



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

In the matter of:

M/S Sunoxx International, VPO Panjhera, Tehsil Nalagarh, Distt Solan, HP-174101
- Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
 2. The Assistant Executive Engineer (E), Electrical Sub-Division No. 2, HPSEBL, Nalagarh, District Solan HP-174101
 3. Sr Executive Engineer, Electrical Division, HPSEBL, Nalagarh, HP-174101
- Respondents**

Complaint No.: 30/2020, Registered on 22/08/2020
(Decided on 26/10/2020)

CORAM

K L Gupta
HP Electricity Ombudsman

Counsel for:

Complainant: Sh. Rakesh Bansal
Respondent: Mr Anil Kumar God

Order

The case was received on 20/08/2020 and registered on 22/08/2020. The case was first listed for 11/09/2020 with reply on or before 11/09/2020 which was submitted during hearing. The Complainant was to file the rejoinder on or before 03/10/2020 and the case was listed for final arguments on 09/10/2020. The orders were reserved on 09/10/2020.

A – Brief facts of the case:

1. M/S Sunoxx International, VPO Panjhera, Tehsil Nalagarh, Distt Solan, HP-174101 has filed an application through Sh. H. R. Suman (hereinafter referred to as 'The Complainant') under regulation 28 (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations,



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2013 for partial non-implementation of the Consumer Grievances Redressal Forum passed on dated 15/07/2020 in Complaint No. 1432/4/19/066, dated 17/12/2019 and to modify the same to the extent of interest on excess amount of Rs 25 lakh kept by the Respondents and also to modify the interest rate in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code, 2009 instead of regulation 15 & 18 (3) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.

B – The Complainant’s submissions:

1. The Complainant submitted that this representation is being filed in accordance with the HPERC (CGRF & Ombudsman) Regulations, 2013 as the Applicant/ Complainant is aggrieved by the orders dated 15/07/2020 passed by the Ld. Forum in the Complaint No. 1432/4/19/066 titled as Sunoxx International v. HPSEBL and others, whereby the Consumer Grievance Redressal Forum of HPSEBL had observed that *“refund of balance amount of Rs. 11,31,000/- is liable to be refunded to the Complainant with simple interest per annum as Regulation 15 and Regulation 18(3) of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012, for the period since the release of power connection i.e. 11/04/2018 till the date of refund.”* The Complainant submits that he accepts the amount of IDC ordered to be refunded but at the same time is aggrieved by the fact that the Forum has not correctly ordered the refund of interest as per applicable regulations. The Forum has only ordered interest for the period after the release of the connection, whereas the Complainant was eligible for refund for the entire period the overcharged amount remained with the Respondents. The Complainant is also aggrieved by the rate of interest ordered by the Forum, which is only 12% simple interest per annum, whereas a higher rate of interest is applicable in the present case. In addition, the Respondents have not implemented the orders of the Forum to the extent of refund ordered by the Forum within the stipulated period of 21 days generally provided in the regulations for compliance of such orders.
2. The Complainant submits that he applied for a power connection for 6000 kW with 2500 kVA of Contract Demand in the year 2010. The connection was sanctioned in favour of the Complainant, wherein a 66 kV service line was to be erected for providing the connection.
3. He further submits that during the time of application, the Supply, Code, 2009 was already in force. The extract of Clause 3.2.2 of the Supply Code, 2009, is reproduced below:

“3.2.2 The Consumer shall apply for the grant of Power Availability Certificate, on payment of advance cost share towards infrastructural developmental charges, calculated @ Rs.1000 per kVA of the contract demand applied for.”

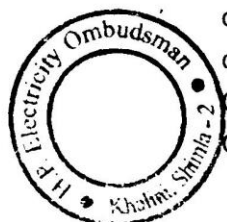


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4. The Complainant submits that the Respondents were entitled to recover advance cost share of Rs. 25.00 lakhs on 2500 kVA @ Rs. 1000/ kVA. The Respondents instead recovered a sum of Rs. 60.00 lakhs, which was in excess by Rs. 35 lakhs. Balance IDC, if any was to be recovered at the time of release of power connection and the account was to be settled within three months of the release of the connection as per HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005
5. The Complainant submits that his power connection at 66 kV was released on 11/04/2018. Meanwhile, the Complainant also availed interim connection at 11 kV, for which the infrastructure development charges were paid separately and which are not in dispute in the present case.
6. The Complainant submits that after the release of power connection at 66 kV voltage, he waited for reasonable period, but no settlement of account of advance cost share was carried out by the Respondents. The Complainant thereafter in 2019 approached the CGRF praying for directions for overhauling the account of advance cost share towards infrastructure development charges.
7. The CGRF passed orders dated 15/07/2020, which were dispatched by the CGRF on 21/07/2020 and was received by the Complainant on 24/07/2020. The HPERC (CGRF and Ombudsman) Regulations, 2013 allow a time period of one month for filing representation before Hon'ble Ombudsman. Hence the present representation is filed well within the time frame allowed under the regulations. A period of 30 days after the expiry of the time provided for compliance is provided for filing a grievance involving the implementation of the orders passed by CGRF. While the Complainant is seeking further relief from the Hon'ble Ombudsman, at the same time the implementation of the orders of the CGRF is also being sought to the extent of relief already ordered in favour of the Complainant.
8. **Non-implementation of Forum's Orders:** The Complainant submits that he is aggrieved with the fact that the orders passed by the Applicant has still not been implemented by the Respondents, while the time period of 21 days provided vide Regulation 27 of the HPERC (Consumer Grievances Redressal and Ombudsman) Regulations 2013 has already expired. The implementation of the order was to be carried out by 12/08/2020, providing grace period for the postage delays. The Respondents neither challenged nor communicated to the Applicant any intention of agitating the matter in any further court of law or any other remedy available to them. Regulation 28 (c) of the HPERC (CGRF and Ombudsman) Regulations, 2013 provides for filing of representations before the Ombudsman if the Complainant is aggrieved by non-implementation of the Forum's order.



