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

In the matter of:

1. **Executive Director (Personnel), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Barotiwala, District Solan, HP-174103**
3. **Sr Executive Engineer, Electrical Division, HPSEB Ltd, Baddi, District Solan, HP-173205**

- Complainant

Vs

1. **M/S Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103**
2. **M/S Rama Steel Ltd., House No. 117, Sector-8, Panchkula**

- Respondents

Review Application No. 07/2021
(In Case No. 36/2020)
(Decided on 14/07/2021)

CORAM

Er. K.L.Gupta
HP Electricity Ombudsman

Counsel for:

The Complainant: **Sh. Anil Kumar God Advocate, Sh. Kamlesh Saklani, Law Officer**
The Respondents: **Sh. Rakesh Bansal**

Order

The case was received on 20/03/2021 and registered on 25/03/2021. The Respondents were to file their reply by 08/04/2021 and the Complainant was to file rejoinder by 16/04/2021. The case was listed for admission hearing for 17/04/2021. The reply from Respondent No. 2 was received on 08/04/2021 and from Respondent No. 1 on 09/04/2021. The rejoinder was to be filed by 30/04/2021 which was filed by the Complainant on 21/06/2021 through email. The hard copy was to be submitted by 30/06/2021 and the case was listed for 03/07/2021. The case listing was postponed and rescheduled due to Covid-19 Pandemic Lockdown announced by the Govt of HP since 07/05/2021 till 30/05/2021.

H.P. Electricity Ombudsman Khalini, Shimla-2

Gupta 14/7/2021

Since the hard copies of the rejoinder with original affidavit was not submitted during hearing on 03/07/2021, the same was to be directed to be submitted on 07/07/2021 which was received on 07/07/2021. The written arguments by both parties were to be submitted by 12/07/2021. The Respondent No. 1 submitted written arguments on 07/07/2021 through email and hard copies was received on 12/07/2021. The written arguments of the Complainants were received on 12/07/2021 through e-mail. Orders were reserved on 03/07/2021 after arguments by both the parties. Hence the delay.

A – Brief facts of the case:

1. The Distribution Licensee represented by Executive Director (Personnel), Assistant Engineer, ESD Barotiwala and Sr Executive Engineer, Baddi have filed a review in case No. 36/2020 through the Sr Executive Engineer, Baddi (hereinafter referred as 'The Complainants'), orders of which were passed on 11/02/2021, titled M/S Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103 Vs HPSEB Ltd & others under Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. They have prayed for review based on discovery of new evidence as stated in their submissions.

B – The Complainants' submission:

1. The Complainants submitted that the Company had filed a Complaint which was registered as Complaint No-36/2020 and the same stood decided on 11/02/2021. They further submitted that the Company was aggrieved by the order dated 20/08/2020 passed in Complaint No. 1453/4/19/053 passed by the Ld. CGRF and thereafter filed the above titled representation under revolution 28 (1) (b) HPERC (CGRF and Ombudsman) Regulations, 2013. In the Complaint filed before Ld. CGRF the Company had prayed for refund of security deposit amount along with interest as was deposited by the proforma Respondent-4 i.e. M/s Rama Steels. The Ld. CGRF disposed of the Complaint of the Complainant with the observation that civil suit No-31/2016 is pending adjudication before the Hon'ble High Court of H.P. for recovery of Rs. 1,56,02,798/- along with interest accrued their upon.

2. The Complainants submitted that the electricity supply of M/s Rama steel Company Ltd was temporarily disconnected on 07/03/2013 as the said Company defaulted in the payment of monthly energy bills and thereafter the electricity supply of the M/s Rama Steels Ltd. was permanently disconnected on 12/09/2013. They further submitted that during the period of temporary disconnection of electricity supply, the fixed charges i.e. the demand charges leviable on the sanctioned Contract Demand continued to be raised every month in the bills till the date of PDCO. The proforma Respondent (M/S Rama Steel

H.P. Electricity Ombudsman Shimla-2

14/07/2021

Ltd) has furnished BG (Bank Guarantee) for Rs 2,21,28,000/- in favour of HPSEB. The said BG (Bank Guarantee) was encashed by the HPSEBL and the amount of said BG (Bank Guarantee) was adjusted against the outstanding dues existed as on 12/09/2013.

3. The Complainants submitted that the non-Applicant/ Complainant placed on the record in above titled representation one letter dated 18/02/2013, whereby the proforma Respondent No-4 (M/S Rama Steel Ltd) allegedly requested the HPSEBL for permanent to temporary dis- connection of electricity supply. The said letter was not filed by the non-Applicant/ Complainant with the Complaint filed before the Ld. CGRF and which amply demonstrate that the Complainant has manipulated the things or circumstances and has fabricated a fake letter dated 18/02/2013 in order to get the relief for the refund of security deposit and interest there upon from this Hon'ble Authority.

4. The Complainants submitted that the proforma Respondent M/s Rama Steel Ltd. earlier filed an appeal/ application registered as case No. 08/2013 and the said appeal /application is duly supported by an affidavit notarised by the Notary public. The proforma Respondent has very categorically stated in the said appeal/ application in para 6 that the HPSEB may be restrained from PDCO as the connection has already been disconnected temporarily. The proforma Respondent herein has solemnized, declared and affirmed the correctness of the said appeal/ application in the accompanying affidavit the said appeal/ application is supported by duly sound affidavit dated 19/09/2013 very clearly falsify the genuineness and correctness of the alleged letter dated 18/02/2013. The said appeal/ application of proforma Respondent No-4 rendered the letter dated 18/02/2013 as a fake and fabricated document, the Complainant and proforma Respondent No-4 has mislead this Hon'ble authority for seeking the relief for the refund of security deposit based on a fake and fabricated document i.e. 18/02/2013. The said application/ appeal nullify the genuineness and correctness of letter dated 18/02/2013. The appeal/ Application filed by the proforma Respondent (M/s Rama steels Ltd.) was registered as Case No, 08/2013 by this Hon'ble Authority and the same was disposed off on 10/01/2014 as non-est. The copies of Application/ Appeal, affidavit, notices and order dated 10/01/2014 are annexed.

5. The Complainants further submitted that letter dated 18/02/2013 is not even part of record of Consumer case file in the concerned office of the Applicant/ Respondent and further that the said letter does not bear the signature of AEE electrical sub division Barotiwala and does not contain the diary No of the sub-division. The proforma Respondent appear to have connived with the concerned sub-division for affixing the rubber stamp on the letter dated 18/02/2013 and have made available the same to the Complainant Company in order to succeed the representation 36/2020.

H.P. Electricity Ombudsman • Khalini, Shimla-2 •

14/07/2021

6. The Complainants submitted that the existence of letter 18/02/2013 is highly suspicious due to the reason that proforma Respondents No-4 has not written even a single word for overhauling its account by the HPSEB and for non-liquidation of bank guarantee. Further the proforma Respondent No.4 never wrote any letter to the HPSEB for the refund of security deposited amount or for discharge of BG on 18/02/2013 or immediately thereafter. The proforma Respondent did not write any letter to HPSEB for refund of security deposit amount after 12/09/2013 when the supply was permanently disconnected, the said act clearly demonstrate that no claim for refund of security amount survived after PDCO.

7. The Complainants submitted that the aforesaid appeal/ application, Notices and copy of order dated 10/01/2014 was not in possession of concerned electrical sub-division Barotiwala as such cannot be provided or placed on record of Complaint 36/2020. The Applicants have now carried out through search in the office of Sr Executive Engineer Baddi and Head office for locating the aforesaid annexure after the passing of order dated 11/02/2021 and have discovered the same. The said documents are material and important piece of evidence and would be having bearing on the order dated 11/02/2021 passed by the Hon'ble authority in case No. 36/2020. The said document would assist this Hon'ble authority to pass an effective and judicious order by way of making review of order earlier passed on 11/02/2021.

