



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 Mahamaya Infrastructure Pvt Ltd, Hotel Taj Bana, Theog, District Shimla, HP-171201
- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
 - 2. Sr Executive Engineer, Electrical Division, HPSEBL, Theog, District Shimla, HP-171201**
 - 3. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Theog, District Shimla, HP-171201**
- Respondents**

Complaint No. 47/2020, Registered on 11/11/2020
(Decided on 12/01/2021)

CORAM

Er. K.L.Gupta
HP Electricity Ombudsman

Counsel for:

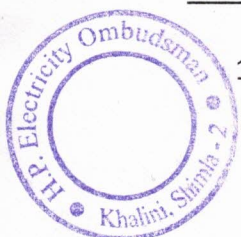
The Complainant: Sh. O.C. Sharma, Advocate
The Respondents: Sh. Anil Kumar God, Advocate

Order

The case was received and registered on 11/11/2020. The case was sent for reconciliation between parties on 11/11/2020 returnable by 26/11/2020. Since no communication was received by 26/11/2020, the case was first listed for admission hearing on 19/12/2020, later shifted to 21/12/2020 after announcement of five day week by HP Govt since 01/12/2020. The Respondents filed their reply on 10/12/2020. The Complainant chose not to file any rejoinder and instead their counsel argued the case on 21/12/2020 and orders were reserved. Additional information was sought from the Respondents by 11/01/2021 which they submitted on 01/01/2021 and 07/01/2021.

A – Brief facts of the Case:

- 1. M/S Mahamaya Infrastructure Pvt Ltd, Hotel Taj Bana, Theog, District Shimla, HP-171201 have filed an application through Sh. Kapil Verma (hereinafter referred to as 'The Complainant') under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer**



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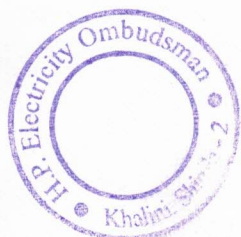


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Grievances Redressal Forum and Ombudsman) Regulations, 2013 for passing necessary orders or the directions to the Respondents to make compliance of orders dated 15/10/2020 passed by HP Electricity Ombudsman in Case No. 25/2020. Further the Complainant has requested to refer the case to Himachal Pradesh Electricity Regulatory Commission for initiating appropriate proceedings under Section 142 of Electricity Act, 2003 in case of non-compliance.

B – The Complainant's submissions:

1. The Complainant submits that the facts of the case are that he is a Private Limited Company duly incorporated under the Companies Act and is having its works at Hotel Taj, Bana, Theog, District Shimla, H.P. Further, the Complainant Company is a body corporate by the name aforesaid, having perpetual succession and common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and can by the said name sue or be sued. Shri Kapil Verma is its Authorized Representative/ Admin HR and is a competent person to file, sign and verify the present representation, applications and other pleadings on behalf of the Company. He is competent person to depose on oath as to the facts of the present representation.
2. The Complainant submits that the Respondent No. 1 is a licensee and has provided permanent electricity supply connection at 22 kV Supply voltage on 02/01/2018 having connected load of 900 kW with a Contract Demand of 900 kVA under the category Commercial supply (Two part tariff). The Respondents No. 2 and 3 are its officers and their offices are situated at Theog, District Shimla for regulating the electricity supply of Consumers and issuance of energy bills etc.
3. The Complainant submits that he applied to the Respondents for the issuance of PAC for permanent supply connection having connected load of 900 kW with a Contract Demand of 900 kVA for the proposed Five Star Hotel Project at village Mohal Janog Doyam, Tehsil Theog, District Shimla, H.P. at supply voltage of 22 kV. The Respondent Board accordingly issued PAC dated 20/06/2013 for Connected Load of 900 kW with Contract Demand of 900 kVA at 22 kV supply voltage from 66/ 22 kV Gumma Sub-Station. He was required to deposit IDC amount of Rs. 9 lacs and earnest money of Rs. 31,500/-.
4. The Complainant further submits that he could not deposit the IDC amount of Rs. 9 lacs and earnest money amounting to Rs. 31,500/- within the validity period of PAC due to some unavoidable circumstances and as such, applied for extension of demand note. The Respondents considered his request and issued PAC/ extension of demand note dated 14/06/2016 and also demanded therein the late fee of Rs. 3,78,000/- alongwith IDC charges of Rs. 9 lacs and earnest money amounting to Rs. 31,500/-. In terms of said fresh PAC dated 14/06/2016, he was also required to submit the complete case file alongwith requisite documents. He deposited the late fee charges of Rs. 3,78,000/- on 21/06/2016.