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9. Excess Recovery of Advance Cost Share: The Complainant submits that:

- a) The Respondents have contravened the provisions of the HPERC Clause 3.2.2 of the Supply Code, 2009 by recovering from the Complainant a sum of Rs. 60 lakhs in place of Rs. 25 lakhs towards advance cost share for infrastructure development charges. The relevant provision is reproduced below:

"3.2.2 The Consumer shall apply for the grant of Power Availability Certificate, on payment of advance cost share towards infrastructural developmental charges, calculated @ Rs.1000 per kVA of the contract demand applied for."

The Respondents were only entitled to recover a sum of Rs. 1000/- per kVA on the Contract Demand of 2500 kVA sought for, by the Complainant. The CGRF has laid no liability / responsibility on the Respondents for recovering this amount in excess of the regulatory provisions. The CGRF has not passed any orders for compensating the Complainant on account of interest lost by him on this amount for the entire period starting from 18/02/2010 up to 11/04/2018, for which such excess money of 35.00 lakhs for held by the Respondents, even though relevant regulations provide for the same. The relevant regulations which can be applied for calculating interest payable on such excess recoveries are discussed below:

- b) Considering the clause 5.7.3 of the Supply Code, 2009, the Complainant is entitled for interest @ 15% simple interest and rates applicable from time to time under this para. The relevant provision is reproduced below:

"If on examination of a Complaint, the licensee finds a bill to be erroneous, a revised bill will be issued to the Consumer indicating a revised due date of payment, which will not be earlier than ten days from the date of delivery of the revised bill to the Consumer. If the amount paid by the Consumer under para 5.7.1 is in excess of the revised bill, such excess amount will be refunded through adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such Consumer³(simple interest on the excess amount @ 15 percent per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis)³ from the date of payment till such time the excess amount is adjusted."

Prior to the amendment of rate of 15%, the rate of such refund was "twice the SBI's Short Term PLR prevalent on the first of April of the relevant year".

- c) Since, the Complainant had to approach this Hon'ble Forum, the interest applicable on refunds ordered by the Forum is also defined in the HPERC (CGRF and Ombudsman) Regulations, 2013. The relevant provision is reproduced below:



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"26. Issuance of Order.- (1) On receipt of the comments from the licensee or otherwise and after conducting or having made such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of being heard to the parties, the Forum shall take a decision.

(2) If, after the completion of the proceedings, the Forum is satisfied that the allegations contained in the grievance are correct, it shall -

(a) issue an order to the distribution licensee directing it to do one or more of the following things in a time-bound manner, namely:-

(i) to remove the cause of grievance in question;

(ii) to return to the Complainant the undue charges paid by the Complainant along with the simple interest at the rate of 15 percent per annum, or at such rate as may be fixed by the Commission, for the actual number of days for which the undue disputed amount was withheld by the licensee; or;"

- d) **Less interest rate ordered by CGRF on refund of Rs. 11,31,000/- for the period 11.04.2018 to the date of payment:** The Complainant submits that the CGRF has directed payment of interest as per "simple interest per annum as Regulation 15 and Regulation 18(3) of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012, for the period since the release of power connection i.e. 11/04/2018 till the date of refund." Such rate has been specified as 12% p.a. in both these regulations.

Regulation 15 of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 deals with provisional schedule of service connection charges, which is not the present case. There was no provisional schedule of service charges before 2012. The excess advance cost share recovered from the Complainant does not fall under the definition of provisional schedule of service charges. Provisional schedule was only applicable for a specific period until the final normative rates were notified by HPERC.

Regulation 18 of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 deals with differential costs and is applicable only on expenses recovered under any Regulation or Law, whereas in the present case, the excess recovery was carried out in ignorance of the applicable rules and regulations. Hence the Respondent is liable to pay interest as per provisions discussed in para 3.2 above even on the refund of Rs. 11,31,000/- for the period from 11/04/2018 up to the date of refund.

10. **Prayer:** The Complainant prayed for a) to modify the orders passed by the CGRF suitably as per submissions above or issue fresh orders in the interest of justice; b) to direct the Respondent to implement the orders to the extent of relief directed by the CGRF within the



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time period allowed in the HPERC (CGRF & Ombudsman Regulations), 2013 while the proceedings are pending before the Hon'ble Ombudsman, and if not complied or if complied with delay, to report the matter of non-compliance of the orders as well as in terms of delay, to the Himachal Pradesh Electricity Regulatory Commission; c) to order interest @ 15% or a rate as per applicable regulations as submitted in para 3.2 of this representation, on a sum of Rs. 35 lakhs recovered in excess by the Respondents and withheld by them during the period 18.02.2010 to 11/04/2018; d) to direct the Respondents to pay simple interest @ 15% or at a rate as per applicable regulations, on a sum of Rs. 11.31 lakhs recovered in excess by the Respondents and withheld by them during the period 11/04/2018 up to the actual date of refund; e) to condone the delay, if any, in the filing of this representation, due to uncertain travel conditions prevailing in the country due to onset of the pandemic Covid 19, which has resulted in the curbs on travelling, that resulted in delay in signing of the representation as well as the late dispatch of orders by the Consumer Grievances Redressal Forum; f) cost of Complaint to an extent of Rs. 2,00,000/-; g) call for the record of the case; h) any other or further orders which this Hon'ble Ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the Complainant Company and against the Respondents/distribution licensees.