8. The Complainant submitted that in the right and entitlement qua the security deposit amount was not specifically transferred in form of HPFC by M/s Rama Steel Ltd. at the time of taking over of possession of assets of the Company. When the right and entitlement over the security amount was not transferred by M/s Rama Steel Ltd in the favour of HPFC, in that eventuality the HDFC was not subsequently transfer such right or entitlement in favour of Complainant herein and this material legal aspect of the matter has also not been appreciated by this Hon'ble authority while passing order dated 11/02/2021.

9. The Complainant submitted that the Applicant could not produce the copy of true and extract statement of accounts of the proforma Respondent in the Complaint No. 36/2020 as the same was with the Counsel engaged in the civil suit for the recovery file in the Hon'ble High Court of H.P. the copy of the same also being produced presently as Annexure.

10. The Complainant further submitted that the present application is with limitation period limitation as copy of the order dated 11/02/2021 was received in the office on 20/03/2021 and from the dated of receiving the order the present review application filed within 30 days.

H.P. Electricity Ombudsman Khalini, Shimla

14/07/2021

11. The Complainant further prayed that the present application for review of order dated 11/02/2021 passed in Complaint No. 36/2020 may kindly be allowed with facts and circumstances and material evidence discovered in the light of justice.

C – The Respondents' submissions:

Respondent No. 1:

1. The Respondents submitted that the Complainant/ Applicant has not approached the Hon'ble Ombudsman within the time frame allowed for the review, which is 30 days of the order as per Regulation 37 (8). The review application has been filed by the Complainant on 20/03/2021, which was registered on 25/03/2021 against the orders passed by the Ld. Ombudsman on 11/02/2021. The review has been filed after the lapse of 30 days and is not maintainable. The Regulation 37 (8) does not empower the Hon'ble Ombudsman to entertain the review application after the lapse of 30 days to extend the period beyond thirty days. The delay in filing is not condonable as per the said provision of the amended Regulation, which is reproduced below:

   "37 (8) [1]("The Ombudsman, either on its own motion or on an application moved, within 30 days of the order, by any of the parties to the original proceedings, may, after affording an opportunity of being heard, review its order on-")[1 Substituted]

   (i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;

   (ii) on account of some mistake or error apparent from the face of record;

   (iii) for any other sufficient reasons.

   [1]("(9) The Ombudsman shall, within 30 days from the date of receipt of an application under sub-regulation (8) of this regulation, accept or reject such application.")[1 Inserted]

   The regulation is very clear and leaves no scope of extension of time. The Complainants have lost their right to file review.

2. The Respondents submitted that the Complainants/ review Applicants is estopped to file the present review by their own acts and deeds. The stand taken by the Complainant is inconsistent with their submissions earlier in their submissions before the Hon'ble Ombudsman in the proceedings in Case No. 36 of 2020.

3. The Respondents submitted further that the orders passed by the Ld. Ombudsman are sustainable in the eyes of law.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

4. The Respondents submitted that the Applicants, encashed the bank guarantee at much earlier date that the issuance of PDCO of 12/09/2013. The Applicants had actually no right to continue the billing after date of the liquidation of the bank guarantee. The security furnished by a Consumer has to be adjusted in the final bill issued to him as per provisions of the Himachal Pradesh Electricity Supply Code, 2009.

5. The Respondents submitted that the allegation of the Applicant is beyond imagination to the extent the letter dated 18/02/2013 was fake and fabricated. M/s Shri Rama Steels had submitted duly notarized letter dated 18/02/2013 under the cover of affidavit during the proceedings before the Ld. Ombudsman, which was taken on record. Merely stating that the letter was fake is beyond imagination without any proof of the same. This is not a Forum where the genuineness of a document can be challenged, whereas the Ld. Ombudsman has passed the directions in Case No. 36 of 2020 relying on the evidence produced on record.

6. The Respondents submitted that sufficient opportunity was given to the Applicants to examine the record specifically in context of the letter dated 18/02/2013 in question. The Ld. Ombudsman in the interim orders passed on 21/12/2020 in Case No. 36 of 2020 has specifically sought additional submissions particularly on some documents, out of which the letter in question was also a part. After the submissions, the matter has been argued at length and leaves no scope of revisiting the same.

   The final orders passed by the Ld. Ombudsman, anyway are not based on the letter dated 18/02/2013, the genuineness of which is in dispute in the present review application. The Ombudsman has relied and based the decision in the case No. 36 of 2020 on the basis of the statement of account furnished by the review Applicants to the Himachal Pradesh Financial Corporation, who executed the sale deed with the knowledge of that statement only. The HPFC had also intimated the review Applicants to mark lien on the balance surplus amount available with HPSEBL.

   The Respondents submitted that it is also incorrect to say that the said letter dated 18/02/2013 was not produced before the CGRF during proceedings. The Respondents/ non-Applicants in this review petition had also produced the said letter as enclosure to the written submissions dated 17/08/2020 as Annexure C-8.

7. The Respondents submitted that the letter dated 18/02/2013 is fake and fabricated document and it is also the matter of record that the matter which the Applicant has produced on record was disputed in the month of December, 2012, even before the TDCO was issued. The Consumer M/s Shri Rama Steels Ltd. had further carried on the dispute for appeal before the Electricity Ombudsman. The appeal of Shri Rama Steels before the Ombudsman was based on the premises already set out in the Complaint filed before the CGRF in 2012. The TDCO and the permanent disconnection etc., were

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

followed afterwards. The prayer for staying permanent disconnection cannot be linked with the present matter. The appeal was filed on 19/09/2013 whereas the PDCO already stood issued on 12/09/2013. Shri Rama Steels tried to obtain stay against the permanent disconnection which was not in their knowledge that it was already carried out on 12/09/2013. The PDCO being merely a paperwork as the supply already stood disconnected, would not have come to the immediate notice of Shri Rama Steels Ltd. However, M/s Rama Steels Ltd. on the other hand, since the Applicants had taken no action on the letter dated 18/02/2013 that request stood there as matter of record. There is no fresh evidence as such to prove that the letter dated 18/02/2013 was not submitted.

8. The Respondents submitted that the Applicants are trying to state as if they diary all the correspondence received by them. It is a regular practice even today that the letters are received without creating the diary record of the same. The Respondents submitted that the letter dated 16/04/2015 also does not contain any diary number, but the same has not been contested by the Applicant for its genuineness. If the Hon'ble Ombudsman allows the Respondent/ non-Applicant can produce hundreds of letters received by the Applicants from various Consumers, and which do not bear a diary number, but has been stamped and signature. The Respondents further submitted that even today the letters are received by other officers and clerks also, who simply acknowledge the letters received from Consumers.

9. The Respondents submitted that the review is not maintainable to justify the suspicions of the Applicant. The letter of the Respondent Company/ non-Applicant is well explained in the letter dated 16/04/2015, which is already on record. The Applicants are trying to make a case for review, without any substantial evidence, which is relevant to the issues raised in the Case No. 36 of 2016.

10. The Respondents submitted that how the annexures to the application have been obtained from the offices is not of concern in the matter and does not justify the review. Since the orders passed by Ld. Ombudsman are not based on the letter dated 18/02/2013, there is no case for review at all.

11. The Respondents denied the submissions of the Complainant and stated that as the same if eligible was to be taken in the time of original proceedings and the entire proceedings cannot be allowed to carried out again in the matter.

