



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 SMSN Continental Private Ltd, Village & PO Kala Amb, Mauja Kheri, Tehsil Nahan, Distt Sirmour HP-173030

– Complainant

Vs

- 1. Sr Executive Engineer (E), Electrical Division, HPSEB Ltd, Nahan, Distt Sirmour HP-173001**
- 2. Assistant Executive Engineer (E), Electrical Sub-Division, HPSEB Ltd, Kala Amb, Distt Sirmour HP -173030**

- Respondents

Complaint No.: 15/2020, Registered on 12/06/2020
(Decided on 12/10/2020)

CORAM

K L Gupta
HP Electricity Ombudsman

Counsel for:

The Complainant: Sh Lavneesh Kanwar, Advocate
The Respondents Sh. Anil Kumar God, Advocate

Order

The case was received on 17/03/2020 and listed for 27/03/2020. But due to Covid-19 Pandemic lockdown w.e.from 22/03/2020 onwards, the case could not be heard and listed for 25/07/2020. The reply by the Respondents was filed on next date of hearing i.e. 29/08/2020 and the Complainant was to file their rejoinder by 11/09/2020 followed by additional submissions by Respondents by 19/09/2020. The final arguments were held on 26/09/2020, written arguments were to be filed by both the parties, if any, by 09/10/2020 and the orders were reserved. Hence the delay in finalizing the case.



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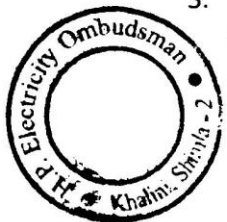
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A – Brief facts of the case:

1. M/S SMSN Continental Private Ltd, Village & PO Kala Amb, Mauja Kheri, Tehsil Nahan, Distt Sirmour HP-173030 have filed an application through Sh. Vineet Bansal (hereinafter called as the Complainant) under regulation 28 (1) & (2) and 33 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by Consumer Grievances Redressal Forum on 19/02/2020 in Complaint No. 1515/2/19/019, dated 04/06/2019.

B – The Complainant's submissions:

1. The Complainant submits that he had filed a Complaint against the Respondents wherein it was stated that the Complainant Company is registered under the Companies Act and is having its corporate office at 177 k, Bombay Bazar, Meerut Cantt UP. It is averred in the Complaint that one M/s Vardhman 41 Bighas situated over the Khasra No. 190/04 (8-17), 197/110 (11-10), 198/110 (4-12), 304/103 (10-0), 305/103 (4-19), 532/285/168 (1-5) at village Kala Amb, Mauza Kheri, Tehsil Nahan, District Sirmour during the year 2008-09 and this Company was sanctioned a connected load of 900 kVA Contract Demand. This Company was set up after borrowing loan from Bank of India and the land and building of the Company was mortgaged with the bank. The Company failed to repay the loan amount as such, it was taken over by the bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (Second) Act, 2002. That after having taken over the Company the bank put up the same to auction and present Complainant purchased the same for a consideration of Rs. 7,24,00,000/- and possession was also delivered on 26/10/2018.
2. The Complainant submits that after taking over of the unit of Vardhman Spinning Private Ltd., the Complainant Company had the option either to apply for new connection or to get the load connection restored. The Complainant Company requested the Assistant Senior Engineer, Kala Amb, vide letter dated, 30/10/2018 to intimate to it the outstanding amount of the demised Company. The total outstanding amount of Rs. 39,05,735/- was intimated by the Assistant Engineer of the Respondent (HPSEB Ltd). That this outstanding amount was deposited by the Complainant Company vide RTGS dated 1/11/2018 and intimated the same to the Assistant Engineer Electrical Sub Division HPSEB Ltd Kala Amb on the same date.
3. The Complainant further submits that vide letter dated 23/3/2019, the Complainant Company requested the Assistant Engineer Kala Amb to issue the Power Availability Certificate and all the necessary documents were also submitted along with this application. The Assistant Engineer forwarded the case of the Complainant Company to



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Senior Executive Engineer vide office letter dated 28/3/2019. It was also mentioned in this letter that the Complainant Company has requested for adjudication of IDC charge which were deposited by the demised Company and to pay the balance ID and ACD as applicable. The Senior Executive Engineer vide letter dated 30th March 2019 directed the Assistant Engineer to forward the case of the Complainant Company as per clause 36.2.5 of Sales Manual (I). He further submits that it was also mentioned in this letter that the difference of Rs. 1,32,597/- which was the outstanding amount from the previous Consumer to also get deposited from the Complainant Company. The Complainant Company deposited Rs. 1,32,597/- with the electricity board on 24/4/2019 as well as the amount of Rs. 9 Lacs as Advance Consumption Deposit against the 11 kV, for new connection. That despite the fact the Complainant Company had deposited the relevant documents as well as the amount as claimed by HPSEB Ltd but the power supply was not restored as such, the Complainant Company preferred a Complaint before the Forum. That while issuing the letter dated 30/3/2019 the Senior Executive Engineer had asked the Assistant Engineer to forward the case as per clause 36.2.5 of sales Manual (I). the said clause is reproduced hereunder:-

"36.2.5.1 The original Consumer or some other person applies for a connection at such premises which has been permanently disconnection.

(1) In case the service line has not been removed or used for release of connection to other Consumers and is having sufficient capacity after commitments of loads and redundancy of 30%.

(2) There is spare capacity in the feeding system for release of the load.

(3) The Consumer apply up to same connection load and contract demand which were previously disconnected.

In case all the conditions are fulfilled, the connection shall be released without issuance of PAC. However, the A & A form, test report etc. shall be submitted by the Consumer & signed by the competent authority and completion of codal formalities as new connection to be done. The load shall be got sanctioned from the competent authority before restoration of supply. However, the electrical installations and apparatus of voltage exceeding 650 volts will be required to be inspected as per regulation 43 of CEA (Measures relating to safety and Electric Supply) Regulations, 2010 and its amendments.

In case above conditions are not fulfilled, all the codal formalities for issuance of PAC, sanction of load shall be done for restoration of supply as is done for a new connection."



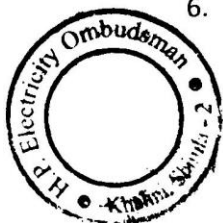
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4. The Complainant submits that clause 36.2.5.2 relates to the charges to be levied at the time of restoration of supply after permanent disconnection. This clause relates to the charges pertaining to Security Deposit, cost of service line in case it has been removed or there is no capacity in the existing service line, recovery for expenditure for supply of electricity as per regulation 5 and 10 of HPERC (Recovery for Expenditure for Supply of Electricity) Regulations, 419/2012 and recovery of all outstanding of previous connection wherever applicable.
5. He further submits that for the completion of the fact it would be relevant to point out here that the HPERC has framed HPERC (Recovery and Expenditure for Supply of Electricity) Regulation, 2012 which regulate the recovery expenditure for supply of electricity lines in various situations. That regulation 10 of these Regulations provides for restoration of supply after permanent disconnection. That during the year 2018, the HPSEBL proposed an amendment in regulation 10 proposing for 100 percent rebate to the premises which have been disconnected permanently without time duration for the Consumer itself or for other Consumer who approaches for the restoration of the supply. It was also proposed that the codal formalities for the release of the new connections as provided in the supply code has to be completed by the Consumer and payment of requisite charges as per the regulation except for normative IDC. On receiving the proposal from the HPSEBL, the HPERC, invited objections from the general public and also published the draft rules vide notification dated 20/7/2018. The draft rules were approved and an amendment was carried out vide notification dated 05/09/2018. He further submits that during the pendency of the Complaint the Consumer Forum was pleased to direct the HPSEBL to restore the electricity supply to the premises of the Complainant Company vide, order dated 21/6/2019. The Respondent filed reply on 23rd July, 2019 and along with this reply a notice of recovery of late payment, surcharge due to restoration supply was produced, whereby, the Complainant Company was asked to deposit a sum of Rs. 79,88,902/-. The submission of the Respondent in the reply was that since an amount of Rs. 79,88,902/- has not been deposited by the Complainant Company as such, the electricity connection was not released. It was also submitted by the Respondent that the case of the Complainant Company is covered under instruction No. 36.2.2 of the Sales Manual which provides for recovery of surcharge on delayed payment. It is was also the submission of the Respondents that Regulation 10 as amended will not exempt the Complainant from liability for making surcharge payment on the outstanding amount. The Complainant Company filed rejoinder, reiterating its submission in the Complaint, and specifically submitting that there is no provision under the Regulations for making recovery of surcharge amount.