C – The Respondents' submissions:

1. The Respondents stressed that the forum has not correctly ordered the refund along with interest as per applicable regulation. The Consumer never ever applied for refund with HPSEBL ever, so that the same could be processed. It was only when application was filed in CGRF that it was realized that Rs. 11,31,000 /only has been deposited extra. Therefore interest is not payable at all even after the release of connection since there has been no delay in release of balance IDC amount. Orders regarding refund of Rs. 11,31,000/- already have been issued vide SE (OP) letter no. HC-II/CS-IDC/2020-21-1172-75 dated 08/06/2020, during the hearing in CGRF but were withheld later due to present petition being filed by the Complainant.
2. The Respondents submits that the Complainant has deliberately not informed that this 66 kV line was to be constructed by the Consumer himself on self-execution basis and hence he is liable for all the delay up to 2018. Therefore to demand interest w.e.f depositing of excess IDC is totally unlawful and wrong. Excess was only deposited due to the fact that before the first amendment of Supply Code in 2014, PAC was on per kW basis and Consumers opted for demand during the time of Load Sanction. In this case connected Load was 6000 kW. And CD at time of Load Sanction 2500 kVA. Due to self-execution work the amount of actual expenditure was to be intimated by the Complainant which never provided the same within three months.



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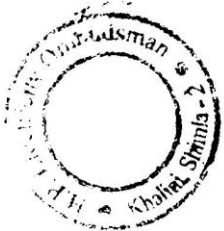
3. The Respondents further submits that the Complainant has wrongly interpreted para 3.2.2 of supply code. The extract of clause 3.2.2 of the supply code, 2009 is reproduced below:-

"3.2.2 the Consumer shall apply for the grant of Power Availability certificate on payment of advance cost share, towards infrastructural development charges, calculated @Rs. 1000 kW/ kVA of the load applied for".

The contract demand is nowhere mentioned in above regulation.

4. The Respondents submits that the Consumer has applied for 66 kV connection for 6000 kW load with 2500 kVA Contract Demand in the year of 2010. At the time of PAC, the Consumer was charged with amount against cost sharing toward Infrastructure Development Charges @1000/-per kW for his applied load of 6000 kW /2500 kVA on 66 kV as per HPERC (Recovery of expenditure for supply of electricity) regulation, 2005 amounting to Rs. 60,00,000/- in 2010. The rates of advance cost share is already mentioned in above para. The connection release at 66 kV supply voltage on dated 11/4/2018 and the Consumer has liable to pay Rs. 48,69,000/- @ 2000/-per kVA. HPERC in Suo Moto case no. 25/2016 has already cleared that the connection released after 23/05/2012 and IDC charges has to be recovered at normative rate as per regulation 419/2012.

Sr. No.	CD in kVA	Charges @	Amount	Remarks
1	30 kVA	300/-	9000	
2	20 kVA	500/-	10000	
3	50 kVA	1000/-	50000	
4	2400 kVA	2000/-	480000	
		Total	4869000	
	IDC amount already deposited		6000000	
	IDC Excess amount		1131000	



Now the balance sum of amount Rs. 11,30,000/- is refundable to the Consumer after deducting Rs. 48,69,000/- from 60,00,000/- as per detail above.

5. The Respondents submits that the Complainant has never applied for overhauling the account of advance cost share towards infrastructural development charges. The balance

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amount of Rs. 11,31,000/- has already been got sanctioned in the month of June 2020 before the Hon'ble CGRF orders which was also produced on record during arguments in Hon'ble CGRF.

6. The Respondents submits that the payment already ordered to be refunded shall be refunded only if without interest to which Consumer was given an option but since they have not responded and filed the present petition, therefore the refund was withheld and appeal which was in the process of filing was not filed in High Court so that the case can be defended first in OMBUDSMAN and Complainant may be directed to accept original excess IDC without any interest which is not applicable. But in the meantime the Consumer has approached Ombudsman.
7. The Respondents submits that they had already written to competent authority for the sanction of Interest @12% as per orders of Hon'ble CGRF from the date of release of connections i.e. 11/04/2018. The sanctions was delayed as the Complainant has already moved to this Hon'ble forum seeking interest from the date of deposit of amount and appeal in high court was deferred since it was advised by higher authorities to defend case in OMBUDSMAN first .
8. The Respondents submits that the advance cost share, towards infrastructural development charges is to be calculated @ 1000 kW/ kVA of the load applied. The Contract Demand is nowhere mentioned in the said regulation. The Consumer is interpreting the regulations as per his own convenience. It was already mentioned in Power availability certificate issued on 11/03/2010 that the total amount of Rs.60,00,000/- charged as advance cost share towards infrastructural development charges for total load of 6000 kW. At the time of PAC the Consumer has not raised any objection/ protest and never raised this issue till the release of his power connection because the applicant had opted for execution of works under self-execution and the Consumer had to obtain all the requisite clearance under various laws. The construction of line of 66 kV was delayed due to dispute regarding land involved for construction of towers. So the licensee is not responsible by any means for delaying the connection and CGRF has not considered this aspect.
9. The Respondents denies that the clause 5.7.3 of the supply code does not applicable in this case as this not a case **of erroneous bill**. The Complainant is mixing the regulations/ clauses as per his suitability.
10. The Respondents further denies that the interest rate of 15% mentioned by the Complainant as per regulation of Issuance of Order HPERC (CGRF and Ombudsman) regulation, 2013 is applicable in this case. The amount was never disputed since the Complainant never applied to any of HPSEBL's offices and this clause quoted refers to **disputed amount**. The same was made disputed by the Complainant by filing the petition



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earlier in CGRF just to draw under favour of regulation and was also ordered to be refunded by HPSEBL in time bound manner.