12. The Respondents again denied and stated that the said copy of account was already produced in earlier submissions of the Applicant before the CGRF and the Hon'ble Ombudsman and there is nothing new in the statement attached now.

H.P. Electricity Ombudsman Khalini Shimla-2

14/07/2024

13. The Respondents further prayed to reject the review application on maintainability and merits as no substantial new evidence has been provided in the review application. The Applicant's intentions are clear so as to misguide the Hon'ble Ombudsman and lead him to believe that the letter dated 18/02/2013 was fake and fabricated without any substantial evidence.

Respondent No. 2:

1. The Respondents submits that no notice was given to him / Non-Applicants in advance regarding the adjustment of security amount and no final bill was issued. Whereas the Applicant continued to raise bills up to 12/09/2013 in contravention of the applicable rules and regulations. The provisions of Supply Code, 2009 provides that after the issuance of final bill, the licensee shall have no right to recover any other dues thereafter. The dues that they are alleging that are still outstanding to be recovered from him / non-Applicant are superfluous and without any justification. The time of adjustment/ realization in all justification has to be taken as date of final bill/ date of PDCO, by whatever term it may be called by the Applicants under the provisions of the regulations.

2. The Respondents submits that the Applicants, encashed the bank guarantee at much earlier date that the issuance of PDCO of 12/09/2013. The Applicants had actually no right to continue the billing after date of the liquidation of the bank guarantee. The security furnished by a Consumer has to be adjusted in the final bill issued to him as per provisions of the Himachal Pradesh Electricity Supply Code, 2009.

3. The Respondents submits that the allegation of the Applicant is false that the letter dated 18/02/2013 is fake and fabricated. He has already submitted an affidavit in this regard and also have submitted the notarized copy of the letter in question. Had the Applicant acted on the request at that time and if they would have issued correct bills, our unit would not have gone sick at all.

4. The Respondents further submits that It is a matter of record that a Complaint was submitted to the Consumer Grievance Redressal Forum to address the issues of incorrect billing in respect of peak load violation charge and delay reduction of Contract Demand, which was much before the temporary disconnection of the unit. The matter was further appealed before the Electricity Ombudsman, who refused to entertain the same due to non-deposit of pre-requisite amount of 50%, that was required to be deposited. He did not have resources to comply with the same and hence the appeal was disposed as non-est. He further stated that even if the prayer in the appellant had appealed for relief in terms of staying the permanent disconnection, of which he was not aware of, cannot be considered as evidence to prove the non-genuineness of the letter dated 18/02/2013. The Applicants chose not to take any action on the request dated 18/02/2013 and continued to raise the bills, till the time, when the financial position of the unit further

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

deteriorated and take over proceedings were started by HPFC because of default in loans.

5. The Respondents submits that the Applicants are trying to state as if they diary all the correspondence received by them. It was a regular practice that the letters were received by officers without any diary numbers on such letters. The contention of the Applicant is baseless and it is very easy to prove that the registering of the correspondence in the diary records, was taken very casually and selectively in those years.

6. The Respondents denied as in this application he never would have wanted the refund of security and it was the duty of the Applicants under the HPERC (Security Deposit) Regulations, 2005, to refund the balance amount of security after the adjustment of the same in final bill, within 30 days, which was due in the year 2013. The statement given by the Applicants to HPFC is a clear indication to this effect. But, they, as stated in the review application, somehow continued to add dues and finally filed a civil suit before the Hon'ble High Court of HP, instead of refunding the balance amount to the undersigned Respondent or to HPFC.

7. The Respondents submits that the Complaint and appeal before the Ombudsman was regarding the refund excess billed amount and it does not in any manner dilutes the claim on security deposit retained by the Applicants illegally for so many years. The evidence in question does not change anything as was decided in the Case No. 36 of 2020 by the Ld. Ombudsman.

8. The Respondents denied the submissions of the Applicant as HPFC had taken over entire assets of the Company under the powers vested with them under the loan agreements, which included the assets taken the project cost and even other such assets which were financed or not financed by them. That is why the rights on security automatically got transferred to HPFC and the undersigned stopped following up the matter of security refund as the rights were with HPFC.

9. The Respondents denied and stated that the statement of account provided by the Applicant is hopeless and cannot be understood by him in it's present form.

10. The Respondents thus prayed to reject the application as the same has been misconceived and based on suspicions and false statements on their part.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

D – The Complainant's additional submission through rejoinder:

1. The Complainants submitted that present application is within limitation period as copy of the order dated 11/02/2021 was received in the office on 20/03/2021 and from the dated of receiving the order the present review application filed within 30 days.

2. The Complainants submitted that the Respondent/ Complainant mislead this Ld. Authority by concealing the facts.

3. The Complainants submitted that the due to non-payment of bill, the petitioner temporarily disconnected the electricity connection of M/s Shri Rama Steel Ltd., on 07/03/2013, as per rules. M/s Shri Rama Steel Ltd. failed to make the payment of outstanding demands, payable by it to the petitioner and, hence, the petitioner was constrained to permanently disconnect the connection of M/s Shri Rama Steel Ltd, on 12/09/2013, in accordance with the rules. The temporary disconnection of the electricity connection of M/s Shri Rama Steel Ltd., the periodical bills were generated and supplied to M/s Shri Rama Steel Ltd. Further that M/s Shri Rama Steel Ltd., at the time of applying for electricity connection had pledged a security in the sum of Rs. 2,21,28,000/-, in the shape of bank guarantee in favour of the petitioner. That M/s Shri Rama Steel Ltd. firstly defaulted in payment of bill, dated 05/02/2013 issued by the petitioners for the month of January, 2013 and thereafter, continued to default in paying all subsequent bills, raised against its account till the permanent disconnection was effected. The intention of M/s Shri Rama Steel Ltd. is mala-fide and has caused heavy financial loss to the petitioners. After deducting the amount of Rs. 2,21,28,000/-, from security deposit of M/s Shri Rama Steel Ltd. during 04/2015, the account of M/s Rama steel was overhauled and after overhauling a sum of Rs. 1,52,33,741/- was required to be paid by M/s Rama Steel.

4. The Complainants submitted that the Respondents have tried to mislead this Hon'ble Authority and as well as Ld. CGRF by not producing letter dated-18/02/2013 with its Complaint earlier. The said letter was not filed by the non-Applicant/ Complainant with the Complaint filed before the Ld. CGRF and which amply demonstrate that the Complainant has manipulated the things or circumstances and has fabricated a fake letter dated 18/02/2013 in order to get the relief for the refund of security deposit and interest there upon from this Hon'ble Authority.

   Moreover, Respondent No. 2 i.e M/s Rama Steel Ltd. has filled an petition bearing petition No. 98/2013 before the Hon'ble Himachal Pradesh Electricity Regulatory Commission Shimla, wherein the Respondent No. 4 i.e M/s Rama Steel Stated that "*the Respondent Board has not accepted the request of Applicant (M/s Rama Steel) dated 08/03/2013 for reduction of the Contract Demand within statutory period of 30 days*"

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

which shows that Respondent No. 2 never want the electricity supply of his premises be disconnected permanently.

Furthermore, the Respondent No. 2 i.e M/s Rama Steel Ltd. has filled as appeal bearing case No. 08 of 2013 on dated 19/09/2013, before the ld. Electricity Ombudsman, where in the Respondent No. 2 graciously prayed the ld. Ombudsman that Respondent Board be restrained from PDCO. Furthermore, they submitted that the appeal for **staying recovery and permanent disconnection of the connection** has been admitted by the ld. Electricity Ombudsman vide notice 23/09/2013.