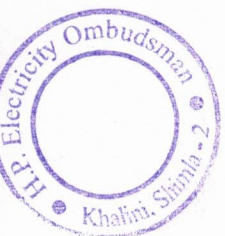
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5. The Complainant submits that the Respondents issued demand notice dated 27/07/2017 and demanded therein security deposit of Rs. 6,30,000/- and IDC amount of Rs. 7,69,069/- (Rs. 16,69,000/- (-) Rs. 9,00,000/-) totaling to Rs. 13,99,000/-. He has deposited the said amount of Rs. 13,99,000/- on 05/08/2017. He further submits that he has also deposited the estimated cost of supply line with the Respondents.
6. The Complainant submits that after substantial compliance made by him by way of deposit of IDC at normative rate for Rs. 16,69,000/- and security deposit of Rs. 6,30,000/-, the Respondents issued office order dated 24/08/2017 and thereby sanctioned permanent supply connection in his favour for Connected Load of 900 kW with Contract Demand of 900 kVA on 22 kV (HT) line. He further submitted that there is no reference in the office order dated 24/08/2017 that the Connected Load of 900 kW with Contract Demand of 900 kVA so sanctioned is under "temporary metered supply" category.
7. The Complainant submits that subsequent to the issuance of office order dated 24/08/2017 and sanction of Connected Load of 900 kW with 900 kVA Contract Demand on permanent basis, the Complainant submitted the requisite A&A form, approved wiring contractor test report accompanied by other requisite documents i.e. letter for approval of building plan, change of land use dated 19/09/2017 and letter dated 04/10/2017 issued by Assistant Town Planner, Division Town Planning Office Kasumpti, Shimla for sending duly compounded map. He also submitted to the Respondents the said duly compounded map of Hotel site and NOC to the Respondents forthwith after its receipt from the said department. He further submitted that the original NOC from TCP as submitted to the Respondents was placed on the record of Consumer file. The Respondent No. 2 herein recommended the case for sanction of 900 kW Connected Load to the Deputy Chief Engineer, (OP) Circle, HPSEBL Shimla on 09/08/2017 by sending the complete case file in triplicate. The Deputy Chief Engineer (OP) Circle Shimla accordingly sanctioned the permanent supply connection for Connected Load of 900 kW with Contract Demand of 900 kVA at 22 kV Supply voltage under the category Commercial Supply (2 part tariff).
8. The Complainant submits that the Respondents provided permanent supply connection for Connected Load of 900 kW with Contract Demand of 900 kVA under the category Commercial Supply (two part tariff) on 02/01/2018.
9. The Complainant submits that the factum of submitting the NOC from TCP by him to the Respondents is evident from the check list annexed with the A&A form.
10. The Complainant submits that the Respondents issued demand notice dated 22/08/2019 and stated therein that the AG Audit has found that Appellant failed to produce NOC from Statutory body (TCP, Panchayat or whatever name called) while applying for SCO. The



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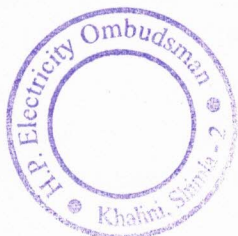


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Respondents have called upon him to deposit a sum of Rs. 17,47,128/- on account of non-compliance to the statutory provision while release of service connection. The Respondents have further added in the said demand notice that his connection will be considered temporary in future. In the aforesaid notice, he has been called upon to deposit the amount within 30 days. He obtained fresh NOC dated 05/09/2019 from TCP subsequent to receipt of demand notice dated 22/08/2019 and submitted the same to the Respondents.