11. The Respondents submits that the total amount charged at the time of PAC is already mentioned. There was no excess amount charged to the Consumer at the time of PAC. The Consumer was charged with amount against cost sharing towards Infrastructural development charges @ 1000/- per kW for his applied load of 6000kW/ 2500 kVA on 66 kV as per HPERC (Recovery of Expenditure for supply of Electricity) regulations, 2005 at the time of load sanction. As per both the Regulations the licensee shall render to the applicant /Consumer the account of expenditure showing the excess or deficit in relation to initial estimated amount within three months after release of connection/ commissioning of work. In this case the applicant had opted for execution of works under self-execution and the Consumer had to obtain all the requisite clearance under various laws. The construction of line of 66 kV was delayed due to construction of towers. The Consumer had submitted the completion report of lines/ tower on dated 02/04/2018 and requested for release of connection vide his office letter and connection was released on 11/04/2018. So the licensee is not responsible by any means for delaying the connection and in this case it was Complainant firm that had to render expenditure to HPSEBL which it has failed. Even the Respondents saved the Consumer from audit paras vide which the Consumer was liable to pay the demand charges as per clause 3.9 of supply code 2009 regarding "delay to take supply or avail contract demand". Now the Consumer is taking undue advantage of some unclarified regulations or deficiency of the system and since the connection was released in 2018 IDC @ Rs. 2000/ kVA which comes to 48,69,000/- is liable to be paid.
12. The Respondents thus prayed that the Complaint filed by the Complainant may kindly be dismissed with cost.

D – The Complainant's submissions through Rejoinder:

1. The Complainant repeated, reiterated and confirmed all the statements and averments made by the Complainant Company in the Complaint. He denied all the statements and averments made in the said reply of the Respondents unless and until the same are specifically admitted by them. The objections raised by the Respondents are lacking merit.
2. The Complainant submits that the Respondents in the reply has accepted most of the contents as matter of record. The Complainant has stated that

"It was only when application was filed in CGRF that it was realized that Rs. 11,31,000/only has been deposited extra. Therefore, interest is not payable at all even after the release of connection since there has been no delay in release of balance IDC amount."



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The Respondent is blatantly denying any delay in refunding the excess IDC recovered. The power connection was released on 11/04/2018. The Complainant has now received the refund of Rs. 11,31,000/- as adjustment in the energy bill issued in the month of September, 2020 and that too after the intervention and advice of the Ld. Ombudsman. There is a clear delay of more than two years in refunding. Surprisingly, the Respondent is basing his denial of delay on the date of realization, which they did only after the Consumer approached the CGRF. The Regulations have cast this duty of overhauling entirely on the Respondents, irrespective of whether a Consumer demands such overhauling or not. Are the Respondents thinking that they can sleep over the refunds due to the Consumers for years together, without any liability falling on them? If yes, it would be completely illogical. The CGRF in its orders have clearly directed the Respondents to pay interest from the date of release of connection which is 11/04/2018. The reply of the Respondent is in direct contravention challenging the orders passed by the CGRF.

3. The Complainant submits that there was no option available with the Respondents either to charge on kW or on kVA basis. It is pertinent to mention over here that the charges were applicable on kVA basis where two kVA tariff was applicable. The term "kW/ kVA" was obvious to be interpreted on the basis of applicability tariff category. While the Complainant declared his Contract Demand in his application in 2010, itself, the amount of Rs. 25.00 lakhs was only claimable from the Complainant @ Rs. 1000 per kVA on 2500 kVA applied for. Even if a sum of Rs. 60.00 lakhs was recovered by the Respondents, the same was eligible for refund in 2010, when A & A Forms and sanction etc. was accorded for 2500 kVA of demand. The Respondent continued to retain the excess money with them for all these years rather than refunding the same, thus bearing the liability of interest on them. Had they been conscious of the interest liability they would have refunded the excess amount there and then.
4. The Complainant submits that merely date sanction of refund is not of concern to the Complainant. It is up to the actual date of refund that the Complainant is demanding interest and the same has been ordered by CGRF.
5. The Complainant submits that surprisingly, the Respondent is stating in written that they have given the Consumer a choice whether to accept the refund without interest or they will approach the High Court in the matter. The Respondents are merely referring to verbal talks and there is nothing on record to substantiate. The Respondents are not at liberty to negotiate with the Complainant, once the orders have been passed by the CGRF, which has to be complied. The reply is not maintainable under law. The Consumer cannot be threatened of extended litigation and compelled to compromise in such situations.
6. The Complainant submits that the Respondent is contradicting what has been said earlier in the reply. Earlier in the reply, the Respondent has contested that no interest is payable

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to the Complainant and that they were planning to approach the Hon'ble High Court in the matter. Whereas in reply, the Respondent has stated that they had written to the competent authority for the sanction of interest @ 12% as per orders of CGRF. The statements of the Respondents are contradictory in different paragraphs of the reply. The Complainant is required to approach the Ld. Ombudsman for non-implementation of the orders of CGRF within one month after the expiry of the period allowed for implementation of the orders of the CGRF as per the regulations. The Complainant cannot wait for implementation beyond the said period for filing the representation before the ombudsman.