5. The Complainants reasserted and re-affirmed the contents of the petition and further submitted that letter dated 18/02/2013 is not even part of record of Consumer case file in the concerned office of the Applicant / Respondent and further that the said letter does not bear the signature of AEE electrical sub division Barotiwala and does not contain the diary No. of the sub-division. The proforma Respondent appear to have connived with the concerned sub-division for affixing the rubber stamp on the letter dated 18/02/2013 and have made available the same to the Complainant Company in order to succeed the representation 36/2020.

6. The Complainants submitted that the Respondent had mislead this Hon'ble Authority by producing fake letter. They further submitted that this Hon'ble Authority ignored the fact & documentary proof provided by the Applicant/ Respondent Board in additional submission regarding forged document has been given by the Complainant to get the relief. They submitted that the in the right and entitlement qua the security deposit amount was not specifically transferred in form of HPFC by M/s Rama Steel Ltd. at the time of taking over of possession of assets of the Company. When the right and entitlement over the security amount was not transferred by M/s Rama Steel Ltd in the favour of HPFC, in that eventuality the HPFC was not subsequently transfer such right or entitlement in favour of Complainant herein and this material legal aspect of the matter has also not been appreciated by this Hon'ble authority while passing order dated 11/02/2021. They submitted that, therefore the order passed by this Hon'ble Authority needs to be reviewed.

7. The Complainants thus prayed that the present application for review of order dated 11/02/2021 passed in Complaint No. 36/2020 may kindly be allowed with facts and circumstances and material evidence discovered in the light of justice.

E – The Complainant's written arguments:

1. The Complainants submitted that the Review Application came up for hearing on 03/07/2021 and on the said date of hearing, the ld. Ombudsman heard the arguments

14/07/2021

and it was directed to file the written argument in support of the case. Hence, the applicant/HPSEBL craves to file written arguments as under:

2. The Complainants submitted that at the very outset, for the sake of brevity, the entire facts leading to the case are not herein reproduced and the pleadings of the Applicants/ Respondents may kindly be taken as part and parcel of present written arguments.

3. The Complainants submitted that material facts leading to filing the Complaint before the ld Consumer Grievances Redressal forum are *"To refund of the security deposit of M/s Rama Steel Industries Pvt. Ltd."* They submitted that as per Section 47 of the Electricity Act, 2003 read with the HPERC (Security Deposits) Regulations, 2005, any Consumer who desires to the take supply, he shall be liable to deposit security. Regulation 8 of the Ibid regulations, contains the refund of the security deposit pursuant to the termination of the agreement for supply of electricity, after making adjustments for the amounts outstanding from the Consumer. They submitted that after complying with the mandatory provisions of the security deposit Regulations read with the provisions of the Supply Code, 2009 covering the field, the account of the then Consumer i.e. Rama Steel was overhauled and sum of the Rs 1,52,33,741/- was required to be paid by the M/S Rama Steel to HPSEBL. Hence, there is no question of the any refund of security deposit of M/S Rama Steel.

JURISDICTION OF THE LD. OMBUDSMAN

4. The Complainants submitted that the Electricity Act, 2003 is a complete code itself wherein under Section 181 of the Act state Commission is empowered to issue/notify the regulation on the various heads hence, in pursuance to the power conferred upon the HPERC under Section 181 of the Act, HPERC (CGRF & Ombudsman) Regulations, 2013 were framed which contains the procedure for redressal of the grievances of the Consumers. The moot controversy involve in the present matter is the refund of the security amount of M/s Rama Steel Industries Pvt. Ltd. to the M/s Prime Steel Ltd. on the basis of the sale deed dated 07/03/2019 executed in between HPFC and M/s Prime Steel. Since, the issue of the sale deed is involved in the present *lis*, which is purely civil in a nature, the ld. Ombudsman does not have jurisdiction to adjudicate the same. However, it is added that the terms of the sale deed dated 07/03/2019 are not applicable upon the applicant/ HPSEBL reason being that the said sale deed did not sign by the HPSEBL.

PERMANENT DISCONNECTION OF M/S RAMA STEEL

5. The Complainants submitted that without prejudice to the submission herein above, the electricity connection of M/s Rama Steel was permanently disconnected on

H.P. Electricity Ombudsman Khalini, Shimla

14/07/2021

12/09/2013 on account of the non-payment of the electricity dues which are statutory in a nature. After the permanent disconnection, the account of the M/s Rama Steel was overhauled in terms of the provisions of the Supply Code, 2009 and the Bank Guarantee amounting to Rs. 2,21,28000/- was en-cashed by the HPSEBL and the amount of said BG was adjusted against the outstanding dues existed as on 12/09/2013. Further, after the adjustment of BG, outstanding dues of M/s Rama Steel were worked out and reconciled according. The ld. Ombudsman may very kindly take the note of the material fact that said reconciled statement was dully signed by Director of M/s Rama Steel which explicitly demonstrates that it is the Consumer who was liable to pay outstanding dues to the HPSEBL.

6. The Complainants further submitted that it is settled position of law that electricity dues are statutory in nature and keeping in view the said dues payable to the HPSEBL by the M/s Rama Steel, HPSEBL adopted the recourse for recovery amounting to Rs. 1,94,99,188/- against the defaulting Consumer i.e. M/s Rama Steel and in sequel to this, a civil suit bearing No. 31/2016 was instituted by the HPSEBL against M/s Rama Steel before the Hon'ble High Court of HP which is pending adjudication. Hence, the ld ombudsman may very kindly take notice of this material fact and the order dated 11/02/2021 in case No. 36/2020 is liable to be reviewed.

APPLICABILITY OF TERMS OF SALE DEED DATED 07-03-2019 EXECUTED IN BETWEEN HPFC AND M/S PRIME STEEL

7. The Complainants submitted that without prejudice to the submissions made herein above, since the sale deed was executed in between HPFC and M/S Prime Steel Industries Ltd, its terms and conditions are not applicable upon the HPSEBL reason being that sale deed dated 07/03/2019 was not signed by the HPSEBL. The reliance of the ld Ombudsman on the alleged sale deed is totally misplaced, unfounded and against the law. The issue as to whether the terms of the agreement entered in between the two parties are applicable to third party who did not sign the agreement is no more *res integra*, and in the catena of the judgments of the Hon'ble Apex Court it was held that the terms of the agreement cannot be enforced upon the third party whose interests are detrimental by virtue of the agreement. Hence, sale deed is not at all applicable to the HPSEBL.

8. They further submitted that as per the provision of the Contract Act, 1872, if as agreement is detrimental to the rights/ interest of the party who has not signed the agreement, the terms and conditions of the said agreement cannot be enforced upon him. However, if the terms are in favour of the third party, who did not sign the agreement, then said terms and conditions which are not detrimental to the interest of the third party are applicable. However, in the case in hand, by virtue of the sale deed

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

dated 07/03/2019, security amount of M/S Rama Steel was agreed in between the parties to the agreement i.e. HPFC and M/S Prime Steel Industries, that the M/S Prime steel will have the right. But M/S Prime steel has miserably failed to understand that if any surplus of M/S Rama Steel was there to refund by the HPSEBL, then what was the need to institute the recovery suit before the Hon'ble High Court of HP. They submitted that since there was no surplus amount of security deposit of M/S Rama Steel with HPSEBL, the Complaint filed by the complainant is liable to be dismissed out-rightly. Details submissions have already been given in the pleadings of the HPSEBL in case No 36/2020 and same may be taken as part and parcel of these written arguments.