11. The Complainant submits that the Respondents further issued letter dated 12/09/2019 and thereby intimated that the he has not followed the statutory provision as per the check list attached with the A&A form and has not submitted the Test report of Wiring contractor and Consumer I.D. and in absence of the same, his supply connection will be considered temporary till the codal formalities are fulfilled.
12. The Complainant submits that the Respondents issued monthly energy bill dated 12/09/2019 and demanded therein an amount of Rs. 17,47,128/- as sundry charges apart from the current charges. The Respondents have also levied the energy charges and demand charges as applicable to the temporary metered supply category in the aforesaid bill dated 12/09/2019. He further mentions that after the release of service connection and till the date of issuance of demand notice dated 22/08/2019, the Respondents have raised all the monthly energy bills by applying the tariff of commercial supply category and not the tariff applicable to temporary metered supply category.
13. The Complainant submits that he challenged the aforesaid demand notice dated 22/08/2019 and the letter and bill dated 12/09/2019 before the Ld. C.G.R.F. Shimla by filing a complaint. The Respondents filed reply to the complaint before the Ld. C.G.R.F. and the Ld. C.G.R.F. dismissed the complaint filed by the Complainant Consumer in terms of Oder dated 13.07.2020 by making the following observations :

"7. We have also perused & carefully gone through the amended provisions of Supply Code, 2009 notified by the Hon'ble HPERC on 03.12.2018. the examination of amendment reveals that in absence of NOC from concerned authorities, the licensee shall not refuse electricity connection to applicant seeking such connection. It further provides that release of connection to applicant shall be on submission of undertaking/declaration to the extent that the licensee may disconnect the electricity connection under reference, in the event of a legally binding order issued by the Statutory Authority (ies) for disconnection of supply owing to any default/non-compliance of statutory provisions. The said amendment in clear terms also specifies that however, such connection shall be regularized by the licensee only on the submissions of the sanction letter of concerned statutory authority of the area. Thus, the amendment clearly states that till the sanction letter of concerned statutory authority, no such connection shall be regularized by Licensee. This means that till submissions of required



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NOC of concerned department, the connection so released shall not be regularized and shall be treated under temporary category, as per prevalent procedure and norms of Respondents.

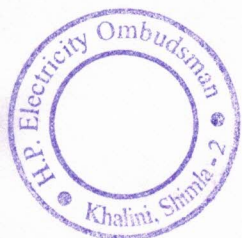
8. In the present complaint in hand, the fact is not denied that the NOC from the TCP was required to be given to regularize the connection released to the Complainant by the Licensee. The facts on the record goes on to demonstrate that the NOC Annexure C-6 was issued on 05.09.2019, in favour of the Complainant by the TCP Department H.P. and as such the connection is to be treated as regularized from the date of submission of NOC by the Complainant to the Respondent Company. Till then, in view of the amended provisions of Supply Code, 2009 referred above, the connection shall be treated under temporary category and the Auditors have also rightly pointed out and categorized it as to be covered under Temporary Connection Category.

9. We find no substance in the contention of the Complainant raised in the complaint beforehand, specifically in the light of facts on record and provisions of Supply Code, 2009 as amended, statutory requirement of NOC from concerned Authority etc. Thus, we find no illegality in the demand Notice Annexure C-2 Dated 22.08.2019, Annexure C-3 dated 12.09.2019 and C-4 12.09.2019 and issued against the Complainant by Respondent Company.

10. In view of the discussion made hereinabove, the complaint preferred before this Forum by the Complainant is found to be devoid of any substance and merits and hence dismissed. The complaint is disposed off accordingly today i.e. on 13.07.2020 in the presence of the parties at Kasumpti. The parties are left to bear their own costs".