7. The Complainant further added that in the bill issued on 12/09/2020, the Respondent has refunded/ adjusted the principle amount of Rs. 11,31,000/- in the energy bill issued to the Complainant. However, this refund was due by 12/08/2020, which is delayed by one month. The non-compliance in respect of refund of principle amount remains to the extent of delay. Whereas, the non-compliance in respect of the refund of interest ordered by the CGRF, the non-compliance remains till the said amount is refunded by the Respondents.
8. The Complainant submits that the Respondent has stressed on the fact that the delay in the construction of line, for which there was no impact on the Respondents. The Complainant on the other hand, suffered a huge cost due to litigation involved with the land owners, and which has nothing to achieve on the basis of conclusion drawn in respect of the cause of such delay or responsibility of such delay. The Complainant in his Complaint has nowhere held the Respondents responsible for the delay in release of power connection. It is accepted that the Respondents are not responsible for the delay in the construction of 66 kV line. The Complainant's claim is simply in respect of legitimate interest on the excess money that remained with the Respondents, up to the release of power connection. The Complainant submits that the advance cost share was not paid in this case for creating of any dedicated or shared infrastructure. The Complainant had approached for power connection from the pre-existing infrastructure i.e. the sub-station from which a dedicated line and bay etc. was constructed at the cost of the Complainant. The estimated cost of works to be carried out by the Respondents was paid separately and in advance. It is only because the normative rates came into force that the Complainant has agreed to pay the IDC on per kVA basis at a rate of Rs. 2000 per kVA.
9. The Complainant submits that the Respondents has simply reproduced the relevant rule defining the rate of interest which may be applied in the present case. Demand notice and a bill are synonymous. So, it will not be incorrect to apply the provisions of this para on all refunds due to the Consumers.
10. The Complainant submits that the interpretation of the Respondent is highly incorrect. Whenever a Consumer has to approach the refund of money or the demand of money



Accepted
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which he thinks is not correct, comes under dispute and is thereby referred to as disputed amount. The provisions of the regulations quoted in this para are very clear, and the CGRF should have ordered interest @ 15% per annum on any kind of refund that it decides to be refunded to the Consumer.

11. The Complainant submits that there is no issue of responsibility of delay in release of connection. The Complainant is simply entitled for interest for the period the money was withheld. The Respondents have nothing to lose, as they are net borrowers as observed in ARR. The Respondents had used the money deposited by the Complainant as working capital and have saved money on account of interest on borrowed funds, by reducing such borrowings.

12. The Complainant submits that in view of the matter of the Complaint none of the issues of the present representation have been disposed by the reply filed by the Respondents. The Respondents has not implemented the Regulations in the manner they should have been. We, once again pray to the Ld. Ombudsman to grant relief as prayed in the Complaint.

E – The Respondents' additional submissions received on 24/09/2020:

1. The Respondents submits that in compliance to orders of CGRF, amount of Rs.11,31,000/- has been refunded as sundry in the monthly bill of August 2020 which was issued on 12/09/2020.
2. The Respondents further submits that the basic issue during the course of hearing was the date of applicability of mechanism for adjustment of advance cost share towards IDC in Suo Moto petition No. 25/2016. In light of the position set out in the preceding paragraphs and submissions made by the HPSEBL, Chief Engineer (Comm.) vide letter No. HPSEBL/CE(Comm)/APTEL/Vol-1/2016-10021-10135 dated 01/11/2016 has clarified the mechanism to field units for compliance as follows:-
3. To adjust advance cost share towards IDC @ 1000 kW/ kVA against recovery of expenditure for supply of electricity as per regulations 419/2005, as per mechanism approved by the Hon'ble commission in respect of the connections released after commencement of supply code(i.e. 29.05.2009) upto the date of repeal of the 419/2005 regulations i.e. 22/05/2012.
4. The amount of cost share @ Rs. 200 per kW/ kVA may be adjusted against recovery of expenditure for supply of electricity as per regulations 419/2005, in respect of the connection released after commencement of the regulation 419/2005 (i.e 04/04/2005) upto commencement of supply code i.e. 29/05/2009.



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Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

5. You may proceed for recovery of expenditure, as per HPERC REGULATION, 419/2005 hpsebl/ce(Comm)/Misc-IDC/2012-16509-574 dated 07/12/2012 read with even file No. 9571-9643 dated 16/10/2015;
6. The Respondents prayed that the Complaint filed by the Complainant may kindly be dismissed with cost.