9. Reliance placed on judgments on the doctrine of Privity of contract:

Jamna Das versus ram Avtar (1911) ILR 34 ALL 63
M.C Chako Versus State Bank of Tranvancore (AIR 1969 SC 504)

"It must, therefore, be taken as well settled that except in the case of a beneficiary under a trust' or under a family arrangement' no right may be enforced by a person eho is not a party to the contract."

FCI versus DR Krishnamurthy (1987) 2 Mad LJ 53

Hence, in view of the settled position of law, the terms of sale deed are explicitly detrimental to the interest of the HPSEBL, who is third party to the agreement, (not signed the sale deed), hence, M/S Prime Steel cannot rely upon the alleged sale deed dated 07/03/2019 as executed in between HPFC and the M/S Prime Steel Industries Pvt Ltd.

RELIANCE ON LETTER DATED 18/02/2013 BY M/S PRIME STEEL

10. The Complainants submitted that without prejudice to the submissions made above, ld Ombudsman may kindly take the note to the fact that M/S Rama steel after the temporarily disconnection, filed case bearing No 08 of 2013 by stating categorically therein that HPSEBL may be restrained to take action w.r.t. permanent disconnection of the supply. The ld ombudsman disposed that representation with remarks of *non-est* vide order dated 10/01/2014. Hence, the reliance of M/S Prime Steel on letter dated 18/02/2013 is totally misplaced. They submitted that letter *ibid* was not even the part of the record of the Consumer file of the concerned office of the HPSEBL and this ld Ombudsman may not put reliance on this fake and fabricated document. They further submitted that M/S Sri Rama Steel had preferred a petition bearing No 98 of 2013 before the ld HPERC under section 142 of the Electricity Act, 2003 contending therein inter alia that he has already requested the HPSEBL to adjust the dues against the

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

security deposit amounting to Rs 2,12,28,000/- lying with the HPSEBL. The ld HPERC disposed of the said petition on 02/12/2013 by following order, operating part of which is reproduced as under:

"the petitioner still asserts that the revised bills do not depict the correct position and solicits for further instructions to the respondent Board to settle the remaining part of the dispute.

In response the respondent Board submits that the part of the disputes, which remains to settled, is purely a billing dispute and as such does not fall within the purview of this commission. However, the respondent Board is still ready to sit with the petitioner to settle the difference in calculations, if any.

In light of the above submissions made on behalf of the respondent Board, the case is closed with the instructions to the petitioner to report to the Executive Engineer Baddi to sort out the difference in calculations, if any."

Hence, pursuance to the directions of the Hon'ble Commission, adjustments were made and it was M/S Sri Rama Steel who had to pay the outstanding amount of the electricity dues to HPSEBL.

REFUND OF SECURITY DEPOSIT ON THE TERMINATION OF AGREEMENT

11. The Complainants submitted that Regulation 8 of the Security (Deposit) Regulations, 2005 provides for the refund of security deposit which inter alia reads as under:

    "8. *Refund of security deposit. (1) where an agreement for supply of electricity is terminated as per the terms and conditions of supply, the licensee shall be required to refund the security deposit if any, any after making adjustments for the amounts outstanding form the Consumer to the licensee, within one month of the effective date of termination of the agreement:*

    Provided that if such refund is delayed beyond the period of one month as specified above, the licensee shall pay simple interest on such deposit @12% per annum from the effective date of termination of the agreement without prejudice to other rights of and remedies available to the Consumer."

12. The Complainants submitted that in the case in hand, on the termination of the agreement pursuance to the permanent disconnection of the supply to M/S Rama Steel on 12/09/2013, as stated in the para supra, after making adjustments of the security deposit Rs. 2,21,28,000/- (Bank Guarantee) for the amount outstanding from M/S Rama

H.P. Electricity Ombudsman

14/07/2021

Steel to the HPSEBL, further, outstanding was remained payable by M/S Rama Steel to HPSEBL, hence, there was no question of the refund of the security deposit.

13. The Complainants submitted that keeping in view the submission made herein above, and the pleadings of the review Applicants/ Respondents coupled with the settled position of law, it is prayed that the order dated 11/02/2021 in Case No 36 of 2020 wherein the present Applicants/ Respondents have been directed to refund the balance security amount of Rs. 1,56,02,798/- calculated after liquidation of Bank Guarantee for Rs. 2,21,28,000/-, may very kindly be reviewed and the representation preferred by the complainant i.e. M/S Prime Steel Industries ltd may kindly be dismissed in the interest of justice and fair play.

F – The Respondents' (Respondent No. 1) written arguments:

1. The Respondents submits that the Complainant/ Applicant has not approached the Hon'ble Ombudsman within the time frame allowed for the review, which is 30 days of the order as per Regulation 37 (8). The review application has been filed by the Complainant on 20/03/2021, which was registered on 25/03/2021 against the orders passed by the Ld. Ombudsman on 11/02/2021. The review has been filed after the lapse of 30 days and is not maintainable. The Regulation 37 (8) does not empower the Hon'ble Ombudsman to entertain the review application after the lapse of 30 days to extend the period beyond thirty days. The delay in filing is not condonable as per the said provision of the amended Regulation, which is reproduced below:

   "37 (8) [1]("The Ombudsman, either on its own motion or on an application moved, within 30 days of the order, by any of the parties to the original proceedings, may, after affording an opportunity of being heard, review its order on-")[1 Substituted]

   (i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;

   (ii) on account of some mistake or error apparent from the face of record;

   (iii) for any other sufficient reasons.

   [1]("(9) The Ombudsman shall, within 30 days from the date of receipt of an application under sub-regulation (8) of this regulation, accept or reject such application.")[1 Inserted]

   The regulation is very clear and leaves no scope of extension of time. The Complainants have lost their right to file review.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

2. The Respondents submits that the review application has been filed by the Applicant under clause 8 (i) of regulation 37 of the HPERC (CGRF and Ombudsman) Regulations, 2013, which is reproduced below:

   "……
   (i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;
   ……"

3. The verbal arguments led by the Counsels of the Applicant were totally out of context of the review application, which were not relevant to the new evidence/ documents attached to the review application and therefore deserve to be rejected. The review Applicant is transgressing the scope of review application and is trying to plead all over again on all the contentions, rather than limiting themselves to issues raised in the review application. The Applicant has submitted on record in review the documents as new piece of evidence, but in the arguments led by the Counsel of the Applicant there was no mention of these new documents appended in the review application in the entire pleadings / arguments held on 03/07/2021 before the Hon'ble Ombudsman.

4. The Respondents submits that the Complainants/ review Applicants is estopped to file the present review by their own acts and deeds. The stand taken by the Complainant is inconsistent with their submissions earlier in their submissions before the Hon'ble Ombudsman in the proceedings in Case No. 36 of 2020. The Applicant is trying to camouflage on the pretext of review, and is leading arguments on the issues which have been contested by them earlier and the new evidence does not have any further impact on such issues.

5. The Respondents submits that the orders passed by the Ld. Ombudsman are sustainable in the eyes of law.

6. The Respondents submits that the Counsel of the Applicant did not argue during the proceedings on 03/07/2021 about the genuineness of the letter dated 18/02/2013, the Respondents maintain the submissions made in the reply on this issue. The Applicant did not even deny the contentions made by the Respondent in the reply, which means that they have nothing to prove the non-genuineness of letter in question and the submissions made in the review application do not hold good.

7. The Respondents submits that the Counsels of the review Applicant did not prove or discuss the issue of the documents pertaining to a case before the Ombudsman in the year 2013 filed by the previous occupier of the premises M/s Rama Steels Limited. In

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

view of this, the argument for review on this account does not hold good as has been submitted by the Applicant in the review application.

