

**BEFORE THE HON'BLE KERALA STATE ELECTRICITY
REGULATORY COMMISSION**

Petition No :

In the Matter of : Scheme for One Time Settlement of Arrears (OTS-2022)

Applicant : Kerala State Electricity Board Limited ,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram

AFFIDAVIT VERIFYING THE APPLICATION

I, **Sasankan Nair C.S**, son of G Chellappan Pillai, aged **55** years, residing at **Sasindu, Snehapuri Road, Karimom, Thiruvananthapuram-13** do solemnly affirm and state as follows:

I am the Chief Engineer (Commercial & Tariff) of Kerala State Electricity Board Limited, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram, representative of the petitioner in the above matter and I am duly authorized by the Board to make this affidavit on its behalf. I solemnly affirm at Thiruvananthapuram on this theday of November of **2021** that

- (i) Contents of the above counter affidavit are true to my information, knowledge and belief. I believe that no part of it is false and no material has been concealed there from.
- (ii) That the statements made in paragraphs of the accompanying application now shown to me are true to my knowledge and are derived from the official records made available to me and are based on information and advice received which I believe to be true and correct.

Deponent

Chief Engineer (Commercial & Tariff)
Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004

VERIFICATION

I, the above named deponent, solemnly affirm at Thiruvananthapuram on this theof November of **2021** that the contents of the petition are true to my information, knowledge and belief, that no part of it is false and that no material has been concealed there from.

Deponent

Chief Engineer (Commercial & Tariff)
Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004

Solemnly affirmed and signed before me

Advocate and Notary

BEFORE THE HON'BLE KERALA STATE ELECTRICITY REGULATORY COMMISSION
at its office, KPFC Bhavan, Vellayambalam, Thiruvananthapuram

In the Matter of : **Scheme for One Time Settlement of Arrears (OTS-2022)**
Applicant : **Kerala State Electricity Board Limited,**
Vydyuthi Bhavanam,
Pattom,Thiruvananthapuram

THE APPLICANT SUBMITS THE FOLLOWING THAT:

1. As per Section 136(5) of the Supply Code, 2014, the licensee may formulate a scheme for One Time Settlement of long pending arrears and implement the scheme with prior approval of the Commission.
2. Accordingly, Hon. Commission as per order dated 11.02.2021 has accorded sanction for the implementation of One Time Settlement scheme (OTS-2021) for the period from 15.02.2021 to 31.03.2021. In compliance to the above, KSEBL had implemented the above OTS-2021 scheme on the consumers of KSEBL.
3. As part of the implementation of OTS-2021 scheme in KSEBL, a total no of 923 applications, having an arrear amount of Rs 20.34Cr had been settled. The amount collected by KSEBL in this behalf was Rs 13.06Cr. The detail of the arrear amount settled and collected as per the above scheme is shown in **Exhibit P1**
4. However, in the wake of Covid -19 pandemic, several requests has been received from consumers that they could not avail the earlier OTS schemes within the time frame and had requested for considering their requests. The period of implementation of the OTS-2021 scheme was when the model code of conduct due to election was also in force. Hence, an effective implementation of above scheme could not been undertaken by KSEBL. Hence, in order to mitigate the hardship faced by the consumers due to Covid-19 pandemic and also considering the several requests made by the consumers, a new proposal for One Time Settlement (OTS-2022) almost in line with the previous scheme is submitted herewith as **Annexure** in compliance to regulation 136(5) of Kerala Electricity Supply Code, 2014.
5. As per the previous OTS-2021 scheme, consumers with arrears more than two years were eligible for availing the OTS scheme. Further, as a one-time relaxation, the consumers previously availed any OTS schemes but could not avail the benefit were also given an opportunity to be considered under the above OTS scheme. But, theft cases booked under section 135 of Electricity Act, 2003 were excluded in the above scheme.
6. In connection with the implementation of previous OTS-2021 scheme, certain clarification has been sought from field offices regarding whether bills issued as per section 127(6) of Electricity Act, 2003 can be considered under the OTS scheme. The

section 127(6) of Electricity Act, 2003 states that if any person defaults in making payment of assessed amount, he in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen percent per annum compounded every six months. Since the interest amount has been specifically mentioned in the Electricity Act, 2003, the bills issued invoking the above provisions of the Electricity Act, 2003 are excluded from the new OTS scheme.