F – CGRF Order:

1. We have heard the parties, carefully examined the case file, record and provisions of regulations/rules etc. It is admitted fact that IDC taken in advance require to be refunded after adjustment of the actual charges at the rate fixed by the competent authority for sharing cost towards IDC i.e., after the connection at 66 kV provided on dated 11.04.2018. The calculation sheet of such sharing cost has been placed on recovered by Respondents with its reply as (Annexure-2) which is not disputed by the complainant. The fact is also not denied by the complainant that as per instruction No.29 of load sanction order (Annexure-1), the proportionate cost of feeding Sub-Station (including augmentation) or incoming line shall be recovered before release of connection, as approved by the competent authority. Thus, in our opinion the consumer/complainant is liable to pay the IDC charges on 11KV supply voltage as per HPERC (Recovery of expenditure for supply of Electricity) Regulation, 2005.
2. We have also examined the clause 3.2.6 of the supply code, 2009 which cover the case of decline to take the supply or submit the application for supply within the validity period of the PAC. In the present case the complainant, as per record, had opted for execution of works under self-execution and consumer had to obtain all requisite clearances under various law. The delay in construction of line of 66KV was stated to be due to dispute regarding land involved for construction of Towers. This delay cannot be solely attributed on the part of licensee or delay in connection thereof. Thus, we find force in the submissions of Respondents and are of the considered opinion that refund of balance amount of Rs.11,31,000/- is liable to be refunded to the complainant with simple interest per annum as per Regulation 15 and Regulation 18 (3) of HPERC (Recovery of Expenditure for supply of electricity) Regulations, 2012, for the period since the release of power connection i.e. on 11.04.2018 till the date of refund.



G – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through.

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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

2. The Complainant applied for power connection for Connected Load of 6000 kW and Contract Demand of 2500 kVA in 2010 as per his submissions although there is no document to suggest that he applied for both Connected Load and Contract Demand. He deposited Rs 60,00,000/- on 18/02/2010 @ Rs 1000/- per kW in line with Clause 3.2.2 of Himachal Pradesh Electricity Supply Code, 2009. There are no documents on record to suggest the load sanctioned in PAC whether it contains both kW and kVA or only kW. Generally practice before June 2014 (First amendment in Himachal Pradesh Electricity Supply Code, 2009) was to apply the Connected Load in kW and PAC confirms/ commit the availability of load in kW. When the Consumer is ready for connection, within the validity of the PAC, the load was then applied in both kW and kVA since in two part tariff, the charges are on kVA basis.
3. The Complainant was to construct 66 kV dedicated feeder to his premises and on 02/04/2018, he informed Respondent No. 3 that his line is ready to charge and requested to release the connection. His power connection was subsequently released on 11/04/2018.
4. As per Complainant's submission, he waited for adjustment of the Infrastructural Development Charges of Rs 60,00,000/- and ultimately filed a Complaint at Consumer Grievances Redressal Forum on dated 17/12/2019 vide Complaint No. 1432/4/19/066 which was disposed off on 15/07/2020 with directions to the Respondents to refund balance Rs 11,31,000/- after adjusting the Infrastructural Development Charges under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.
5. The Forum also ordered 12% simple interest in line with regulation 15 and 18 (3) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 to be applicable after release of connection to the Complainant on 11/04/2018.
6. The Complainant has prayed only for refund of Rs 11,31,000/-, interest @15% in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code, 2009 and interest on excess claimed amounting to Rs 35,00,000/- and kept by the Respondents since 2010.
7. The Complainant has confirmed of having received refund of Rs 11,31,000/- by way of adjustment in energy bills in the month of September 2020 after a delay of more than two years.
8. The Complainant has contended that since the Respondents has kept an amount of Rs 35,00,000/- (Rs 1,000/-*6000 kW=Rs 60,00,000/- minus Rs 1,000*2500 kVA=Rs



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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

25,00,000/- i.e. Rs 35,00,000/-) since 2010, the interest part on Rs 35,00,000/- should also be given to him.

9. Although, the Complainant applied for connection in 2010, the load of the Complainant might have been committed even prior to that. There are no document on record to suggest whether he applied for PAC both for Connected Load in kW and Contract Demand in kVA but for release of power connection, he might have applied for both Connected Load in kW and Contract Demand in kVA in 2010 in A&A form. **He should have been covered for recovery of expenditure under provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 as per date of his PAC for commitment of load (Subject to any conditions specified in PAC)** since the subsequent regulations 2012 were notified on 18/05/2012 and applicable w.e. from 23/05/2012 (Date of publication in HP Gazette) were not applicable to him.
10. However, in its rejoinder dated 30/09/2020, the Complainant had submitted that since normative rates came in to force, he has agreed to pay as per normative rates fixed under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 **which has also not been contested by the Respondents since their assumption was that the load was released on 11/04/2018, the provisions under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applicable, which is totally wrong.** The charges under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 provisions of which should have been applicable could have been even higher to those under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012. But since this is not the issue raised by any of the parties, the matter shall not be discussed further.
11. There are no documents on record such as A&A Form to ascertain when he applied for release of his load in kW only or also in kVA but his submissions suggest that the same was in 2010. Further, there are no documents such as PAC when his load was committed (Most probably in kW only) so as to ascertain whether there were any preconditions to release the committed load.
12. In absence of any documents such as PAC or A&A Form, the release of power connection on 11/04/2018 after his confirmation of readiness on 02/04/2018 can be safely assumed to be the date on which his Infrastructural Development Charges are to be calculated based on his applied load. The Forum has also considered this date up to which Infrastructural Development Charges has been calculated for adjustment since PAC and A&A Form were also not submitted at the Forum during his complaint and proceedings on 17/12/2019 afterwards decided on 15/07/2020.