Arguments on verbal submissions of the Applicant on 03/07/2021

8. The Respondents submitted that although the submissions made by the Applicant were out of the scope for consideration in the present review, the Respondent is ceased on the issues and the judgements cited during the course of the proceedings, which are as under:

   The Respondents submits that the Applicant stated during the course of the verbal arguments that they had fully complied with the provisions of the Supply Code, 2009, stating the procedure followed for TDCO and PDCO of the power supply of M/s Rama Steels Ltd. They further mention that the date of TDCO has been mentioned as 07/03/2013, whereas the PDCO date has been mentioned as 12/09/2013.

9. While the specific provisions of the Supply Code, 2009, in the form it existed in 2013 are:

   "7.1.2 Where a Consumer fails to deposit, the billed amount or any sum other than the charge for electricity due from him, with the licensee by the due date mentioned in the bill, the licensee may, after giving not less than fifteen days clear notice in writing to such Consumer and without prejudice to his other rights to recover such amount, disconnect supply to the Consumer temporarily and for that purpose disconnect any electric supply line or other works being the property of such a licensee. The authorized official of the licensee shall ensure that all the cases pertaining to default of payment(s) / temporary disconnections are monitored regularly and where default in payment(s) is continued for a period of six months, from the date of the payment first became due, the supply may be disconnected permanently:

   Provided that the supply of electricity shall not be disconnected-
   (i) if a Consumer makes payment under protest as per Paras 5.2.14, 5.6.2 and 5.7 of this Code;

   (ii) if any sum is not recoverable as per para 5.7 of this Code.

10. They further submitted that even though the matter of the bills which were under the dispute before CGRF in Complaint No. 1453/4/12/035 and non-payment of these disputed bills could not have been made the cause for disconnecting the supply of M/s Rama Steels Ltd as per provisions of the Supply Code but the Applicants still disconnected the supply of the Consumer executing the TDCO and PDCO contravening the provisions of the Supply Code, 2009.

    " 7.1.9 For all cases of temporary and permanent disconnection(s)-

H.P. Electricity Ombudsman Kholini, Shimla-2

14/07/2021

a) *if dues are not paid by the Consumer, the delayed payment surcharge, as per Tariff Order shall be levied up to the date of permanent disconnection, and*

b) *the security deposit's amount shall be adjusted in the final bill."*

11. The Respondents further submits that the Applicants in the present case realised the security and encashed the bank guarantee much before the issuance of the final bill, which is required to be issued after the permanent disconnection. The pre-mature encashment of the bank guarantee would definitely have caused a huge impact on the cash flows of the Consumer, which might have resulted in closure of the units.

12. Further, the Applicants also contravened the provisions of para 7.1.6 and did not disconnect the supply of the Consumer on his request, but continued to raise the bills thereafter, resulting in excess billing to the Consumer M/s Rama Steels Ltd. In nut shell, the plea of the Applicant that they followed the procedure laid down in the Supply Code, 2009, is proved incorrect.

Jurisdiction of the Ombudsman to settled the electricity dues and the dispute of electricity line:

13. The Respondents submits that the jurisdiction of Hon'ble Ombudsman to decide in the matters related to dues, security and the electrical line has been questioned during the verbal arguments, whereas the regulations and the Electricity Act, 2003 fully empower this Hon'ble Ombudsman to decide in such matters. Since, this matter has already been taken up and argued in Case No. 36 of 2020 and since there is no new evidence produced by the Applicant to support fresh arguments on this issue, any such argument of the Applicant is not maintainable.

Maintainability of the Sale Deed between HPFC and the Respondent

14. The Respondents submits that applicability and execution of the sale deed executed by Himachal Pradesh Financial Corporation on the Applicant was argued by the Applicant. They further mention that the HPFC had granted loans to the borrower M/s Rama Steels Ltd. for creation of assets in question such as,

i) Security amount deposited by the borrower

ii) 132 kV dedicated line constructed at the cost of borrower, in which too the component of loan borrowed from HPFC was the means of finance.

iii) Other assets in terms of deposits, infrastructure , and infrastructure development charges created within the ambit of the project financed by the HPFC.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

15. HPFC being a lending financial institution has complete rights vested with them under the powers of acquisition of assets.

16. Section 29 empowers the HPFC to acquire the assets of the defaulter, the section being reproduced below:

29. Rights of Financial Corporation in case of default.—*(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof 1[or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the 2[right to take over the management or possession or both of the industrial concerns], as well as the 3[right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.*

*(2) Any transfer of property made by the Financial Corporation, in exercise of its powers 4*** under sub-section (1), shall vest in the transferee all rights in or to the property transferred 5[as if the transfer] had been made by the owner of the property.*

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

*6[(4) 7[Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, 8[charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it 9[as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it 10*** shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.]*

*(**5**) 7[Where the Financial Corporation has taken any action against an industrial concern] under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of 11[the concern].*

17. The Respondents submits that the assets of the borrowers were already mortgaged and the rights were vested with HPFC under the cover of an agreement, and by virtue of which the electricity related assets were never free from charge and thus could never have become the property of the Applicant.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

18. They further submitted that had there been no charge on such assets, such assets would still have remained the property of the person who had borne the cost of such assets. The regulations cited by the Applicant, particularly the HPERC (Recovery of Expenditure for Supply of Electricity), 2005 and 12 are merely imposing the restrictions on removal and maintenance of such lines so as to not to disrupt the supply to other Consumers who may have been supplied through such assets/ lines etc.

19. The Respondents submits that the Applicant also contested that they were not a party to the sale deed executed between HPFC and Prime Steels Limited, due to which the terms are not binding on them. The Respondents further points out that the Applicant cannot enter into an agreement which contravenes the regulations framed under the Electricity Act, 2003. The Applicants themselves have asserted during the verbal arguments the judgement of the Apex Court in the case of PTC India Limited versus CERC in Civil Appeal No. 3902 of 2006, out of which he derived that the regulations framed under the Electricity Act, 2003 are binding on the supplier and the Consumer. Going by the assertion of the Applicant, even if the Applicant was a party to the agreement between HPFC and Prime Steel Industries Pvt. Ltd., it would have no different consequences. The claim of the Applicant that the IDC Regulations shall prevail over the recovery rights of the lending institution is not maintainable.

Recovery of dues of Previous Occupiers

20. The Respondents submits that another judgement of the Apex Court in the case of DHBVN versus Paramount Polymers in Civil Appeal No. 4574 of 2006 was cited in by the Applicant's Counsel during the verbal arguments on recovery of previous occupier's dues from the subsequent occupier in support of their claim of dues of M/s Rama Steels Ltd from Prime Steel Industries Pvt. Ltd. The said judgement does not apply in the present case as in the case referred in the judgement, the sale was executed on 'as is where is' basis, which is not the present case.

21. The Respondents submits that in the present case, it has not been established that the dues being claimed by the Applicants are bona fide under the regulations or not as the Civil Suit is still pending.

22. The Respondents thus in view of above submissions, prayed to reject the review application on maintainability and merits as no substantial new evidence has been provided in the review application. The Applicant's intentions are clear so as to misguide the Hon'ble Ombudsman and reopen the total proceedings once again in the matter.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

G – Analysis of the Review application:

1. The case file No. 36/2020 titled M/S Prime Steel Industries Pvt Ltd Vs HPSEB Ltd and Case file No. 08/2013 mentioned by the Complainants in their review application have also been referred to. The orders of the Hon'ble Commission in Case No. 98/2013 stated by the Complainants have also been referred to.