14. The Complainant submits that feeling aggrieved and dissatisfied with the impugned order dated 13/07/2020 passed by the Ld. Forum in Complaint No. 1241/3/19/046, the Complainant assailed the same before this Hon'ble Authority. The said representation of the Complainant was registered as complaint No. 25/2020 on 11/08/2020. This Hon'ble Authority has been pleased to set-aside the Order passed by the Ld. C.G.R.F. Shimla by passing Order dated 15/10/2020. This Hon'ble Authority has been pleased to return its findings on Issue No. 3 as under :

"As is evident from the analysis done above, the orders passed by the Consumer Grievances Redressal Forum on dated 13/07/2020 in complaint No. 1241/3/19/046 dated 21/09/2019 are not in line with the requirements of PAC, sanction, other documents on record and also not in line with the provisions of the Himachal Pradesh Electricity Supply Code 2009, amended provisions vide amendment No. 3 applicable w.e.f. 05/12/2018."



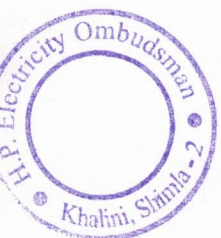
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The operative part of the Order passed by this Hon'ble Authority is reproduced as hereunder:

- 1) *"The Orders passed on dated 13/07/2020 by Consumer Grievances Redressal Forum in complaint No. 1241/3/19/046 dated 21/09/2019 are quashed and set-aside.*
 - 2) *The demand note dated 22/08/2019 issued by Respondent No. 3 is quashed and set-aside.*
 - 3) *The Respondent No. 1 is hereby advised to comply the directions issued in case No. 09/2019 titled M/s Manjholi Stone Crushers versus HPSEB Ltd. issued on 10/08/2020, which is very much relevant to the present case also, to apprise the field officers specifically the AEs/AEEs of the Operation Sub-Divisions of the relevant Rules, Regulations and tariff orders by way of regular trainings in order to defend the wrong decisions taken by Audit at the time of audit itself so as to avoid the unnecessary litigation in future.*
 - 4) *The Respondents are hereby directed to overhaul the Consumer account w.e.f. December, 2018 till June 2019 or for the period during which the Complainant has been billed under Temporary Metered Sully (TMS) category by treating as regular electricity connection under Commercial Supply Category covered under two-part tariff.*
 - 5) *The Respondents are further directed to refund the amount deposited with them by the Complainant during the pendency of his complaint at Consumer Grievances Redressal Forum and Electricity Ombudsman by adjustments in future energy bills.*
 - 6) *The Respondents are further directed to report compliance within a period of 21 days."*
15. The Complainant submits that the Respondents have failed to make compliance of order dated 15/10/2020 passed in Complaint No. 25/2020 despite the fact that the copy of the said order has duly been served upon the Respondents. The Respondents have failed to make compliance of the Order dated 15/10/2020 till date. He further mention that in utter disregard and disobedience of the order dated 15/10/2020, the Respondents have reiterated the demand as has been quashed and set-aside by this Hon'ble Authority in the monthly energy bill dated 05/11/2020 under the head arrears by way of levying surcharge thereupon and the total amount of arrears has been depicted in the bill aforesaid as Rs. 20,95,826.22 paise.
16. The Complainant submits that the Respondents have willfully, deliberately and intentionally disobeyed the order dated 15/10/2020 and are continuing to do so.
17. The Complainant submits that there is no representation by the applicant/Complainant, in respect of the same grievances, pending in any proceedings before any Court or Tribunal or Arbitrator or any other authority. That no representation was earlier made in respect of the present grievance before this Hon'ble Authority.



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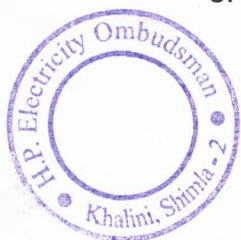
18. The Complainant submits that he is aggrieved by the wrongful, arbitrary, illegal and unjustified acts of the Respondents in not making compliance of the order dated 15/10/2020 passed in Complaint No. 25/20 by the Hon'ble H.P. Electricity Ombudsman in letter and spirit.
19. The Complainant submits that the present representation for non-compliance of Order dated 15/10/2020 is within the statutory period of limitation as the Respondents have not till date complied with the aforesaid order and are rather inclined to recover and realize the amount, the demand of which has been quashed and set-aside by this Hon'ble Authority.
20. He further submits that the Respondents may be directed to make compliance of Order dated 15/10/2020 passed in complaint No. **25/2020** by Hon'ble H.P. Electricity Ombudsman Shimla in letter and spirit by way of making refund of Rs. 8,73,564/- alongwith 15% interest thereupon from the date of each deposits till the date of actual payment to the Complainant or its adjustments in the monthly energy bills and in case of default, the case may be referred to the Hon'ble H.P.E.R.C. for initiating appropriate proceedings under Section 142 of the Electricity Act 2003, in the interest of justice.