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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

13. Moreover, the Complainant has agreed to the extent of relief ordered by the Forum as per his prayer at para 4.2 of his application and requested to direct the Respondents to implement the orders to the extent of relief directed by the CGRF, except for interest part on 12% and also on Rs 35,00,000/- which he has sought in line with Clause 5.7.3 of the Himachal Pradesh Electricity Supply Code, 2009, there are no issues of the amount of refund ordered which he has also received by way of adjustment in energy bills for September 2020.
14. This issue of interest on Rs 35,00,000/- kept by the Respondents in excess of the Infrastructural Development Charges applicable have also not been taken at the Forum by the Complainant. He has only prayed at Forum for the refund of entire amount of Rs 60,00,000/- deposited as Infrastructural Development Charges out of which the Forum has ordered Rs 11,31,000/- to be refunded with simple interest @ 12% w.e. from 11/04/2018, date of release of his power connection. Further, the Complainant has not preferred any review under regulation 26 (7) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 at Consumer Grievances Redressal Forum for not touching the issue of interest on the so called excess amount kept by the Respondents between 2010 and 11/04/2018 amounting to Rs 35,00,000/-.
15. Moreover, the Complainant has filed the present application for non-implementation of the Forum's orders under Regulation 28 (c) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and not under 28 (b) of the said Regulations as submitted in para 3 of his submission, reproduced at para B – 8 above. This issue can't be taken up afresh when the same has not been contended by the Complainant or even preferred for review at the Forum.
16. The Forum has only ordered for refund of Rs 11,31,000/- considering the normative rates as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 fixed vide Commission's order dated 10/10/2016 applicable till date considering the Infrastructural Development Charges calculation date as 11/04/2018 and agreed to by the Complainant in his submissions. He has contended to implement the orders of the Forum to the extent of relief directed by the Forum, the issue of interest on Rs 35,00,000/- since 2010 till its adjustment by 11/04/2018 can't be considered at this stage in absence of any supportive documents. Moreover, the Complainant has sought relief in the present application under Regulation 28 (c) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and not under 28 (b).



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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

17. The Complainant has one other contention of simple interest ordered by the Forum on dated 15/07/2020 @12% in line with regulation 15 and 18 (3) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012. He has contended that Clause 5.7.3 of the Himachal Pradesh Electricity Supply Code, 2009 should have been applied and the interest should have been @15%.

18. The Clause 5.7.3 of Himachal Pradesh Electricity Supply Code, 2009 states:

"If on examination of a Complaint, the licensee finds a bill to be erroneous, a revised bill will be issued to the Consumer indicating a revised due date of payment, which will not be earlier than ten days from the date of delivery of the revised bill to the Consumer. If the amount paid by the Consumer under para 5.7.1 is in excess of the revised bill, such excess amount will be refunded through adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such Consumer ³(simple interest on the excess amount @ 15 percent per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis)³ from the date of payment till such time the excess amount is adjusted."

19. Now the regulation 15 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 states:

Provisional Schedule of the Service Connection Charges.- (1) Notwithstanding anything to the contrary contained in these Regulations, the Commission may notify provisional schedule of service connection charges to be levied for any of the activity/activities required to be undertaken by the distribution licensee to fulfill its obligations to supply electricity under the Act and the Regulations framed thereunder.

(2) Each provisional schedule of service connection charges notified under sub-regulation (1) shall be for a period of one hundred and eighty days and shall, unless extended by the Commission, cease to be valid and effective on the expiry of period of one hundred and eighty days or the date on which the order approving the schedule of service connection charges is issued under regulation 14, whichever is earlier.

(3) The amount charged under the provisional schedule of service connection charges notified under sub-regulation(1) shall be adjusted against the amount chargeable under the schedule of service connection charges approved by the Commission under regulation 14:

Provided that where the provisional amount charged exceeds the amount chargeable under the schedule of service connection charges approved under regulation 14, the licensee shall pay simple interest @6% per annum on the excess amount so charged for the actual number of days falling between the date of the receipt of such excess amount and the date of adjustment of such amount:



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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

Provided further that such excess amount, alongwith simple interest @ 6% per annum, shall be adjusted within ninety days from the date of Commission's order approving the schedule of service connection charges under regulation 14, failing which the defaulting licensee shall, in addition to the excess amount and simple interest @ 6% per annum upto the permitted period of ninety days, also be liable to pay simple interest @ 12% per annum on the excess amount, for the period till the date of such adjustments beyond the permitted period of ninety days:

Provided further that where the amount charged on provisional basis is less than the amount chargeable under the schedule of service connection charges approved by the Commission under regulation 14, the beneficiaries shall pay, within 30 days of its billing by the licensee, the same alongwith simple interest @6% per annum on the deficit amount for the actual number of days falling between the date on which the provisional payment was made and the date of payment of such deficit amount:

Provided further that in case the deficit amount, alongwith simple interest @6% per annum, is not paid by the concerned beneficiary within thirty days from the date of its billing by the licensee, the defaulting beneficiary shall, in addition to the deficit amount and the simple interest @ 6% per annum upto the date on which the permitted period of 30 days expires, be also liable to pay simple interest @ 12% per annum on the deficit amount, for the period till the date of such payment(s) beyond the permitted period of 30 days and the same shall further be without prejudice to this licensee's right to disconnect supply to the consumer after giving a notice of atleast 30 days.

20. Now the regulation 18 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 states:

(1) The distribution licensee shall recover the expenses and/or charges for giving electricity connections to the applicants as per the provisions of these Regulations and any other additional expenses, as are not recoverable from the applicants under any Regulations or Law, shall be met out of the approved financial provisions of the capital expenditure plan.