2. The review has been filed by the Complainants under Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 which states that"

   "The Ombudsman may, at any time, after affording an opportunity of being heard, review his Order, either on his own motion or on an application of any of the parties to the proceedings, within 30 days of the Order on –

   (i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;"

3. The Complainants have relied their review, stated to have based on the discovery of new evidence as they have filed their review under the provisions of Regulation 37 (8) (i), mainly on the authenticity of letter dated 18/02/2013 and have submitted documents in support of their claim that the said letter for permanent disconnection is fake and fabricated by the Respondents in connivance with their field officials besides a statement of accounts with CWP No. 31/2016. They have submitted following documents in support of their claim

   a) Copy of application in case No. 08/2013 alongwith Interim Orders and final orders dated 10/01/2014 filed in the office of HP Electricity Ombudsman wherein they have specifically stressed upon the submission of M/S Rama Steel, Respondent No. 2 in this case, specifically at Sr. No. 6 of the prayer that *"The Respondents may be restrained from PDCO as the connection has already been disconnected temporarily"*.

   b) Statement of accounts with M/S Rama Steel prepared by the Assistant Engineer, ESD Barotiwala and jointly signed by Sh. Om Prakash (Stated to be representative of M/S Rama Steel but neither mentioned/ stamped) filed in recovery suit at Hon'ble HP High Court bearing CWP No. 31/2016.

4. Their pleadings are mainly focused on the authenticity of letter dated 18/02/2013 which they claimed to be fake and procured later with the connivance of their official(s) at the

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2024

ESD Barotiwala besides the statement of accounts which they stated to have with their Counsel of HP High Court filed with CWP No. 31/2016.

5. Before the pleadings of the Complainants are discussed, let us discuss the applicability/ limitations of the reviews. The Complainants have filed the review under Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 which enables either of the parties to the proceedings to file the review based on the discovery of new and important matter of evidence, which has already been reproduced above.

6. The said provisions of the Regulations have been derived from the Order XLVII of Code of Civil Procedure, 1908 (5 of 1908) and the Hon'ble Commission have only cited the Rule 1 of Order XLVII in the said Code in the said regulations. Now the plea of the Counsel for the Complainants during verbal arguments was that the Code of Civil Procedure, 1908 is not applicable to the court of HP Electricity Ombudsman and only the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 are applicable and Regulation 37 (8) (i) are the relevant regulations which are applicable in this case.

7. Let us examine the provisions of the Electricity Act, 2003. The Article 94 (1) (f) of the Electricity Act, 2003 states"

   "The Appropriate Commission shall, for the purpose of any enquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

   (a).....

   .....

   f) reviewing its decisions, directions and orders;

8. The Article 181 of the Electricity Act, 2003 empowers the State Commission to make Regulations. The Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 have been made by the Himachal Pradesh Electricity Regulatory Commission under the said powers.

9. Since the Article 94 of the Electricity Act, 2003 empowers the State Commissions to have same powers as are vested in the civil court under the Code of Civil Procedure, 1908 (5 of 1908), such power automatically flows down to the subordinate courts like that of HP Electricity Ombudsman through the regulations framed by the State Commissions.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

10. Now the Rule 4 (2) (b) of Order XLVII of the Code of Civil Procedure, 1908 (5 of 1908) states:

    "no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation."

11. In view of the provisions under Rule 4 (2) (b) of Order XLVII of Code of Civil Procedure, 1908 (5 of 1908), the review application filed by the Complainants is liable to be rejected straight away since they have filed the review under Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 which is stated to have been based on the discovery of the new evidence only.

12. But in order to give proper transparency to the case, even though the case deserved to dismissed at first instance as stated above, now let us examine what new evidence the Complainants have submitted which they claim was not in their knowledge/ possession at the time of decision in Case No. 36/2020 and also examine their written and verbal arguments advanced on 03/07/2021.

13. In their reply in Case No. 36/2020 sent through e-mail dated 10/12/2020, the Complainant No. 3 in this case (Respondent No.-3 in Case No 36/2020) had attached the very same statement as R-1 as have now been attached and stated to be a true and extract statement and part of new evidence and which was available with their counsel in the recovery suit filed at Hon'ble HP High Court (CWP No. 31/2016). They have provided a statement of accounts for Respondent No. 2 prepared in 2015 and is part of recovery suit with Respondent No. 2 showing that after liquidation of the Bank Guarantee for Rs 2,21,28,000/-, balance due from the Respondent No. 2 was as Rs 1,52,33,741/-. The Complainants have now submitted the same scanned copy of the statement without even authenticating the same. Since the statement was already on record and have been dealt with in para H-6 to H-11 of orders dated 11/02/2021 in Case No. 36/2020 and taken on record in deciding the issues, there is no requirement at this stage to reopen this issue which has already been dealt with, deliberated in detail and stands decided.

14. In their review application, the Complainants besides giving the background and facts, have relied on the letter dated 18/02/2013 written by the Respondent No. 2 to the Complainants and produced earlier in Case No. 36/2020 being fake and fabricated with the connivance of their field offices. As referred above on para G-3, they have attached a copy of the case filed at the HP Electricity Ombudsman bearing No. 08/2013 wherein

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

the prayer given by the Respondent No. 2 that "*The Respondents may be restrained from PDCO as the connection has already been disconnected temporarily*" stating further that it clearly implies that the letter dated 18/02/2013 is fake since the Respondent No. 2 never desired the PDCO. They have also cited order of the Hon'ble Commission in case No. 98/2013 decided on 02/12/2013 for reduction in Contract Demand citing that they Respondent No. 2 never wanted the PDCO.

15. The Complainants claimed that the letter dated 18/02/2013 is fabricated and fake in view of the prayer made by the Respondent No. 2 in Case No. 08/2013 which was decided on 10/01/2014 being non-est after the Respondent No. 2 failed to deposit the mandatory 50% of the disputed amount. The said letter is part of the Annexures in Case No. 36/2020 attached by Respondent No. 1. and have already been dealt with in para H-14 to H-27 of orders dated 11/02/2021 in Case No. 36/2020. The statement made by Respondent No. 2 in Case No. 08/2013 on 19/09/2013 does not carry any material difference since the PDCO was already done by the Complainants even before the said prayer was made by Respondent No. 2. Further, since the Bank Guarantee had already been invoked by the Complainants on 14/05/2013, the PDCO done on 12/09/2013 does not make any difference.

16. The Complainants have also mentioned that the letter dated 18/02/2013 was not part of their submissions at Consumer Grievance Redressal Forum but scrutiny of the record file at Forum shows that the said letter is part of their written submissions dated 17/08/2020 and attached as **Annexure - 'C-8'.**

17. Further, the contention of the Complainants that the Respondents never wrote letter after PDCO done on 12/09/2013 for refund of security deposit also does not make any difference since the said Bank Guarantee had already been invoked/ encashed by the Complainants on 14/05/2013.

18. The contention of the Complainants in their written arguments that right and entitlement over the security amount was not transferred by M/S Rama Steel to HPFC and subsequent transfer to the Respondent No. 1 in sale deed was not right and is also out of place since the HPFC had already taken over the assets of the Respondent No. 2 under Section 29 of The State Financial Corporations Act, 1951 and also wrote a communication dated 10/05/2013 to mark lien on the Bank Guarantee given by Respondent No. 2 for Rs 2,21,28,000/-. Even then the Complainants invoked the said guarantee on 14/05/2013 and intimated the balance surplus credit balance for Rs 1,56,02,798/- vide communication dated 29/05/2013.

