



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 Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103
- Complainant

Vs

1. Executive Director (Personal), 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
 4. M/S Rama Steel Ltd., House No. 117, Sector-8, Panchkula (Proforma Respondent)
- Respondents

Review Application No. 03/2021

(In case No. 36/2020)

(Decided on 19/07/2021)

CORAM

Er. K. L. Gupta
HP Electricity Ombudsman

Counsel for:

The Complainant: Sh. Rakesh Bansal

The Respondents: Sh. Anil Kumar God Advocate, Sh. Kamlesh Saklani Law Officer

Order

The review application was received and registered on 02/03/2021. The case was first listed for admission hearing on 27/03/2021. The Respondents were to file their reply by 20/03/2021 and the Complainant was to file his rejoinder by 27/03/2021. The reply was not received by the fixed date and the Respondents sought extension in time by 15 days, the case was further listed for 07/05/2021. The Respondents were to file their reply by 24/04/2021 and the Complainant was to file his rejoinder by 30/04/2021.

Due to Covid 19 Pandemic lockdown announced by the Govt of HP w.e from 07/05/2021 till 30/05/2021, the hearing scheduled for 07/05/2021 was postponed and since the reply was not received by the earlier scheduled date, the same was rescheduled for 23/06/2021 and rejoinder by 26/06/2021, the case was listed for 26/06/2021. Again, the Respondents sought 15 days extension in time and reply was again rescheduled by 03/07/2021 and rejoinder by 09/07/2021. The case was listed for 15/07/2021. The reply from the Respondents was received



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on 06/07/2021 and the Complainant filed his rejoinder through email dated 13/07/2021 and the original submitted on 15/07/2021 during hearing. The case was argued by both the parties and orders were reserved. Hence the delay.

A – Brief facts of the Case.

1. M/S Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103 has filed the review application of orders dated 11/02/2021 in Case No. 36/2020 through Sh. Megh Raj Garg (hereinafter referred to as 'The Complainant') under Regulation 37 (8) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. They have prayed for review and modification of para K-3 of the orders dated 11/02/2021 with prayer to direct Respondents to pay interest @ 12% w.e. from 14/05/2013 onwards till actual date of payment.

B – The Complainant's submissions:

1. The Complainant submits that this application is being filed in accordance with the regulation 37 of the HPERC (CGRF & Ombudsman) Regulations, 2013 as the applicant is aggrieved by the orders dated 11/02/2021 passed by the Ld. Ombudsman in the Case No. 36 of 2020 titled as Prime Steel Industries Pvt. Ltd. v. HPSEBL and others, whereby the Hon'ble Electricity Ombudsman has granted partial relief to the Complainant. The Complainant had filed the representation titled as Prime Steel Industries Pvt. Ltd. versus HPSEBL in Case No. 36 had prayed for relief in terms of interest on refund amount as per applicable rules and regulations along with the amount eligible for refund. The Hon'ble Ombudsman while passing orders have ordered partial payment of interest w.e.f. 07/04/2019, in point number 3 of K section of the orders, whereas the Complainant is of the view that the Respondents are liable to pay interest @ 12% per annum from the deemed date of permanent disconnection within one month.

2. The Complainant further submits that Regulation 38 allows for review of the orders passed by the Ombudsman under specific circumstances, the detailed text of the regulations being reproduced below:

37. (8) "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-

(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;



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(iii) for any other sufficient reasons "

3. He further submits that it is apparent from the orders passed and the record that there has been some mistake or error on the face of record, while passing orders in respect of interest, particularly with respect to the period for which the Respondents are liable to pay the interest as per HPERC (Security Deposit) Regulations, 2005.