7. Further, as per the conditions of OTS-2021 scheme, the arrears above 2 years are eligible to be considered under the above scheme (ie; demand raised prior 01.01.2019). However, on implementing the above scheme, several clarifications has been sought from the field offices on whether the bills issued to self financing institutions based on the Hon'ble Supreme Court Order dated 20.02.2020 may be considered under the above OTS scheme. The demand claimed with interest as per the Court Order was for the period from 2007 onwards. However, the bill was issued within 2 years based on Court Orders. Accordingly, the Hon'ble Commission on the above matter had clarified that any amendment in the conditions of the approved scheme as sought by KSEB Ltd, requires to follow the due process of law. Hence, in the new proposal scheme for OTS-2022, the eligibility criteria has been modified such that the actual date from which the amount become originally due is to be taken for assessing eligibility.
8. The OTS-2021 scheme had allowed one additional chance to those cases which were settled under previous OTS schemes but could not avail the benefit due to various reasons as a one-time relaxation. Since, the same was provided as a one-time relaxation, it is excluded from the new proposal.
9. The intention behind the new scheme is to encourage the defaulted consumers to settle the dues by availing reduced rate of interest. KSEBL expects that a number of long pending issues could be settled through another OTS scheme. Further, The Board also intends to reduce considerably the bad debts reflected in its Book of accounts.

10. **Prayer**

- (i) Hon. Commission may kindly approve the One Time Settlement Scheme (OTS-2022) attached as Annexure proposed by KSEBL to be implemented for a period from 01.01.2022 to 31.03.2022.

Chief Engineer (Commercial & Tariff)

Kerala State Electricity Board Ltd One Time Settlement Special Scheme (OTS-2022)

A. Terms & Conditions

1. Eligibility

Consumers with arrears for more than two years will be eligible to apply for One-time-settlement scheme-2022. ie; arrear resulted from demand raised prior 01.01.2020. The actual date in which the amount becomes originally due will be taken for assessing eligibility. The scheme will also be open to those cases where RR action has been initiated and those pending before courts. However the cases once settled under previous OTS, theft cases booked under section 135 of Electricity Act 2003 and demand issued invoking section 127(6) of the Electricity Act, 2003 will not be considered under this scheme. .

2. Period of the scheme:

The scheme shall be open from 01.01.2022 to 31.03.2022.

3. Time schedule of the scheme

| | |
|--------------|-----------------------------------------------------------------------------------------|
| 01.01.2022 - | Intimating consumer about the scheme. |
| 01.01.2022 - | Acceptance of application. |
| 10.01.2022 - | Commencement of issue of demand notice |
| 25.03.2022 - | Last date of accepting application form |
| 31.03.2022 - | Last date to issue of demand notice and remittance of first installment by the consumer |

4. The Scheme:

The Consumer will be eligible to get reduced rate in interest as mentioned below. The Interest can be remitted in six months time with equal installments. However, the Principal portion of the arrear shall be remitted in lump sum along with first installment of interest.

5. Reduction in Interests :

For arrears of age below 5 years old and above 2 years, a reduced flat interest rate equivalent to average of the previous 6 months MCLR of one month tenor as notified by SBI instead of 18% interest will be applicable for the entire arrear, for arrears more than 5 years old and below 15 years old, a reduction to flat 6% interest rate will be applicable for the entire arrears and for arrears more than 15 years old an interest rate of 4% will be applicable for the entire arrear. For arrears of continuous nature, the entire arrear will be split agewise and the applicable rate of interest will be applied. ie; 4% rate for arrears above 15 years, 6% interest on arrears between 5 to 15 years, MCLR rate arrived for arrears between 2 to 5 years and the ruling rate of 18% for arrears less than 2 years from the date of OTS. No further interest will be levied for payment of interest portion in installment upto six months.

6. Full settlement option:

Consumer may also remit the entire principal amount and total reduced interest in one lump sum. In such cases a rebate of 2% on interest amount (total reduced interest amount) would be granted.

7. Installment for principal amount:

In certain deserving cases, (Government departments, Public undertakings, Government institutions, local bodies, other deserving consumers with long pending arrears) installment will be provided after the approval of the concerned Deputy Chief Engineer/Full time Directors of KSEBL. Six equal monthly installments shall be provided on the principal amount by Deputy Chief Engineer of the concerned circle office and for installments above 6 and upto 18, the approval of the Full Time Directors is needed. Such equal monthly installments upto 12 will bear an interest rate of 12% per annum and for above 12 installments upto 18 will bear an interest rate of 14%.

8. Dismantled connections :

The MD charges /fixed charges demanded will be limited to six months after disconnection. No charges will be levied after the date of dismantling except for minimum guarantee/rental liability cases. Fresh application for new connection will have to be submitted for reconnection of services in dismantled cases.

9. Industrial units/Plantations with different spells of closure (intermittent period of closure):

The MD charges /fixed charges will be limited to six months from the date of disconnection in each spell of closure.