6. The Complainant submits that the matter was heard by the learned Forum and vide ordered dated 19/2/2020 the Complaint was dismissed. Feeling aggrieved against the



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order dated 19/2/2020 as well as the demand notice dated 3/7/2019, the Complainant Company prefers this representation on the following amongst other grounds:-

- (a) He submits that the learned Forum while rejecting the Complaint has miserably failed to take into consideration that the HPERC has framed HPERC (Recover of Expenditure for supply of Electricity) Regulations, 2012 which provides for the manner in which the various expenditures are to be recovered for the supply of electricity and there is no such condition of recovery of surcharge under these regulations. That such regulations have been issued by Regulatory Commission under the powers conferred by Sections 46 and 181 of the Electricity Act, 2003. That since the regulations were framed while exercising powers under the Regulations were framed while exercising powers under the Electricity Act as such, they were having statutory force and after issuance of the notification the recovery of expenses is to be governed as per the Regulations and all the instructions contained in the Sales Manual came to be overruled. It is settled position of law that departmental instructions cannot over rule the regulations. That the learned Forum while passing the impugned order has ignored this fact and have wrongly relied upon the instructions contained in the Sales Manual while dismissing the Complaint.
- (b) The Complainant submits that the learned Forum while rejecting the Complaint had fallen in fallacy by relying upon the instruction of the Sales Manual and ignoring the HPERC (Recovery of Expenditure for supply of electricity) Regulations, 2012. The learned Forum while passing the impugned order and upholding the demand notice has failed to appreciate the position of law related to the regulations framed while exercising statutory powers viz-a-viz intradepartmental instructions. The Sales Manual is not a creation of a statute and is only issued in exercise of departmental functions and are mere guidelines. The Sales Manual on which learned Forum has relied upon do not hold the field in view of Regulation 10 of the 2012, Regulations which specifically deals with Restoration of Supply after Permanent Disconnection. That once a specific regulation with regard to restoration of Supply after permanent disconnection was framed then no other instruction would overrule the regulation and the restoration of a permanent disconnection is to be made strictly in terms of Regulation 10.
- (c) That impugned order and the demand notice dated 03/07/2019 are further liable to be quashed and set aside as the learned Forum below has failed to appreciate that in the amended regulation 10, there is no mention of charging of surcharge on the outstanding dues. The amended regulations 10 (IV) provides "the applicant clear all outstanding dues, however, if any, against the original connections as well as against all such previous connections are accepted from time to time at the premises for



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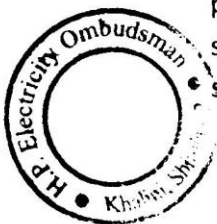
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which new connections is being sought, also including of those related to infrastructure development, for such original connection which was permanently disconnected". That the bare perusal of this regulation makes it abundantly clear that there is no mention of recovery of surcharge on the outstanding amount. The intention of non-recovery of the surcharge is evident from the proposal sent by the HPSEBL to the HPERC as has been notified vide notification dated 20th July, 2018 clearly stipulates that there will be 100 percent rebate for the premises which time duration and the Consumer itself or any other Consumer could approach HPSEBL for restoration of supply after permanent disconnection. That the Ld Forum has also fallen in error while dismissing the Complaint by not appreciating the proposal made for amendment to regulation 10. That under the un-amended Regulations it was specifically mentioned in the proviso that rebate admissible as per the 3rd and 4th proviso to this regulation shall be applicable only on the amount of infrastructure development charge worked out on normative rules under the sub regulation 2 of regulation 5 and not any other charge/ cost as may be recovered, in accordance with all the provision of these regulations. Whereas the amended Regulations specifically provides only for clearing of the outstanding dues if any against the original connection. That since there was no requirement under the regulations for recovery of surcharge over the outstanding amount as such the impugned demanded notice dated 03/07/2019 and the order dated 19/02/2020 passed by the learned Forum deserves to be quashed and set aside.

7. The Complainant prayed that present representation may kindly be accepted and impugned order dated 19/02/2020 and the quashed and set aside and Respondent be directed to continue the power supply to the premises of the Complainant Company.

C – The Respondents' submissions:

1. The Respondents submits that the order passed by the Ld. Forum below is based on proper appreciation of law, rules and regulations for the time being in force and pleading of both the parties which requires no interference of this Hon'ble Forum. It is further submitted that the demand raised by the replying Respondents is just based on rules and regulations. Moreover the Complaint of the Complainant is misconceived as the outstanding amount and late payment surcharge on the outstanding amount are two sides of the same coin and cannot be considered in isolation of each other and the surcharge for the late payment has rightly been levied by the Respondent Board. They further submitted that the Complainant had not challenged the amount which was due to the replying Respondents on account of default made by the previous occupier of the premise in paying the electricity consumptions charges and the outstanding amount stood deposited in the replying Respondents account at the time when the electric power supply was restored to the premise. They further submitted that the M/S Vardhman