C – The Respondents' submissions:

1. The Respondents in its reply dated 10/12/2020 submitted that after receiving the copy of the order dated 15/10/2020 passed by the Ld Ombudsman, they immediately wrote to higher authorities seeking further directions regarding implementation of the order and informed that they have decided to implement the order dated 15/10/2020 as communicated vide letter dated 08/12/2020 and sought 30 days to implement the same.

D – The Respondents' additional submissions:

1. As directed in Interim Order dated 21/12/2020 when the case was heard, they informed that they have already overhauled the account of the Consumer as per orders dated 15/10/2020.
2. As directed in Interim Order dated 21/12/2020 to provide a copy of the statement of overhauling of the account of the Complainant, the Respondents provided the same vide affidavit dated 23/12/2020, received on 01/01/2021.
3. The Respondents further submitted a statement vide e-mail dated 07/01/2021 of exact amount with surcharge which was given as credit in the energy bill of the Complainant to nullify the demand earlier raised and quashed by the Consumer Grievance Redressal Forum.



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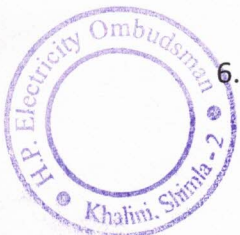


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4. They intimated that Rs 24,46,401/- (Rs 17,47,128/- original demand plus Rs 6,99,273/- surcharge thereupon) was worked out as the demand and surcharge thereon and have also submitted the energy bill issued on 07/01/2021 to the Complainant.

E - Analysis of the Complaint:

1. Since the case pertains to non-implementation of the orders of the HP Electricity Ombudsman, the case file 25/2020 have also been gone through.
2. The Complainant have submitted the present case under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being non-compliance of directions passed in orders dated 15/10/2020 by HP Electricity Ombudsman in Case No. 25/2020.
3. The case does not require to be discussed on merit since the case stands decided on 15/10/2020 and the Complainant has filed this case since the same has not been complied by the Respondents till the date of filing.
4. The orders and the specific directions passed in Case No. 25/2020 were as under:
 - 1) **The Respondents are hereby directed to overhaul the Consumer account w.e. from December 2018 till June 2019 or for the period during which the Complainant has been billed under Temporary Metered Supply {TMS} category by treating as regular electricity connection under Commercial Supply Category covered under two part tariff.**
 - 2) **The Respondents are further directed to refund the amount deposited with them by the Complainant during the pendency of his Complaint at Consumer Grievances Redressal Forum and Electricity Ombudsman by adjustments in future energy bills.**
 - 3) **The Respondents are further directed to report Compliance within a period of 21 days.**
5. The compliance period in the orders dated 15/10/2020 was 15 days as per Part-II 5) of Annexure-I of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 but for direction mentioned at Sr No. 3 above for which the compliance period was given as 21 days for overhauling of the account since December 2018 onwards till June 2019.
6. The Respondents have submitted on 10/12/2020, after the case was pending at HP Electricity Ombudsman that they will overhaul the account of the Complainant. Further during the last hearing on 21/12/2020, they confirmed that the account have been overhauled and they were



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directed to provide a statement to that effect on or before 11/01/2021 and orders were reserved.

