018-2019 with 9% P/a interest, But

partial amount i.e only principle amount of TOU TOD rebate is adjusted that too after filing the case us 142 before Hon'ble Commission.

In the view of above submitted facts it is humbly prayed that

- i. Notice u/s 142 may be issued to respondent (s) for deliberate and wilful disobedience of order dated 19.06.2024 passed by Ld. CGRF DHBVN Gurgaon.
- ii. Respondent may be directed to adjust the due refund of interest @ 9% P/a on TOU/TOD rebate for the period 2017-2018 and 2018 - 2019 as per Sales Circular D 32-2019 and as per the calculation sheet attached and;
- iii. Respondent may be directed to waive off the surcharge amounting to Rs. 63225 charged on account of delayed payment surcharge and;
- iv. Suitable action may be taken against the respondent as deemed fit by the Hon'ble Commission for non-compliance of order passed by the Ombudsman and misleading the commission by hiding facts and the case may be disposed off with cost as litigation expenses with court fee 50,000 deposited by the complainant petitioner for this execution petition.

Commission's order:

6. The case was heard on 19/03/2025 in the court room of the Commission. At the outset, Ms. Sonia Madan Counsel for the respondent submitted that the rejoinder was received two days back. Based on the averments made in the rejoinder the respondents have calculated the interest payable and submitted a copy of the same in the court as well as to petitioner. She submitted that the amount shall be adjusted in the petitioner's account within 7 days.

Sh. Akshay Gupta submitted that only interest part is remaining to be refunded to the petitioner. After going through the calculations, the counsel expressed satisfaction with the same. However, he prayed the Commission that the petition may be disposed of with direction to the respondent for payment of court fee 50,000/- deposited by the petitioner alongwith litigation expenses.

In view of the above discussions, The Commission observes that since the order of CGRF has been complied with now, nothing remains to be adjudicated in the present petition. However, the dispute was primarily pertaining to non-compliance of the CGRF orders in timely manner. The negligence on the part of officials/officers of Respondent Nigam cannot be ignored, due to which the consumer had to suffer and had to knock the doors of CGRF for relief in the first instance and then had to approach the Commission for implementation of CGRF orders. Nigam has been burdened with interest and litigation charges in addition to wastage of valuable time of the officers/officials.

The Commission, therefore, directs the respondent DHBVN to ensure the refund of interest as agreed alongwith payment of ₹50,000/- Court Fee deposited by the petitioner along with ₹15,000/- towards litigation expenses to the petitioner within 30 days from the date of this order.

The petition is disposed of, in above terms.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 25/03/2025.

Date: 25/03/2025
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman

H E R C