(2) In cases where the cost of certain works is to be recovered from the applicant or group of applicants initially on the basis of estimate and such recovery is subject to adjustment as per actual as per the provisions of these regulations, the following provisions shall apply:-

(a) the estimate shall be prepared on the basis of the standard cost data as per sub regulation (2) of Regulation 13; and

(b) the licensee shall, within ninety days of commissioning of the works, render to the applicant/consumer, the account of expenditure showing the excess or deficit in relation to the initial estimated amount giving details of item wise estimation and actual expenditure alongwith the item wise figures of variance to the extent possible and if applicant requires any additional information, the distribution licensee shall furnish the same within ten days of receipt of such requisition.



Receipt
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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

(3) The distribution licensee shall recover or refund, as the case may be, the difference between the actual expenditure and the estimated cost within 60 days from the submission of account and the un-refunded or unrecovered amounts, as the case may be, shall attract simple interest @ 12% per annum for the period beyond the said limit of 60 days.

21. Since the matter pertains to recovery of expenditure and excess amount charged by the Respondents from the Complainant, the provisions under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code, 2009 are not applicable as contended by the Complainant. The provisions under Regulation 15 read with Regulation 18 (3) of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applicable in this case.
22. The simple interest @12% ordered by the Forum on a refund of Rs 11,31,000/- is as applicable in this particular case.
23. The Respondents have confirmed that they have refunded an amount of Rs 11,31,000/- by way of adjustment through energy bills in September 2020. They have also given the calculations for Infrastructural Development Charges recovered in their reply in line with regulation 419/2012 i.e. Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.
24. The Respondents have also contended that before 2014 amendment in Himachal Pradesh Electricity Supply Code, 2009, the PAC was sanctioned in kW. This contention of the Respondents is not absolutely true since the Clause 3.2.2 of Himachal Pradesh Electricity Supply Code, 2009, prior to amendment states the charges as Rs 1,000/- per kW/ kVA and can't be ascertained to be true in absence of either Pac or sanction but the amendment in June 2014, first amendment specified the load to be charged in kVA basis @ Rs 1,000/- per kVA for Contract Demand applied for.
25. Further, the Respondents have submitted that they had already written to higher authorities for sanction of simple interest of 12% as per orders of the CGRF but since the Complainant filed the present case at Electricity Ombudsman, the sanction has got delayed.
26. The Complainant has also prayed for reporting the matter to the Commission if the orders are not implemented by the Respondents being non-compliance of the orders.

H - Issues in question: As is evident from the analysis above, the issue of interest on Rs 35,00,000/- as prayed by the Complainant to be ordered since 2010, the sanction of his connection/ submission of A&A form till 11/04/2018, release of his connection can't be taken up as issue since

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HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

the Complainant has filed application under provisions of Regulation 28 (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and not under the provisions of 28 (b) of the said regulations. Further, there are no documents on record to ascertain the Complainant's claim. There are only two issues before Electricity Ombudsman listed below:

1. **Issue No. 1:** Whether the Forum's orders regarding interest @ 12% ordered in line with regulations 15 and 18 (3) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are correct and need modifications?
2. **Issue No.2:** Whether the orders of the Forum passed on 15/07/2020 in Complaint No. 1432/4/19/066, dated 17/12/2019 have been complied by the Respondents?

I - Findings on the Issues:

Issue No. 1:

1. As is evident from the analysis above, the orders passed by the Consumer Grievances Redressal Forum on dated 15/07/2020 in Complaint No. 1432/4/19/066, dated 17/12/2019 with regard to interest @ 12% since 11/04/2018 on the excess amount of Rs 11,31,000/- ordered to be refunded till finally adjusted are in line with provisions under Regulation 15 and 18 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.
2. As is evident from the analysis above, the orders passed by the Forum on dated 15/07/2020 require no modifications in respect of interest to be ordered in line with Clause 5.7.3 of the Himachal Pradesh Electricity Supply Code, 2009 as contended by the Complainant for refund of Rs 11,31,000/-.

Issue No.2:

1. As is evident from the analysis done above, the Respondents have refunded Rs 11,31,000/-, as ordered by the Forum on dated 15/07/2020 in Complaint No. 1432/4/19/066, dated 17/12/2019 through adjustment in energy bills of the Complainant in September 2020 (Bill issued on 12/09/2020).
2. As is evident from above, the Respondents have shown their inclination to pay interest @ 12%, as ordered by the Forum on dated 15/07/2020 and have approached the higher authorities for sanction, but the same is yet to be adjusted.

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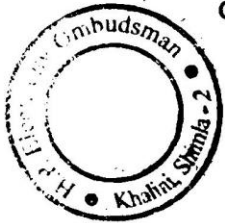
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Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

3. The orders of the Consumer Grievances Redressal Forum passed on 15/07/2020 in Complaint No. 1432/4/19/066, dated 17/12/2019 have been partially complied.

J – Order:

1. The orders passed by Consumer Grievances Redressal Forum on dated 15/07/2020 in Complaint No. 1432/4/19/066, dated 17/12/2019 are upheld.
2. The Respondents are directed to pay interest @12% on an amount of Rs 11,31,000/- w.e. from 11/04/2018 till 12/09/2020 through adjustment in energy bills of the Complainant.
3. The Respondents are directed to report compliance within a period of 15 days from the date of issue of this order failing which the matter shall be reported to the Commission under provisions of Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
4. The Complaint filed by M/S Sunox International, VPO Panjhera, Tehsil Nalagarh, Distt Solan, HP-174101 is hereby disposed off.
5. No cost to litigation.

Given under my hand and seal of this office.



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26/10/2020
Electricity Ombudsman