10. Revenue Recovery action cases:

The surcharge and the Demand notice charges with respect to the revenue department will have to be remitted by the consumer additionally when RR action is initiated by KSEBL.

11. Arrears under litigation :

The applications from LT consumers for settling arrears under litigation will be received by Senior Superintendent in the concerned section office. Arrears under litigation will be settled under OTS only after withdrawal of cases in courts. However, District Level Committees (DLC) formed for this purpose will examine the matter on a case to case basis and settle the cases. Cases where the party is not agreeing for withdrawal of cases before courts for settlement under OTS, it shall be consolidated by Deputy Chief Engineers (District Headquarters) and placed before DLC. The committee shall interact with the consumers and propose settlement formula in compliance with the interest rates approved by the Hon'ble Commission. There will not be any financial limit to settle the cases. The decision of the Committee, if accepted by the party, will be implemented subsequent to the respective court allowing withdrawal of cases. Cases which cannot be settled by the District Level Committee shall be taken up with the Director (D&IT).

The District Committee shall comprise of the following members:

1. Deputy Chief Engineer, Electrical Circle in District Head quarters (Convener)
2. Deputy Chief Engineers of Electrical circle
3. Executive Engineers of Distribution Divisions
4. Assistant Executive Engineers of Electrical Subdivisions
5. Special Officer (Revenue) or his representative
6. Representative of Legal Advisor & Disciplinary Enquiry Officer

Applications for settlement of Arrears with litigation from HT consumers will be received at the office of SOR. The applications shall be processed by SOR and placed before the State Level (Expert) Committee. The State Level (Expert) Committee constituted as given below shall examine carefully the issues in such cases, shall interact

with consumer and shall propose a settlement to Full Time Directors for decision. The State level Committee may also recommend review in the principal amount in genuine cases, the reasons shall be stated clearly in the Report.

The State Level Expert Committee shall comprise of the following members:

1. Chief Engineer (Commercial & Tariff)(Chairman)
2. Special Officer (R) (Convener)
3. Joint Secretary (Law)
4. Accounts Officer, Arrear Clearance Cell
5. T.A to Director (Dist & IT)

The guidelines to be followed by KSEBL as per the above OTS scheme for settling arrears which are entangled in court cases and similar issues is attached separately in Annexure 2.

12. Receipt and processing of Application for settlement :

Application from LT consumers will be accepted in respective Electrical Section Office and forwarded to Deputy Chief Engineers of electrical circle for settlement. Deputy Chief Engineers of all Electrical Circles will be authorized to settle arrears of LT consumers without limit. However request for more than 6 installments on principal amount shall be taken up with FTD through Director (D&IT). Applications from HT & EHT consumers will be accepted by SOR. Those cases will be put up before FTD with the recommendation of expert committee for settlement.

13. Publicity :

The Public Relations Officer, KSEBL and Deputy Chief Engineers of Electrical Circles shall give wide publicity about the scheme in local news papers, cable TV, FM radios etc; periodically till end of the scheme. The Senior Superintendent at Electrical Section Office and Special Officer (Revenue) at Corporate Level will be responsible for informing consumers with arrears about the scheme. Intimation shall be given to all such consumers clearly indicating the savings the consumer would get by opting the scheme. The Accounts Officer (Arrear Clearance Cell), O/o CIA shall intimate the details of the scheme directly to heads of all Government departments, PSUs, Government institutions and local bodies.

B. Guidelines for settling arrears entangled in court cases and similar issues by the District level committee as per OTS 2022.

General:

The alarming accumulation of pending arrears has been a constant cause of concern for KSEB Ltd. A substantial share of such arrears is being held up in litigation before various Courts. This in turn precipitates huge revenue arrears in Board's accounts, which includes amounts that may be practically unrecoverable by any lawful means. The OTS schemes implemented previously has been quiet effective as large no of arrears pending has been realized. In order to collect the maximum amount of arrears held up in litigation and other issues, the Board is introducing a new scheme named as OTS -2022. The present scheme covers all arrears which are more than two years but specifically **excludes theft cases booked under Section 135 of the Electricity Act 2003 and demand issued invoking section 127(6) of the Electricity Act, 2003.**

As the judicial processes involved in resolving disputes are time consuming affairs and as the parties are at liberty to go for appeals, such disputes would be shuttling back and forth by way of appeals, remissions, de-novo disposals etc., and the Board would remain deprived of a fair share of its revenue by way of the predicament. Taking a serious view of the matter, the Board has decided to issue the following guidelines which is almost in line with the earlier guideline issued for OTS -2021.