CONTENTIONS OF THE APPELLANT/ COMPLAINANT

4. The Complainant submits that the Hon'ble Ombudsman in Section J-Point No. 2 has concluded that deemed date of PDCO i.e. the termination of agreement is 23/02/2013. Provisions of the Himachal Pradesh Electricity Supply Code, 2009 is reproduced below as applicable in the present case

"7.1.3 In case the consumer desired his connection to be disconnected permanently, he shall apply for the same on the format prescribed in Annexure-C of this Code. The licensee shall carry out special reading and prepare final bill, including all arrears up to the date of such billing within five days from such request. Upon payment, the licensee shall issue the receipt with final bill stamped on it and this receipt shall be treated as "No dues certificate". Thereafter, the licensee shall not have any right to recover any charges for any period prior to this date of billing.

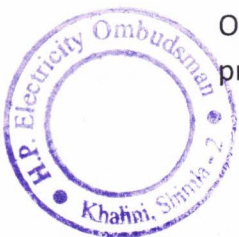
7.1.6 In case the consumer desired his connection to be disconnected permanently, he shall apply for the same on the format prescribed in Annexure-C of this Code. The licensee shall carry out special reading and prepare final bill, including all arrears up to the date of such billing within five days from such request. Upon payment, the licensee shall issue the receipt with final bill stamped on it and this receipt shall be treated as "No dues certificate". Thereafter, the licensee shall not have any right to recover any charges for any period prior to this date of billing.

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

(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.

5. He further submits that it is sufficiently clear as per procedure defined in the Supply Code that the final bill including the adjustment of security amount available with the licensee within five days of the request for permanent disconnection i.e. 18/02/2013. The Hon'ble Ombudsman has rightly determined the date of final bill as 23/02/2013 as per the above provisions and have held that Rs. 1,56,02,798/- were refundable after adjusting the dues



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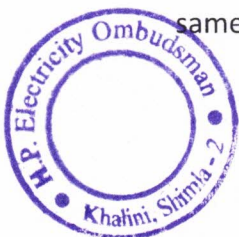
of the predecessor Consumer Shri Rama Steels Ltd. The Respondents however delayed in encashment and adjusting the security of Rs. 2,21,28,000/- on 14/05/2013 and have taken the statement issued to HPFC as the final bill in the present case. In view of above, the communication dated 29/05/2013 by AEE Barotiwala to HPFC which also included dues upto April, 2013, has been held as statement of final dues by the Hon'ble Ombudsman. As per this statement of account Rs. 1,56,02,798/- were refundable to Shri Rama Steels Ltd. on that date after the adjustment of security.

6. He further submits that the HPERC (Security Deposit) Regulations provides as below:

"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, after making adjustments for the amounts outstanding from 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."

7. The Complainant submits that the Respondents as per the above stated regulation were liable to pay interest of the surplus security deposit of Rs. 1,56,02,798/- w.e.f. date of liquidation of bank guarantee i.e. 14/05/2013.
8. The Complainant submits that it appears to be an error or mistake in judgment that the Complainant does not have any legal right on the interest payable on the security for the period prior to transfer of ownership of security and other assets. The Complainant is fully entitled to the interest on security for such period also as the same is payable on the amount of security. The rights of security automatically comes with accumulated amount of interest which kept adding in the amount of security for the relevant period. Also, as per clause ix) of the Sale Deed executed with HPFC, the complaint (BUYER) is entitled to refund of security and any other amount or claim, if any, from the Himachal Pradesh State Electricity Board.
9. The Complainant further submits that the Hon'ble Ombudsman has ordered that the interest on security deposit lying with the Respondents has to be paid from 07/04/2019. The logical question that arises is whether the Respondents can be allowed to forfeit the amount of interest payable for the period 23/02/2013 to 07/04/2019. If it is allowed, the same is against the objective of the Regulations and result in undue enrichment of the



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Respondents. There appears to be a mistake or error in the judgment / orders passed by the Hon'ble Ombudsman in this case.

10. The Complainant submits that the Preamble of the HPERC (CGRF and Ombudsman) Regulations, 2013 reads as:

"AND WHEREAS after coming into force of the said regulations, there has been significant changes in the Distribution Performance Standards of the licensee and in the consumer grievance redressal mechanism and the recommendations in relation thereto have been made by the Forum of Regulators (FOR) in its Report on "Protection of Consumer Interest" which have been endorsed and approved by the Hon'ble Appellate Tribunal for Electricity for implementation vide its Order dated 15/04/2010.