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Roofing Pvt. Ltd. was a Consumer of the replying Respondent on whose premise power connection with 900 kVA Contract Demand and 900 kW Connected Load was issued and the M/s Vardhman Roofing Pvt. Ltd. has not paid the electricity charges as was raised by the replying Respondents and as such the electricity connection was temporarily disconnected and when the payment was not made by M/s Vardhman Roofing Pvt. Ltd. despite TDCO the replying Respondents had permanently disconnected electricity connection of the premises. The Complainant had applied for the restoration of power connection on similar Contract Demand and Connected Load to the same premises i.e., original connection. When the Complainant had taken possession of the premises which was formerly owned and possessed by the M/s Vardhman Roofing and the same was deposited through RTGS amounting to Rs. 39,05,735/-. The Complainant has applied for the PAC and HPSEBL has raised a demand for a sum of Rs. 1,32,597/- on account of less deposit IDC by earlier firm M/s Vardhman Roofing and the Complainant has deposited the same. Instead of issuing PAC the connection at the premises has to be released as per Sales Manual instruction 36.2, accordingly, the notice for recovery of surcharge had been issued to the Complainant. Instead of depositing the amount, the Complainant approached to Hon'ble forum CGRF in the Complainant No. 1515/2/19/019. It is also pertinent to mention here that the replying Respondents had adjusted the ACD but despite adjustment of ACD an amount of Rs. 39,05,735/- was still due against the M/s Vardhman Roofing Pvt. Ltd and this amount were deposited through RTGS in the replying Respondents account. The electricity connection was not issued to the Complainant "until the Ld. CGRF has issued Interim Order on 21/06/2019. An amount of Rs. 79,88,902/- on account of surcharge on delayed payment is still due as per sales Manual Instruction No. 36.2.2. However, the electricity connection now stands issued to the Complainant according to the directions issued in the Interim Order passed by the Ld. CGRF on 21/06/2019. They further submitted that "it has been provided in instruction No. 36.2.2 of sales manual that in case of permanent disconnection, the amount remains outstanding after adjustment of security, the surcharge for delayed payment shall be levied up to the date of application for restoration of supply after permanent disconnection". It is pertinent to mention here that power connection of the M/s Vardhman Roofing Pvt. Ltd. had been permanently disconnected and agreement is terminated with adjustment of security amount deposited with the replying Respondents, and the case of the Complainant is squarely covered by the second part as cited supra and as a matter of general prudence said instruction is to be read as a whole and not in isolation. It is further submitted that the Complainant had suppressed the material facts from this Hon'ble Court as the Complainant had filed a Complaint No- 1515/2/20/009 before the Ld. CGRF in which the Complainant has now challenged the amount of Rs. 39,05,735/- i.e., the original outstanding amount of the previous occupier/owner of the premise in question, as such the representation of the Complainant is not sustainable and same is liable to be dismissed and the order passed by the Ld. CGRF is required to be



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upheld. The Complaint filed by the Complainant is not maintainable because the Complainant had not challenged the principal outstanding amount earlier and had only questioned the authority of the replying Respondents w.r.t levying of late payment surcharge as such the Complaint of the Complainant is not sustainable in the eyes of law. The reply filed by the replying Respondents before the Ld. Forum below may kindly be read as part and parcel of this reply. The order passed by the Ld. Forum below is well-reasoned speaking order based on the proper appreciation of rules and regulations as is framed under the Electricity Act, 2003 and pleading of both the parties which warrants no interference of this Hon'ble Court as this stage and the representation/ Complaint of the Complainant is not sustainable in the eyes of law and same is liable to be dismissed.

3. The Respondents submits that the Ld. Forum has rightly passed the order dated 19/02/2020, which is well- reasoned speaking order and the same has been passed on the basis of the record placed before the Ld. Forum and warrants no interference of this Hon'ble Court at this stage. The order passed in the Complaint by the Ld. CGRF below is based on proper appreciations of the pleading, rules and regulations and same is just and proper in the facts and circumstances of the case. The Ld. Forum below has committed no illegality while passing the order in question and the Complainant is liable to make the payment of the late payment surcharge as is raised by the replying Respondents. It is pertinent to mention here that the charges have to be levied and recovered from the Complainant as per clause No. 7.2 of the HP Electricity Supply Code 2009 and Instruction No. 36.2.2 of the Sales Manual which provides that recovery of expenditure for the supply of electricity has to be effected as per Security regulation No. 2005 and its amendments and as per regulations 4, 5 and 10 of the HPERC (Recovery of Expenditure for the supply of Electricity) Regulations 419/2012 as amended from time to time. The Regulation No. 10 of the HPERC (Recovery of Expenditure for the Supply of Electricity) Regulations 2012 has also since been amended by the Hon'ble HPERC, vide HPERC (Recovery of Expenditure for the Supply of Electricity) Regulations 2018, which override the last sentence of sub-Para 5.2.13 of the HP Electricity Supply Code 2009 and the Complainant is liable to make the payment of the outstanding amount of the previous electricity connection to the premise as such the regulations cited by the Complainant will not exempt the Complainant from the liability to make payment of the outstanding amount, this being so the Complaint of the Complainant lacks merits and same is liable to be dismissed. So far as the clause of Sales Manual cited by the Complainant is concerned, in context to it, they submitted that these clauses are applicable whose connection has been permanently disconnected and during the permanent disconnection his supply can be restored after completing the necessary formalities. As submitted supra, it has been made clear in clause No. 7.2 of the HP Electricity Supply Code 2009 and instruction No. 36.2.2 of the sales manual that after permanent disconnection surcharge on delayed payment has to be paid by the new Consumer who has applied for the reconnection of the power connection



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which was disconnected permanently. After completing the formalities of the Instruction No. 36.2.2, the load can be released up to same connected load and CD to the same premise which was previously disconnected on the application of the original Consumer or some other persons and the connection cannot be released till completing the formalities as required under clause 36.2.2 of Sales Manual. The interim order dated 21/06/2019 has been implemented and 30 days demand notice has also been issued to the Complainant as per Clause No. 7.2 of the HP Electricity Supply Code 2009 and Instruction No. 36.2.2 of Sales Manual on account of surcharge for delayed payment up to date of application for reconnection of the power connection. It is submitted that Hon'ble CGRF has rightly passed the order on 19/02/2020 after considering all the rules and regulations as framed in the Electricity Act 2003 as amended from time to time. Moreover as has already been submitted supra the Regulation No.10 of the HPERC (recovery of Expenditure for the Supply of Electricity) (Fifth amendment) Regulations 2018 which provides that the applicant who has applied for the power connection will clear all the outstanding dues, if any, against the original connection as well as against all such previous connections which existed from time to time at the premise for which the new connection is being sought, also including those relating to IDC for such original connection which was permanently disconnected and as per the amended provisions the Complainant is liable to make the payment of the outstanding amount of the previous connection. Moreover, as per this amendment, the condition specified to clause (iv) of the third proviso to regulation No.10 being a part of a package offered and shall override the general provisions of the existing last sentence of the sub- para 5.2.13 of the Supply Code 2009, as such the Complainant has no cause of action and locus standi to file and maintain the present Complaint and same is liable to be dismissed. The Complainant has applied for the restoration of the same power connection on the same Contract Demand and Connected Load which was permanently disconnected as such the replying Respondents have rightly raised the demand from the Complainant and the Complainant is not entitled to its refund. The Complainant is liable to make the payment of the demand as is raised by the replying Respondents in accordance with clause No. 7.2 of the Supply Code 2009, Regulation No. 27 of Condition of Supply and Regulation No.5 and 10 of the HPERC of Expenditure Regulation 2012. It is further submitted that the Electricity Supply Code 2009 has further been amended by the Hon'ble HPERC vide notification dated 03/07/2020 and the last sentence occurring at the end of sub- para 5.2.13 has been omitted as is evident from Annexure R-1. **They further submitted that the Complainant has filed a Complaint No-1515/2/20/009 before the Hon'ble CGRF which is pending adjudication, in which the Complainant had challenged the initial outstanding amount of Rs. 39,05,735/- on account of default committed by the previous owner/ occupier of the premise in paying the electricity consumption charges. The replying Respondents have levied the late payment surcharge on this amount which is the subject matter of the lis, whereas the Complainant should have challenged this outstanding amount in**



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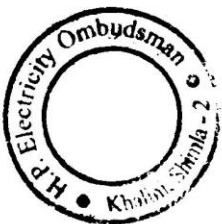


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Complaint No-1515/2/19/019 and the Complaint No. 1515/2/20/009 pending before the Ld. CGRF is liable to have stayed as the same is barred by the principle of constructive res-judicata as enshrined under section 11 of the Code of Civil Procedure. The Complaint No-1515/2/20/009 had been filed by the Complainant with an ulterior motive just to defeat the just claim of the replying Respondents. The representation of the Complainant is also not sustainable keeping in view the provisions of the HPERC (CGRF and Ombudsman) Regulation 2013 as the Complainant has suppressed the material facts from this Hon'ble Forum. The Complainant had applied for the restoration of the electricity power supply to the premise in question and not for issuance of new connection as is evident from the pleading of the Complainant in the present Complaint, on the same Contract Demand and Connected Load and as such keeping in view the rules and regulations for the time being in force the Complainant is under an obligation to clear all the outstanding due of the previous owner of the premise as such the Ld. Forum below has rightly upheld the action of the replying Respondents w.r.t levying of surcharge on the outstanding amount of Rs. 39,05,735/- and the order of the Ld. Forum is based on proper appreciation of the pleading of the parties, rules and regulations for the time being in force and record made available which does not warrants any interference at this stage and representation is liable to be dismissed.