19. Furthermore, the orders issued on 11/02/2021 were based mainly on the statement jointly signed by the parties after invoking the Bank Guarantee for Rs 2,21,28,000/- and

H.P. Electricity Ombudsman Khaling

Lupta 14/07/2021

further intimation to HPFC vide letter dated 29/05/2013 wherein after invoking the Bank Guarantee, a surplus of Rs 1,56,02,798/- was intimated to be the credit balance with the Board. The matter has also been covered under the para J-1 (Issue No. 1), findings on the issues. The Complainants have not contested the genuineness of the letter dated 29/05/2013 written to HPFC by Complainant No. 2 in this case. The letter dated 18/02/2013 didn't made any difference in finalization of the Order.

20. Further, the only outstanding intimated by the Complainants to the HPFC for both before and after clubbing was Rs 60,25,182/- only. The matter regarding outstanding balance and surplus etc have already been dealt with at Para H-18 to 38 & 43 of orders dated 11/02/2021 in Case No. 36/2020.

21. The letter dated 18/02/2013, in view of prayer of Respondent No. 2 in case No. 08/2013, have no bearing on the orders dated 11/02/2021 in Case No. 36/2020. This matter regarding genuineness of letter dated 18/02/2013 has also been dealt with in para H-14 to H-27, as stated above, deliberated at length and decided, there is no requirement to revisit this issue also again.

22. The Complainants have argued to review the entire order during the hearing on 03/07/2021 instead of restricting themselves to the matter taken up in their review application under Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. Their arguments/ pleas for review the orders dated 11/02/2021 in entirety can't be considered in view of the provisions under Regulation 37 (8) (i) and also in view of the provisions under Rule 4 (2) (b) of Order XLVII of the Code of Civil Procedure, 1908 (5 of 1908).

23. The Complainants have raised the issue of jurisdiction in their written arguments vide para E-4 above. The jurisdictional issue has not been raised by the Complainant in their original submissions in review application as well as in the rejoinder submitted on dated 07/07/2021 (earlier forwarded through email dated 21/06/2021). The jurisdictional issue can't be raised now at this stage and require no further discussions. The HP Electricity Ombudsman has however full jurisdiction in the case. Moreover, the matter regarding case at the Hon'ble HP High Court bearing No. CWP 31/2016 has already been dealt with and deliberated vide para H-33 of Orders dated 11/02/2021 in Case No. 36/2020.

24. However, during verbal arguments on 03/07/2021, the counsel for the Complainants have argued about Regulations having override effect on the Contracts. They had argued that the provisions under Regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 give them exclusive rights over the assets like dedicated transmission lines being property of

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

the Distribution Licensee which includes maintenance and the HPFC could not have transferred such assets including Bank Guarantee even to the Respondent No. 1. The contention of the Respondent No. 1 seems to be appropriate and just that Section 29 of The State Financial Corporations Act, 1951 empowers the State HPFC to have exclusive rights over the assets of the defaulter, Respondent No. 2 in this case since the assets had been created with the finances advanced by them and till the same are free from loan the exclusive right remains with the lending institutions which they further transferred to the new buyer i.e. Respondent No. 1 in this case. **However, the Complainants have not touched this issue in their written arguments.**

25. The Complainants have also raised the issue of applicability of the terms of the sale deed dated 07/03/2019 in their written arguments. Section 29 of The State Financial Corporations act, 1951 empowers the State HPFC to take over the assets of the defaulting Company and vest the same in new buyer which has already been covered in the sale deed dated 07/03/2021. The Complainants have contended that since they are not party to the sale deed dated 07/03/2019, the same is not binding on them and further the transfer of assets which include Bank Guarantee and dedicated transmission line to Respondent No. 1 is illegal. The issue has also been dealt with at para H-37 & 38 of the order dated 11/02/2021 and even discussed in this analysis, doesn't require any further deliberations.

26. The contention of the Complainants in their rejoinder that Respondent No. 2 had defaulted in payment of energy bills leading to TDCO and subsequent invoking the Bank Guarantee on 14/05/2013 has already been dealt with at para H-29 to 32 of orders dated 11/02/2021 and require no further attention on the issue.

27. Besides reliance on letter dated 18/02/2013, which stands discussed above, the Complainants have made submissions in written arguments regarding refund of security on the termination of agreement. The issue has already been dealt with, deliberated in para 'H' and decided in the orders dated 11/02/2021 and not required to be visited again.

28. The Complainant have further cited the provisions of the Contract Act, 1872 for which they have relied on some judgements (Jamna Dass Versus Ram Avtar (1911) IKR ALL 63, M. C. Chako Vserus State Bank of Tranvancore (AIR 1969 SC 504)). This issue has not been raised by them either in the review application nor in rejoinder filed on 07/07/2021 nor in the submissions made on 10/12/2020 in case No. 36/2020. The raking up new issue after the passing of orders in case No. 36/2020, which is not part of their any of earlier submissions, is not admissible at the review stage and require no further discussions.

29. The Complainants have also cited some more judgements during verbal arguments and the same have not been incorporated in their written arguments. However, the

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

Respondent No. 1 have responded to the same in their written arguments. The same need not to be discussed here as the same are not applicable to the present case since being confined to the original submissions made by the Complainants in review application filed under the provisions of Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

H – Issues at hand:

1. There is only one issue whether the orders passed on 11/02/2021 in Case No. 36/2020 are required to be reviewed in view of the prayer made by the Complainant for material evidence discovered as stated in review application under Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 or not?

I – Findings on the issues:

Issue No. 1:

1. As is evident from the detailed analysis and deliberations done in para 'H' above, the Statement of accounts provided again showing that they have a balance amount to be recovered from the Respondent No. 2 for Rs 1,52,33,741/- which was with their counsel in CWP No. 31/2016 filed at Hon'ble HP High Court is not a new evidence and has already been dealt with in the orders dated 11/02/2021 in Case No. 36/2020.

2. As is evident from the analysis done above and deliberations in para 'H' above, the letter dated 18/02/2013 being fabricated and fake in view of the prayer of Respondent No. 2 in Case No. 08/2013 does not have any bearing on the orders passed on 11/02/2021 and does not make any material difference. Further, the orders dated 11/02/2021 relied upon the statement of accounts submitted to the HPFC through letter dated 29/05/2013 after invoking the Bank Guarantee for Rs 2,21,28,000/- showing a credit balance of Rs 1,56,02,798/- instead of letter dated 18/02/2013. The Complainants have not contested the genuineness of letter dated 29/05/2013 submitted to HPFC.

3. As is evident from the analysis done above, the other written and verbal arguments advanced by the Complainants to review the orders dated 11/02/2021 in entirety is also not admissible in view of provisions under Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 read with Rule 4 (2) (b) of Order XLVII of Code of Civil Procedure, 1908 (5 of 1908).

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

4. The review application filed by the Complainants under the provisions of Regulation 37 (8) (i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 deserved to be dismissed.

J -Order:

1. **The review filed by the HPSEB Ltd through its Executive Director (Personnel), Assistant Executive Engineer, ESD Barotiwala and Sr Executive Engineer, Baddi for review of Orders passed on dated 11/02/2021 in Case No. 36/2020 is hereby dismissed.**

2. **The review application filed by HPSEB Ltd through its Executive Director (Personnel), Assistant Executive Engineer, ESD Barotiwala and Sr Executive Engineer, Baddi is hereby disposed off.**

3. **No cost to litigation.**

Given under my hand and seal of this office.

H.P. Electricity Ombudsman Khalini, Shimla-2

14/07/2021

Electricity Ombudsman