1. LITIGATIONS PERTAINING TO ASSESSMENTS MADE IN METER FAULTY CASES

Probable situations and positions : Back assessments for meter faulty cases are being effected in several cases, pursuant to RAO audit/AG audit. In a majority such cases assessments are issued for several months without any uniformity. In this context it is worth mentioning the fact that the licensee Board is bound to issue such assessments under Regulations 125 of the Kerala Electricity Supply Code, 2014 only. If the consumer was already issued with monthly/bi-monthly bills for average consumption, then the Board is not empowered to issue revised short assessments after taking into consideration the average consumption after the meter is replaced. This position has been clarified by the Kerala State Electricity Regulatory Commission vide clarification letter dated 30.05.2017 wherein it is clearly stated that *“there is no provision for re-assessment of current charges for the meter faulty period by taking an average of subsequent meter reading, after realizing the electricity charges on the basis of average consumption of the past three billing cycles”*. Moreover, as per Section 55(1) of the Electricity Act, 2003 *“ No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority”*.

General guide line for settlement : Back assessments for periods of meter fault, where regular bills were issued on average consumption is unlawful and is liable to be withdrawn. Hence litigations in such issues can be closed by withdrawing such demands.

2. DISPUTES PERTAINING TO MINIMUM GUARANTEE

Probable situations and positions: The concept of Minimum Guarantee is no longer in existence and there are certain isolated instances of disputes pertaining to the same subject matter which had its genesis based on the previous regulations. Many of such demands are presently tied up in litigations. Most of such installations might have already become self remunerative with a few exceptions.

General guide line for settlement: In cases where the installations have become self remunerative, demands already issued can be revoked. The benefit of reduced interest rate for age wise category as per the OTS-2022 scheme can invariably be extended to the consumers in such cases.

3. DISPUTES REGARDING UNCONNECTED MINIMUM (UCM)

Probable situations and positions: Unconnected Minimum is the offshoot of the erstwhile regulation and there are a few disputes/ litigations still pending on it. By placing reliance upon whether the infrastructure has become self remunerative bills already issued can be withdrawn, recording genuine and convincing reasons. Whereas, if the infrastructure is being erected for the sole purpose of the party in dispute and if the same is still remaining unutilised, the party is legally bound to remit the said amount.

General guide line for settlement: In cases where the installations have become self remunerative, demands already issued can be revoked. Reduction in interest shall be considered at the interest rates as per the OTS-2022 scheme.

4. INSTANCES OF PART PAYMENTS

Probable situations and positions: It has come to the notice of the Board that certain consumers have defaulted payments after remitting a portion of the disputed figure or after remitting a few instalments. In some cases, they have already availed amnesty like OTS and have become defaulters again. Several such cases may be lying entangled in litigations.

General guide line for settlement : Such issues can be reopened in appropriate cases and can rework the out standings based on the present guidelines/schemes. Whereas, if the arrear is already settled completely and remitted in full under any of the previous schemes, the same shall not be re-opened.

5. DISPUTES PERTAINING TO MOBILE TOWERS

Probable situations and positions: For a while the High Court of Kerala was flooded with writ petitions regarding the penalisation connected with mobile towers. Having regard to

the directive of the Hon'ble High Court in its various judgments, the Board has issued an exhaustive Board Order dated 16.04.2016 and a good majority of those disputes have already been settled based on the guidelines stipulated in the said BO.

General guide line for settling The same dictum can invariably be employed to settle the remaining such disputes, if any.

6. DISPUTES CONNECTED WITH WRONG APPLICATION OF MULTIPLICATION FACTOR

Probable situations and positions: Instances of detection of wrong application of multiplication factor at a later date and its consequential back assessment has led to several legal wrangles. In such cases the licensee is well within the legal frame work to back assess the consumer notwithstanding the time span.

General guide line for settling: Reduction in interest rate based on age wise category as per the OTS-2022 scheme and suitable installments can be considered in genuine cases.

7. MATTERS CONNECTED WITH REVENUE RECOVERY ACTIONS

Probable situations and positions: Revenue recovery is the extreme legal measure resorted to by the Board to realise its pending arrears. It is a time consuming process. In certain instances, it might have ended up in litigations and a consequent stalemate. In some other cases, the correct address of the defaulter may be untraceable even after earnest efforts and the arrear would be unrecoverable by lawful means.

General guide line for settlement: The settlement authority can explore the possibility of a potential settlement by negotiating with the debtor by offering considerable reduction in interest rate based on the rates approved in the OTS-2022 scheme. In instances where correct address remain untraceable the same may immediately be brought before the notice of the Board to get the outstanding figure written off after due diligence, for ensuring sanitization of the debt burden.