D – The Complainant's submissions through rejoinder:

1. The Complainant submits on the reply of the Respondents that it is wrong to contend by the them that the learned Forum has decided the matter appreciating rules and regulation, whereas the learned Forum below has miserably failed to take into consideration the amended regulation where in no provision of surcharge was provided. The learned Forum below also fell in error by ignoring the basic principle of law which warranted that the Sales Manual cannot over rule the regulations which have been issued in exercise of statutory powers exercised by the Electricity Regulatory Commission. The learned Forum below has fallen in fallacy in misunderstanding this concept of law which has resulted in the passing of the wrong and illegal order. The Ld Forum below has also failed to take into consideration that amendment to regulation 10 of the HPERC (Recovery of Expenditure for Supply of Electricity) (Fifth Amendment) Regulations, 2018 was carried out in pursuance to the proposal made by the Respondent Board where in it was specifically mentioned that 100% rebate for the premises which have been disconnected permanently without time duration and the Consumer itself or any other Consumer could approach HPSEBL for restoration of supply. That the proposal of HPSEBL was accepted and Regulation 10 was amended vide, notification, dated, 05/09/2018. That the amended regulation does not provide for any kind of surcharge on the payment to be made for restoration of supply. The Respondents have issued the notice for depositing Rs. 79,88,902/- on account of delayed payment in terms of instruction number 36.2.2 of the Sale Manual, ignoring the fact that the departmental instruction cannot over rule the



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statutory regulations. It is settled law that executive instructions cannot amend or supersede the statutory rule or add something there in, nor any order can be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law. While statutory rules have full force of law (AIR 1981 SC 711). The Hon'ble Supreme Court in case titled Delhi Development Authority V/s Joginder S. Monga reported in 2004 Vol 2 SCC 297, observed that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions. The Hon'ble Supreme Court in a case reported in AIR 1997 SC 1446, held that any executive instruction/ order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather the same deserves to be quashed as having no force of law. That since the surcharge amount has been claimed on the basis of the departmental instructions as such, the same is liable to be quashed and set aside but such submission of the Complainant have not been considered by the learned Forum which has resulted in the passing of an illegal order against the provisions of law.

2. The Complainant submits that for the sake of brevity it is again submitted that the impugned order under challenge is no orders in the eyes of law as the learned Forum below has misunderstood and misinterpreted the provisions of law which specifically provided that the departmental instruction cannot over reach the statutory provisions. This contention of the Complainant is fortified from the case law as mentioned in para supra. It is absolutely wrong to contend by the Respondents that the charges have to be levied and recovered from the Complainant as per clause No 7.2 of the HP Electricity Supply Code, 2009 as there is no provision under this clause for charging surcharge on the amount. The contention of the Respondents that the instruction number 36.2.2 of the Sales Manual provides for the recovery of expenditure for the supply of electricity but while making such submissions the Respondents have failed to understand that the Sales Manual cannot override the HPERC regulations. That there is no provision under the HP Electricity Supply Code, 2009 which provides for imposition of surcharge on the delayed payment while getting a connection restored. The mentioning of the words "clear all the outstanding dues" does not include surcharge. In case it would have been the intention of the HPERC, that surcharge is to be applied on the outstanding amount in that eventuality the same would have found mention in the amended regulation. That even otherwise as submitted in the foregoing Paras regulation 10 was amended subsequent to the recommendation of the Respondents wherein it was specifically requested that 100% rebate is to be provide to the persons who want to get the connection reinstated. It is wrong to contend by the Respondents that by way of amendment the conditions specified to clause 4 of the third proviso to regulation number 10 being a part of the package offer shall override the general provision of the existing last sentence of sub-para 5.2.13 of the Supply Code 2009. The Complaint number 1515/2/20/009 has been filed subsequent to the filling of the present representation and in that Complaint the Complainant has laid



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challenge to the payment charged for restoration of supply which cause of action is independent of the present cause as in the present case the Complainant has laid challenge only to the surcharge amount now claimed by the Respondents. That even otherwise the Respondents are estopped from claiming the surcharge amount as vide letter dated 30/10/2018 the Respondents have specifically intimated to the Complainant Company that Rs. 39,05,735 is the only outstanding amount against M/s Vardhman Roofing. That once the total amount due against the earlier owner was conveyed to the Complainant then no subsequent surcharge could have been claimed by the Respondents. That in case the Respondents would have earlier notified the surcharge amount the Complainant would have opted for installation of fresh connection for which the Complainant would have incurred less amount but the Respondents did not disclose the surcharge amount to the Complainant and the same was only claimed after the filing of the Complaint before the forum thus the action of Respondents amount to fraud.

E - Written submissions by the Complainant

1. The Complainant submits that his Company deposited a sum of Rs.39,05,735/-which was the outstanding amount of the previous Company. The Assistant Engineer Electrical Sub Division, HPSEBL, Kala AMB issued a letter dated, 16/11/2018, addressed to Tehsildar Revenue, Nahan, District Sirmaur, informing him that it has received the outstanding dues pending against M/s Vardhman Roofing Pvt. Ltd and that his office has issued no objection/dues certificate to the Complainant Company. That once the Respondents have issued no objection/ no due certificate then no surcharge can be claimed from the Complainant. The issuance of no objection/dues certificate makes it abundantly clear that nothing more was required to be paid to the Respondents therefore the demand notice issued by the Respondents is liable to be quashed and set aside.
2. He further submits that vide letter dated 23/03/2019, they requested the Assistant Engineer Kala Amb to issue the Power Availability Certificate and all the necessary documents were also submitted along with this application. The Assistant Engineer forwarded the case of the Complainant Company to Senior Executive Engineer vide office letter dated 28/03/2019. It was also mentioned in this letter that the Complainant Company has requested for adjudication of IDC charges which were deposited by the demised Company and to pay the balance ID and ACD as applicable. The Senior Executive Engineer vide letter dated 30th March, 2019 directed the Assistant Engineer to forward the case of the Complainant Company as per clause 36.2.5 of Sales Manual (I). It was also mentioned in this letter that the difference of Rs.1,32,597/- which was the outstanding amount from the previous consumer to also get deposited from the Complainant Company. The Complainant Company deposited Rs.1,32,597/- with the electricity board on 24/04/2019 as well as the amount of Rs. 9 lacs as Advance Consumption Deposit



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against the 11 kV, for new connection. That despite the fact that the Complainant Company had deposited the relevant documents as well as the amount as claimed by HPSEB Ltd but the power supply was not restored as such, the Complainant Company preferred a complaint before the Forum. That while issuing the letter dated 30/03/2019, the Senior Executive Engineer had asked the Assistant Engineer to forward the case a per clause 36.2.5 of Sales Manual (I). The said clause is reproduced hereunder:-

"36.2.5.1 The original consumer or some other person applies for a connection at such premises which has been permanently disconnection.