7. The Respondents had submitted that they will implement the orders by 30/12/2020 and now through communication dated 07/01/2021 calculated a sum of Rs 24,46,401/- as the amount to be credited to the Consumer which include the amount charged from the Consumer as Rs 17,47,128/- for compliance to direction besides Rs 6,99,273/- as surcharge accumulated so far.
8. They have further intimated that the same has been nullified by giving sundry credit in energy bill issued on 07/01/2021.
9. There is no communication regarding adjustment of the 50% of the disputed amount deposited by the Complainant during pendency of his complaint at CGRF and HP Electricity Ombudsman. The Respondent Board is using SAP ISU Billing and the 50% amount deposited by the Complainant have been adjusted against the subsequent current and outstanding energy bills of the Consumer as informed by the Respondents during arguments on 21/12/2020.
10. However, the Complainant is required to be apprised of the adjustment of the 50% amount deposited by the Complainant with the Respondents.
11. Since the Respondents didn't reported compliance of orders passed on 15/10/2020 by 05/11/2020, a communication dated 06/11/2020 was sent to the Respondents to comply the same by 21/11/2020.
12. Still there was no report on Compliance of the directions passed in orders dated 15/10/2020 by 21/11/2020, the case was reported to the Hon'ble Commission on 23/11/2020 being non-compliance of directions of the HP Electricity Ombudsman under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
13. The Complainant have now prayed to issue directions to the Respondents to comply with the directions of orders passed on 15/10/2020 or send the case to the Commissions for initiating proceedings under Section 142 of the Electricity Act, 2003 in case of non-compliance.
14. From the record and submissions made by the Respondents, it is clear that they have now complied with the orders passed on dated 15/10/2020.
15. Non-compliance of the directions in orders passed on 15/10/2020 in Case No. 25/2020 titled M/S Mahamaya Infrastructure Private Ltd, Hotel Taj, Bana, Theog, District Shimla, HP-171201



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Vs HPSEB Ltd & others and filed under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the HP Electricity Ombudsman lacks jurisdiction to decide on the case which is the domain of the Himachal Pradesh Electricity Regulatory Commission as per said provisions stated below:

“Non-Compliance of the Ombudsman’s orders shall be deemed to be a violation of these regulations and shall be liable for appropriate action by the Commission under the provisions of the act.”

16. Further, the case already stands reported to the Commission on 23/11/2020 under Regulation 38 (2) (e) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being non-compliance under Regulation 37 (6) for appropriate action by the Commission under the provisions of the Act.

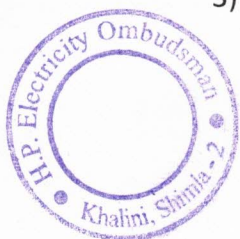
F – Issues in question:

- 1) **Issue No. 1:** There is only one issue whether the HP Electricity Ombudsman have the jurisdiction to entertain the case or not?

G – Finding on the Issue:

Issue No. 1:

- 1) From the analysis done above it is evident that the HP Electricity Ombudsman lacks jurisdiction in the present case under the provisions of Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being the domain of the Himachal Pradesh Electricity Regulatory Commission.
- 2) Further, the case already stands reported to the Hon’ble Commission on 23/11/2020 under Regulation 38 (2) (e) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being non-compliance of the directions passed in orders of the HP Electricity Ombudsman dated 15/10/2020 in Case No. 25/2020 titled M/S Mahamaya Infrastructure Private Ltd, Hotel Taj, Bana, Theog, District Shimla, HP-171201 Vs HPSEB Ltd & others.
- 3) The case has now been complied by the Respondents.



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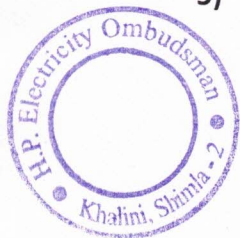


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H – Order:

- 1) The HP Electricity Ombudsman lacks jurisdiction in the present case under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
- 2) The Respondents are directed to provide statement in respect of adjustment of 50% of the amount deposited by the Complainant during pendency of his original complaint w.e. from the date of deposit till finally adjusted in the energy bills within a period of 15 days from the date of issue of this order.
- 3) The compliance be reported within a period of 21 days from the date of issue of this order.
- 4) The Complaint filed by M/S Mahamaya Infrastructure Private Ltd, Hotel Taj, Bana, Theog, District Shimla, HP-171201 is hereby disposed off.
- 5) No cost to litigation.

Given under my hand and seal of this office.



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Electricity Ombudsman