8. LITIGATIONS PERTAINING TO ASSESSMENTS FOR TEMPORARY EXTENSION UNDER LT VIII AND LT III B

Probable situations and positions: It is a settled legal proposition that penalization for temporary extension on a daily basis (previously under the tariff category LT VIII and presently under the tariff category LT III B) is legally unsustainable. Time and again various judicial fora have turned down such assessments as having no statutory backing.

General guide line for settlement: In such cases revoke those assessments and issue fresh assessments in the respective tariff for which energy was used. Interest may be computed from the date on which such fresh assessments are issued, based on OTS-2022 rates of interest.

9. GENERAL ISSUES

Certain general issues that are relevant to the OTS scheme, but are not necessarily under litigation.

i) Power supply to temporary buildings and make shift establishments, during periods of disasters

Probable situations and positions : The Board provides power supply to temporary buildings and make shift establishments, during periods of disasters. Emergency connections provided during the Tsunami disaster are examples. But the current charges and its consequential interest have accumulated as huge arrears in several cases. Similarly, the Board has undertaken some capital works and effected electric connection to certain disaster prone areas, for which no amount has been remitted into the Board's exchequer.

General guide line for settlement The settlement regime shall be instructed to take up the matter with the State Tsunami Cell/Disaster Management Authority/ concerned revenue authorities to get the arrears realised at the earliest. In such cases, interest can be reduced based on the present scheme.

ii) Pending arrears, Part remittances:

Probable situations and positions: In the cases of pending arrears, if some piecemeal interim remittances are made.

General guide line for settlement : Such figures can be reworked afresh by reassessing the principal amount on the date of remittance and suitable reductions can be effected in the principal and interest components. That means, interim remittance made previously may be adjusted as on the date of remittance against the interest calculated at OTS -2022 rates and the balance amount if any, to the principal.

iii) Leakage of electrical energy owing to wiring faults

Probable situations and positions It is the bounden duty of the consumer to keep the electrical appliances and wiring in good condition. But there are many reported instances wherein exorbitant readings are shown due to leakage of electrical energy owing to wiring faults which is solely attributable to the consumer. The recent trend shows that many such disputes are being adjudicated in favour of the consumers by judicial/quasi judicial forum alleging various technical/ legal reasons, thereby depriving the Board a fair share of revenue due to it. Having regard to the fate of such disputes,

General guide line for settlement : Those pending cases pertaining to the subject matter can be taken up for settlement through a fair process of negotiation and the settlement authority should exercise its reasonable discretion to rework the assessment up to a maximum of 50% reduction of the original assessment on a case to case basis, if such

arrears qualify for being included in the OTS scheme. This shall not be taken as a norm and shall be made applicable only in the case of deserving consumers whose average monthly consumption is below 100 units.

iv) Arrears of community drinking water schemes

Probable situations and positions : Arrears of community drinking water schemes is another area of concern that require specific attention, as part of the OTS scheme. Such drinking water schemes are usually registered as a society with the beneficiaries as its members. The electric connection would be availed by the society. Once the society becomes defunct the Board cannot move further to realise the arrears as the society remains only in papers. Initiating revenue recovery action may also be practically impossible as the said society may no longer be in existence and legally it is impermissible to proceed against the individual members.

General guide line for settlement: In such cases a serious drive may be undertaken at the Subdivision level to meet the office bearers of the society alerting them of coercive-penal action from the part of the Board. Taking up the issue with the local self government concerned may also be resorted to. Reduced rates of interest can invariably be extended, if the arrear qualifies to be included in the OTS scheme.

Note: Any request received from the consumer under the OTS-2022 scheme may be processed immediately and the final payable arrear amount after extending the benefit of the scheme may be intimated to the consumer for favour of taking a decision on joining the scheme.

Exhibit P1

Details of arrears settled under OTS-2021

| Particulars | Application Settled under OTS (Nos) | Actual arrear | | Settlement made under OTS | |
|--------------------|-------------------------------------|-----------------------|----------------------|---------------------------|----------------------|
| | | Principal amount (Rs) | Interest amount (Rs) | Principal amount (Rs) | Interest amount (Rs) |
| LT Consumer | 915 | 2,98,99,239 | 4,84,07,437 | 2,80,82,098 | 1,51,62,966 |
| HT Consumer | 8 | 5,88,24,528 | 6,62,63,420 | 5,85,74,391 | 2,87,96,853 |
| Total | 923 | 8,87,23,767 | 11,46,70,857 | 8,66,56,489 | 4,39,59,819 |
| Grand Total | | 20,33,94,624 | | 13,06,16,308 | |