- (1) In case the service line has not been removed or used for release of connection to other consumers and is having sufficient capacity after commitments of loads and redundancy of 30%.*
- (2) There is spare capacity in the feeding system for release of the Load.*
- (3) The consumer apply up to same connected load and contract demand which were previously disconnected.*

In case all the conditions are fulfilled, the connection shall be released without issuance of PAC. However, the A&A form, test report etc. shall be submitted by the consumer & signed by the competent authority and completion of codal formalities as of new connection to be done. The load shall be got sanctioned from the competent authority before restoration of supply. However, the electrical installations and apparatus of voltage exceeding 650 volts will be required to be inspected as per regulation 43 of CEA (Measures relating to safety and Electric Supply) Regulations, 2010 and its amendments.

In case above conditions are fulfilled, all the codal formalities for issuance of PAC, sanction of load shall be done for restoration of supply as is done for a new connection.

Clause 36.2.5.2 relates to the charges to be levied at the time of restoration of supply after permanent disconnection. This clause relates to the charges pertaining to Security Deposit, cost of service line in case it has been removed or there is no capacity in the existing service line, recovery for expenditure for Supply of electricity as per regulation 5 and 10 of HPERC (Recovery for Expenditure for Supply of Electricity) Regulations, 419/2012 and recovery of all outstanding amount of previous connection wherever applicable."

The Himachal Pradesh Electricity Regulatory Commission has framed HPERC (Recovery and Expenditure for Supply of Electricity) Regulation, 2012 which regulate the recovery expenditure for supply of electricity lines in various situations. Regulation 10 of these Regulations provides for restoration of supply after permanent disconnection. That during the year 2018 the Himachal Pradesh State Electricity Board Ltd proposed an amendment in regulation 10 proposing for 100 percent rebate to the premises which



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have been disconnected permanently without time duration for the consumer itself or for other consumer who approaches for the restoration of the supply. It was also proposed that the codal formalities for the release of the new connections as provided in the supply code has to be completed by the consumer and payment of requisite charges as per the regulation except for normative IDC. On receiving the proposal from the HPSEB Ltd, the HPERC, invited objections from the general public and also published the draft rules vide notification dated 20.7.2018. The draft rules were approved and an amendment was carried out vide notification dated 5.9.2018. The respondent filed reply on 23rd July, 2019 and along with this reply a notice of recovery of late payment, surcharge due to restoration supply was produced, whereby, the Complainant Company was asked to deposit a sum of Rs. 79,88,902/-. The submission of the respondent in the reply was that since an amount of Rs. 79,88,902/- has not been deposited by the Complainant Company as such, the electricity connection was not released.

3. The Ld Forum while rejecting the complaint has miserably failed to take into consideration that the HPERC has framed HPERC (Recover of Expenditure for Supply of Electricity) Regulations, 2012 which provides for the manner in which the various expenditures are to be recovered for the supply of electricity and there is no such condition of recovery of surcharge under these regulations. That such regulations have been issued by Regulatory Commission under the powers conferred by Sections 46 and 181 of the Electricity Act, 2003. That since the Regulations were framed while exercising powers under the Electricity Act as such, they were having statutory force and after issuance of the notification the recovery of expenses is to be governed as per the Regulations and all the instructions contained in the Sales Manual came to be overruled. It is settled position of law that departmental instructions cannot over rule the regulations. That the learned Forum while passing the impugned order has ignored this fact and have wrongly relied upon the instructions contained in the Sales Manual while dismissing the complaint. The honorable Supreme Court of India in a case reported in 1998 volume 8 Supreme Court cases has held that instructions cannot over rule the rules or regulations framed under a statutory power.
4. The Sales Manual is not a creation of a statute and is only issued in exercise of departmental functions and are mere guidelines. The Sales Manual on which learned Forum has relied upon do not hold the field in view of Regulation 10 of the 2012, Regulations which specifically deals with Restoration of Supply after Permanent Disconnection. That once a specific regulation with regard to restoration of supply after permanent disconnection was framed then no other instruction would over-rule the regulation and the restoration of a permanent disconnection is to be made strictly in terms of Regulation 10.



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5. The fact that recovery of arrears from consumers has been specified in instruction number 38 of the Sales Manual Instructions Part-1, and instruction No 38.4.6.4 provides that **"In the industrial units which are non-functional or closed and the electricity charges are outstanding in the name and any other person purchases the unit for its revival, the recovery shall be effected from the new consumer before the release of connection in a line with HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 as amended from time to time and Supply code.** The perusal of this instruction makes it abundantly clear that the case of the Complainant Company was to be considered in light of the 2012 Regulations. That since the case of the Complainant was required to be considered under the 2012, Regulations therefore, no surcharge could have been claimed from the Complainant as there was no such stipulation in the regulations.
6. The Respondents while filing reply before the forum have never agitated the same on the ground that the provisions of Supply Code are applicable to the facts of the case but while filing reply to the present representation it has been submitted that surcharge has been fixed in terms of clause No 7.2 of the HP electricity Supply code 2009. That even the perusal of clause 7.2 of the supply code makes it clear that there is no provision for claiming surcharge on the service charges/fixed charges. That since the supply code which has also been issued in terms of the Electricity Act is having a statutory force but in this supply code also there is no provision for imposing surcharge on a connection which is to be reinstalled.
7. In addition to above the Complainant submit that Hon'ble ombudsman does not consider that the 2012, regulations apply to the facts of the case then in the alternative the Complainant submits that clause 36.2.2 which is being agitated by the Respondents for imposing surcharge if read in its totality only pertains to the consumer who is in default and whose connection is disconnected permanently and thereafter, he applies for restoration of the same connection. The idea behind claiming surcharge from such a consumer can be said to be correct as he has defaulted wilfully in not paying the outstanding amount. The clause 36.2.2 can be said to be applicable only to a original consumer and not to some other person who applies for restoration as there is a specific instruction No 36.2.5.1 which provides for restoration of supply after permanent disconnection either by the original consumer or by some other person. That in clause 36.2.2 the word **"by some other person"** is missing and the same is only for the reason that the surcharge is to be claimed only from the original consumer and not from some other person who applies for a connection at the same premises. That since clause 36.2.2 only pertains to the original consumer and not to the other person therefore, the demand notice demanding surcharge from the Complainant is liable to be quashed and set aside.



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8. In the alternative the Complainant humbly submit in case this Hon'ble ombudsman comes to the conclusion that surcharge is still to be paid then it is humbly submitted that clause 7.1.9 of the HP Electricity Supply code has been amended which provides that delayed payment surcharge shall not be charged for the period beyond the date of permanent disconnection and instead interest shall be charged on the outstanding amount, for the actual number of days for which such amount remains unrecovered/unadjusted, at a simple interest rate of 12% per annum.
9. Since the Department had issued no objection certificate which clearly demonstrated that no dues were pending, coupled with the fact that the provisions of 2012, Regulations are only applicable to the facts of the case which nowhere provided for claiming of surcharge, non-mentioning of the word any other person in clause 36.2.2 therefore, the demand notice as well as the order of the Forum may kindly be dismissed.

F - Written submissions by the Respondents:

1. The Respondents submits that the Complainant had purchased the assets of the M/s Vardhman Roofing Pvt. Ltd. in an auction purchase conducted by the bank, the M/s Vardhman Roofing Pvt. Ltd. was a consumer of the Respondents on whose premise power connection with 900 KVA Contract demand and 900KW Connected load was issued and the M/s Vardhman Roofing Pvt. Ltd. had not paid the electricity charges as was raised by the Respondents and as such the electricity connection was temporarily disconnected and when the payment was not made by M/s Vardhman Roofing Pvt. Ltd. despite of TDCO. The Respondents had permanently disconnected electricity connection of the premise and the Complainant has applied for the restoration of power connection on similar Contract Demand and Connected Load on which connection to M/s Vardhman Roofing Pvt. Ltd was released.
2. The Respondents had adjusted the ACD and other charges deposited by the M/s Vardhman Roofing Pvt. Ltd. but despite adjustment of amount already deposited by the M/s Vardhman Roofing Pvt. amount of Rs. 39, 05, 735/- was due against M/s Vardhman Roofing Pvt. Ltd and this amount was deposited through RTGS in the respondent's account.
3. As per the instructions no. - 36.2.2 of sales manual that in case of permanent disconnection, the amount still remains outstanding after adjustment of security, the surcharge for delayed payment shall be levied up to the date of application for restoration of supply after permanent disconnection". The power connection of the M/s Vardhman Roofing Pvt. Ltd. had been permanently disconnected and agreement is terminated with or without adjustment of security amount deposited with the Respondents, therefore the case of the Complainant is squarely covered by the second



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part as cited instructions. Therefore, amount of Rs. 79,88,902/- on account of surcharge on delayed is due against the Complainant as is provided in the sales Manual Instruction No. 36.2.2. However, the electricity connection is issued to the Complainant pursuant to the directions issued by this Ld Forum vide its order dated 21/06/2019 subject to the final outcome of this complaint.

4. The Complainant has taken possession of the premise which was initially owned and possessed by the M/s Vardhman Roofing Pvt. Ltd, the Complainant had requested the Respondents to intimate the outstanding amount against M/s Vardhman Roofing Pvt. Ltd., the Respondents had intimated the principal amount due against the previous owner and this amount of Rs. 39, 05,735/- was deposited through RTGS in the Respondents' account.
5. The electricity connection was not issued to the Complainant "until the direction of this Hon'ble Court issued on 21/06/2019", because an amount of Rs. 79,88,902/- on account of surcharge on delayed is still due as is provided in the sales Manual Instruction No. 36.2.2. However, the electricity connection now stand issued to the Complainant pursuant to the directions issued by this Hon'ble Court vide its order dated 21/06/2019 subject to the final outcome of this complaint.
6. The Ld Forum has rightly passed the order dated-19-02-2020, which is well reasoned order and the same has been passed on the basis of the record placed before the Forum. The charges have to be levied and recovered from the Complainant **as per clause No: 7.2 of the HP Electricity Supply Code 2009 and Instruction No. 36.2.2** of the Sales Manual which provides that recovery of expenditure for supply of electricity has to be effected as per Security regulation No. 2005 and its amendments and **as per regulations 4, 5 and 10 of the HPERC (Recovery of Expenditure for the supply of Electricity) Regulations 419/2012 as amended from time to time. The Regulation No. 10 of the HPERC (Recovery of Expenditure for the Supply of Electricity) Regulations 2012** has also since been amended by the Hon'ble HPERC, vide HPERC (Recovery of Expenditure for the Supply of Electricity) Regulations 2018, which override the last sentence of **sub Para 5.2.13 of the Himachal Pradesh Electricity Supply Code 2009** and the Complainant is liable to make the payment of the outstanding amount.
7. The Respondents submitted that it has been made clear in Instruction No. 36.2.2 of the Sales Manual that after permanent disconnection surcharge on delayed payment has to be paid by the new consumer who has applied for the reconnection of the power connection which was disconnected permanently. After completing the formalities of the Instruction No- 36.2.2 the load can be released up to same connected load and CD to the same premise which was previously disconnected on the application of the original



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consumer or some other persons and the connection cannot be released till completing the formalities as required under clause 36.2.2 of sales manual.

8. The interim order dated 21/06/2019 has been implemented in its letter and sprits and demand notice has also been issued to the Complainant as per as per clause No: 7.2 of the HP Electricity Supply Code 2009 and clause No. 36.2.2 of Sales Manual on account of surcharge for delayed payment up to date of application for reconnection of the power connection.

G - CGRF Order:

1. In Regulation 10 of the said regulations:-

- (i) For the clause (ii) of the third proviso, the word and bracket "{omitted}" shall be substituted;
- (ii) For the existing clause (iv) under the third proviso, the following shall be substituted:-

"(iv) the applicant clears all outstanding due, if any, against the original connection as well as against all such previous connections which existed from time to time at the premises for which new connection is being sought, also including those relating to the infrastructure development charges, for such original connection which was permanently disconnected; and";

The Respondent Board in reply stated that the surcharge has rightly been levied on the outstanding amount as per instruction No. 36.2.2 of the sale manual.

After having heard Ld. Counsel for both the parties and going through the case carefully, the forum feels that outstanding amount and late payment surcharge on outstanding amount are two side of the same coin and cannot be considered in isolation of each other, as argued by the Ld. Counsel for the Complainant while drawing attention to amendment of regulation 10 made by the HPERC vide Notification dated 5 September 2018. Here we would like to discuss regulation 36.2.2 of the sales manual Part 1 which is reproduced below;



"In case the Consumer is permanently disconnected and agreement is terminated with or with adjustment of security deposited with HPSEBL, the Consumer service charged and fixed charge such as demand charges etc. shall be levied for the period of temporary disconnection of supply. However, in case of permanent disconnection, the amount still

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remains outstanding after adjustment of security; the surcharge for delayed payment shall be levied up to the date of application for restoration of supply after permanent disconnection".

In view of the above discussion we are of the view that the surcharge for the late payment has rightly been levied by the Respondent Board, which the Complainant is liable to pay in terms of the provision of the Sales Manual part-1.

H – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through.
2. The Complainant purchased a unit of M/S Vardhman Roofing Private Limited at Village Kala Amb, Mauja Kheri, Tehsil Nahan, District Sirmour during 2008-09 from Bank of India under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (Second) Act 2002. The earlier unit was having 900 kW Connected Load and 900 kVA Contract Demand. The possession of the unit was taken by the Complainant on 26/10/2018.
3. During the proceedings of sale, a certificate of non-recovery was issued by the Collector, District Sirmour in December 2017 showing an amount of Rs 39,05,735/- on account of recovery of electricity/ energy bill from M/S Vardhman Roofing Private Limited. This amount was also intimated to the Complainant on 30/10/2018 by the Respondent No. 2 showing as **principle amount**. The amount was paid by the Complainant through RTGS on 01/11/2018 and also intimated to Respondent No. 2.
4. Difference of Infrastructural Development Charges paid by the previous owner and actually due was also paid by the Complainant on 24/04/2019 amounting to Rs 1,32,597/- as intimated by the Respondent No. 1 vide communication dated 30/03/2019 to Respondents No. 2. The Complainant also paid Rs 9,00,000/- towards ACD on 24/04/2019. Respondent No. 1 also intimated Respondent No. 2 to **send the case for PAC as per clause 36.2.5 of the Sales Manual, Part-1 revised up to 17/10/2017**.
5. Since the power supply was not restored, the Complainant filed a Complaint at CGRF on dated 04/06/2019 vide Complaint No. 1515/2/19/019. The Forum ordered to restore the electricity connection to the premises of the Complainant. During pendency of the Complaint and before filing the reply, the Respondents served a demand notice dated 03/07/2019 for Rs 79,88,902/- towards surcharge for delayed payment.



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6. The Forum, giving interim relief to the Complainant, had ordered to restore the electricity connection vide orders dated 21/06/2019 which was restored by the Respondents and confirmed while filing reply on dated 23/07/2019.
7. The Forum passed the orders on dated 19/02/2020 and held that the surcharge on delayed payment levied up to the date of application for restoration of supply after permanent disconnection has been rightly levied by the Respondents.
8. Feeling aggrieved, the present application has been filed by the Complainant.
9. Now the provisions contained in Sales Manual/ Supply Code/ Regulations applicable in this case are discussed below.
10. The Sales Manual clause 36.2.5 states:

36.2.5.1

"The original Consumer or some other person applies for a connection at such premises which has been permanently disconnection.

- 1) *In case the service line has not been removed or used for release of connection to other Consumers and is having sufficient capacity after commitments of loads and redundancy of 30%.*
- 2) *There is spare capacity in the feeding system for release of the load.*
- 3) *The Consumer apply up to same connection load and contract demand which were previously disconnected.*

In case all the conditions are fulfilled, the connection shall be released without issuance of PAC. However, the A & A form, test report etc. shall be submitted by the Consumer & signed by the competent authority and completion of codal formalities as new connection to be done. The load shall be got sanctioned from the competent authority before restoration of supply. However, the electrical installations and apparatus of voltage exceeding 650 volts will be required to be inspected as per regulation 43 of CEA (Measures relating to safety and Electric Supply) Regulations, 2010 and its amendments.

In case above conditions are not fulfilled, all the codal formalities for issuance of PAC, sanction of load shall be done for restoration of supply as is done for a new connection.



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36.2.5.2: Charges to be levied at the time of restoration of supply after permanent disconnection.

Following charges shall be recovered:-

- 1) Security deposit as per HPERC (Security Deposit) Regulations, 2005 and its amendments.
 - 2) Cost of service line, in case service line as per regulation 4 and 10 of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 419/2012 as amended from time to time, in case it has been removed or there is no spare capacity in the existing service line after commitment of load and redundancy of 30%
 - 3) Recovery of expenditure for supply of electricity as per Regulation 5 & 10 of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 419/2012 as amended from time to time.
 - 4) **Recovery of all outstanding amount of previous connections wherever applicable.**
11. The Complainant contention is mainly based on the regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 amended on 05/09/2018. His contention is that the Respondent Board had proposed an amendment in regulation 10 in 2018 proposing 100% rebate to the premises which have been disconnected permanently without time duration for the Consumer itself or for other Consumer who approaches for the restoration of the Supply. He further contended that it was proposed that the codal formalities for the release of the new connections as provided in the Supply Code has to be completed by the Consumer and payment of requisite charges as per regulation except for the normative IDC.
12. He further contends that the draft rules published, after receiving the proposal from HPSEB Ltd, were approved and an amendment dated 05/09/2018 was issued. The amended regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 states:

"Restoration of Supply after Permanent Disconnection.- In case the supply to a premises having permanent connection of electricity has been permanently disconnected in accordance with the provisions of the Supply Code and the original consumer or some other person applies for a connection at such premises, the distribution licensee shall provide supply within the time allowed for a new connection after recovery of expenses applicable for new connections under these Regulations :



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Provided that if the service line to such premises has not been removed or used for release of other connections and is in a good condition and also has sufficient spare capacity, after meeting the requirements of all the connections released or committed to be released through the same service line and redundancy of about 30% of the total capacity of such line, to cater to the connected load or contract demand applied for by such applicant, the cost of service line under regulation 4 shall not be recovered and the connection shall be released at the earliest subject to other conditions applicable for release of new connections: 14

Provided further that in case of such applicants, the amounts worked out under regulation 5 and other Regulations of the Commission shall be recoverable in the same manner as applicable for new connections:

Provided further that if –

(i) the application for such new connection is for a similar connected load or contract demand and supply voltage, as had been sanctioned for the original connection;

(ii) the application from the new applicant is received simultaneously or within 60 days from the date on which the original connection was permanently disconnected;

(iii) the provisions of sub-regulation (3) of regulation 5 are not attracted; and

(iv) the applicant clears all outstanding dues, if any, against the original connection as well as against all such previous connections which existed from time to time at the premises for which new connection is being sought, also including those relating to the Infrastructural Development Charges, for such original connection which was permanently disconnected;

the amount of infrastructural development charges and other costs payable by the applicant for the connected load or contract demand applied for, as per the provisions of regulation 5 shall be reduced by 90% of the amount of the infrastructural development charges worked out at the normative rates under sub-regulation (2) of regulation 5 for the connected load/ contract demand originally sanctioned or for the same applied for by the new applicant, whichever of the two is lower:

Provided further that the rebate admissible as per the third proviso to this regulation shall be applicable only on the amount of infrastructural development charges worked out at normative rates under sub-regulation (2) of regulation 5 and not on any other charges/costs as may be recoverable in accordance with the second proviso to this regulation.

"Explanations:-

- (a) The term original connection used in this regulation means the connection as it existed immediately before the permanent disconnection and the sanctioned*



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connected load/contract demand as per the latest status existing immediately prior to permanent disconnection shall be considered as the connected load/contract demand of the original connection for such purposes. However, the temporary reduction to the extent 50% of such contract demand, if any, under the provisions of the Tariff Order shall not be considered for the purpose;

(b) The condition specified under Clause (iv) of the third proviso to this regulation, being a part of package offer in such cases, shall override the general provision under the existing last sentence of sub-para 5.2.13 of the Himachal Pradesh Electricity Supply Code, 2009."

13. The Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 primarily deals with authorization to Distribution Licensee to recover such expenses as may be reasonably incurred by it in providing any electric line and the electric plant used for the purpose of giving supply of electricity as is evident from Regulation 3 and 4 of the said regulation.
14. The regulation 5 of said regulation also authorize the Distribution Licensee to recover all expenses reasonably incurred on the works related to laying of service line to the premises of the applicant as well as the cost of providing terminal equipment and other arrangements (Except the cost of meter, CT and PT) at the applicant's premises.
15. The Complainant has mainly relied on the provisions under regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 stating that nowhere it has been mentioned that the Distribution Licensee shall also recover the surcharge on the outstanding amount.
16. The Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 primarily deals with the recovery of Infrastructural Development Charges or expenses incurred by the Distribution Licensee on the service line. The contention of the Complainant that the Distribution Licensee can't recover the surcharge as per provisions of regulation 10 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 does not hold good since the regulations does not deal with the same. There are separate provisions under Himachal Pradesh Electricity Supply Code, 2009 issued by the Commission and Sales Manual for dealing with the delayed payments on restoration of supply after permanent disconnection.
17. Respondents have states a Clause 5.2.13 of the Himachal Pradesh Electricity Supply Code, 2009. This clause is not relevant to the case since the Complainant has purchased the unit under Sarfaesi Act 2002.



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18. Further, the Respondents have also relied upon Clause 36.2 of the Sales Manual specifically provisions under 36.2.2 and Clause 7.2 of the Himachal Pradesh Electricity Supply Code, 2009.

19. The Clause 36.2.2 of the Sales Manual states:

"HPSEBL shall resume supply of electricity within twenty four hours from the time the Consumer:

- (a) Makes good the default and/ or pays outstanding payment,*
- (b) Pays the prescribed amount as per relevant Schedule of Tariff, for reconnecting the supply of electricity,*
- (c) Pays the consumer service charges/ fixed charges for the period of disconnection and **additional charges for the delayed payment.***

*In case the Consumer is permanently disconnected and agreement is terminated with or without adjustment of security deposited with HPSEBL, the Consumer service charges and fixed charges such as demand charges etc. shall be levied for the period of temporary disconnection of supply. However, in case of permanent disconnection, the amount still remains outstanding after adjustment of security, **the surcharge for delayed payment shall be levied up to the date of application for restoration of supply after permanent disconnection.***

20. The additional charges for delayed payment is nothing but surcharge and the Complainant's contention that the said clause doesn't speak about the surcharge specifically does not hold good. The provisions under second paragraph of clause 36.2.2 are very much clear about surcharge to be levied up to the date of application for restoration of supply after permanent disconnection.

21. Now the Clause 7.2 of the Himachal Pradesh Electricity Supply Code, 2009 states:

"Restoration of supply of electricity. –

7.2.1 The licensee shall resume supply of electricity within twenty-four hours from the time the consumer-

- (a) makes good the default and /or pays outstanding payment,*
- (b) pays the prescribed amount as per the Tariff Order, for reconnecting the supply of electricity,*



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(c) pays the consumer service charges/ fixed charges for the period of disconnection and the **additional charges for the delayed payment**:

Provided that in case of permanent disconnection, if the electric line or plant supplying electricity to the consumer is/are removed by the licensee then the licensee will restore supply after undertaking the work(s) for providing the electric line or plant within the time specified in the case of a new connection and the consumer will deposit charges as if a new connection is being released:

Provided, further that in case of temporary disconnection, if the electric line or plant supplying electricity to the consumer is/are removed by the licensee then the licensee will restore supply after undertaking the work(s) for providing the electric line or plant within the time specified in the case of a new connection.

22. The provisions under Clause 7.2.1 (c) are also very much clear about additional charges for the delayed payments which is surcharge basically. Moreover on 30/10/2018, while intimating the outstanding amount to the Complainant, the Respondent No. 2 has shown it as the **Principal Amount**.
23. The contention of the Complainant is that the Sales Manual is not creation of a statute and is only issued in exercise of departmental function and are mere guidelines. He has also referred to (1998) 8 Supreme Court Cases 469 titled K Kuppusamy and another Vs State of T.N. and others citing the statutory rules cannot be overridden by executive orders or executive practice.
24. The provisions under Clause 36.2.2 of the Sales Manual are consistent with the provisions under Clause 7.2.1 of Himachal Pradesh Electricity Supply Code, 2009 approved by the Commission and are applicable in this instant case.
25. The provisions under regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are not applicable in this instant case since the same only deals with recovery of Infrastructural Development Charges by the Distribution Licensee. Clause 7.2.1 of Himachal Pradesh Electricity Supply Code, 2009 are not in conflict with the provisions of regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and both deals in different aspects.
26. The provisions under Clause 7.2 have further been amended by the Hon'ble Commission on dated 03/07/2020 (Published on 04/07/2020 in HP Gazette) to deal with matter related to restoration of supply of electricity for temporary and permanent disconnections separately with further amendment in Clause 7.1.9 to specifically deal





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with delayed payment surcharge wherein now the surcharge shall be levied up to date of permanent disconnection only and the same shall now be subjected to simple interest @ 12% per annum for actual number of days for which such payment remains un-recovered/ unadjusted.

27. From the provisions in Clause 7.1.9 read with Clause 7.2.1 of Himachal Pradesh Electricity Supply Code, 2009, the intention is very much clear that for cases prior to 04/07/2020 (Date of publication in HP Gazette) on delayed outstanding payment, a surcharge till the date of application for restoration of supply after permanent disconnection shall be levied and for cases after 04/07/2020, a simple interest @ 12% per annum shall be levied for actual number of days for which such payment remains unrecovered/ unadjusted.
28. The Respondents contended that the Complainant has filed a Complaint No-1515/2/20/009 before the Hon'ble CGRF which is pending adjudication, in which the Complainant had challenged the initial outstanding amount of Rs. 39,05,735/- on account of default committed by the previous owner/ occupier of the premise in paying the electricity consumption charges.
29. The Complainant contended that they have filed the said Complaint subsequent to the filling of the present representation and in that Complaint he has laid challenge to the payment charged for restoration of supply which cause of action is independent of the present cause as in the present case the Complainant has laid challenge only to the surcharge amount now claimed by the Respondents.
30. Since the matter is under litigation separately in the lower court/ Forum and yet to be decided, the matter shall be taken up only if the same is agitated in this Court at later stage.

I - Issues in question:

1. **Issue No. 1:** Whether the surcharge on the delayed outstanding payment after permanent disconnection till the date of application for restoration of supply are applicable or not?
2. **Issue No. 2:** Whether the orders passed by the Forum on dated 19/02/2020 in Complaint No. 1515/2/19/019, dated 04/06/2019 are correct or not?



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J – Findings on the Issues:

Issue No. 1:

1. As is evident from the analysis above, the surcharge on delayed outstanding payment is applicable till the date of application for restoration of supply after permanent disconnection in line with provisions contained in Clause 7.2.1 of the Himachal Pradesh Electricity Supply Code, 2009 and Clause 36.2.2 of the Sales Manual.
2. The provisions under regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are not applicable in the present case as contended by the Complainant.

Issue No. 2:

1. The orders passed by the Consumer Grievances Redressal Forum on dated 19/02/2020 in Complaint No. 1515/2/19/019, dated 04/06/2019 are correct although not in line with provisions under regulation 26 (4) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

K – Order:

1. The orders passed by the Consumer Grievances Redressal Forum on dated 19/02/2020 in Complaint No. 1515/2/19/019, dated 04/06/2019 are upheld.
2. The demand note issued by the Respondent No. 2 dated 03/07/2019 is also upheld.
3. The Respondents are hereby directed to recover the surcharge on delayed outstanding payment duly updated till 03/07/2020 in line with provisions under Clause 7.2.1 of Himachal Pradesh Electricity Supply Code, 2009 prior to amendment read with Clause 36.2.2 of Sales Manual 2017 and thereafter @ 12% simple interest in line with amended Clause 7.2.1 read with Clause 7.1.9 of Himachal Pradesh Electricity Supply Code, 2009.
4. The amount deposited by the Complainant with the Respondents up to a level of 50% during the pendency of the Complaint at CGRF and Electricity Ombudsman may also be adjusted accordingly.



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5. The Compliance be reported by the Respondents within a period of 30 days positively.
6. The Complaint filed by M/S SMSN Continental Private Limited is hereby disposed off.
7. No cost to litigation.

Issued under my hand and Seal of the Office.



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