AND WHEREAS, with a view to simplify the process for registration and resolution of consumer complaints, the Himachal Pradesh Electricity Regulatory Commission recognizes the urgency and need to revise and modify the existing regulations framed by the Commission;"

11. The Complainant submits that the HPERC (CGRF and Ombudsman) Regulations, 2013, has been enacted under the Electricity Act, 2003, which is Consumer centric legislation. In case of any conflict, where the provisions may seem ambiguous or not clear, the balance of justice is in the favour of the Consumer.

Prayer:

12. In view of above submissions, the Complainant prayed to review the orders dated 11/02/2021 passed in case No. 36 in respect of the following:
- a) To Review and modify Para 3 of the Section K of the Order suitably so as to direct the Respondents to pay interest as per Regulations for the period starting from 14/05/2013 upto the date of actual payment.
 - b) To grant opportunity of being heard in the matter as per provisions of Regulation 33 (8) of HPERC (CGRF and Ombudsman) Regulations, 2013.
 - c) Any other or further orders which this Hon'ble Ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the Complainant Company and against the Respondents/distribution licensees.



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C – The Respondents’ submissions:

1. The Respondents submits that the applicant has preferred the instant review application under Regulation 37 (8) of the HPERC (CGRF & Ombudsman) Regulations, 2013 on the following inter alia reliefs:
 - a) To review and modify para 3 of the section K of the order in case No 36/2020 suitably so as to direct the Respondents to pay interest @ 12 % on Rs 1,56,02,798/- w.e.f. 14/05/2013 onwards up to the date of actual payment.
 - b) To grant opportunity of being heard in the matter as per provisions of Regulation 33 (8) of HPERC (CGRF & Ombudsman) Regulations, 2013.”
 - c) Any other or further orders which this Hon'ble ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the Complainant Company and against the Respondents/ Distribution Licenses.”

Preliminary Submissions:

2. The Respondents submits that the representation/ Complaint of the Complainant is not maintainable in the eyes of law hence, liable to be dismissed. They submitted that the present application as filed by the applicant/ Complainant is collusive one with active connivance the proforma Respondent, who is defaulter of the statutory dues of the replying Respondents/ non-applicants. Hence the application as preferred by the applicant is not maintainable.
3. The Respondents submits that the replying Respondents feeling aggrieved and dis-satisfied with the order Dated 11/02/2021 passed in case No 36 of 2020 titled as M/S Prime Steel Industries Pvt Ltd versus HPSEBL has preferred a review application on the various grounds and same is pending adjudication before this Id Electricity Ombudsman. They submitted that the Id Ombudsman has exceeded his jurisdiction as provided in the regulations and returned on the findings which are totally un-tenable in the eyes of law. Hence, the review of the replying Respondents deserves to be allowed.
4. The Respondents submits that Id ombudsman has erroneously held that by virtue of the sale deed dated 07/03/2019 executed in between HPFC and the applicants/ Complainant, is applicable fully to HPSEBL/ Respondents and as per terms and conditions of the alleged sale deed, the assets stands transferred to the Complainant. The order of the Id Ombudsman is deserve to be reviewed in favour of the HPSEBL on the sole ground that since the HPSEBL was not party to the sale deed dated 07/03/2019, terms and conditions cannot be applicable to it. Moreover, the law in this regard has already been settled by the supreme court of India in the catena of judgements which are fully applicable to this Id Ombudsman also.



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Reply on merits:

5. The Respondents submits that since the order dated 11/02/2021 in case No. 36 of 2020 stands challenged in entirety by way of filing review application by the HPSEBL/ Respondents, the present review application is not maintainable.

Contention of the Appellant/ Complainant

6. The Respondents submits that the legality of the order dated 11/02/2021 in case no 36 of 2020 is under challenge by the HPSEBL by filing a review application under regulation 37 (8) of the HPERC (CGRF & Ombudsman) Regulations, 2013, at this stage, the present application filed by the applicant/ Complainant is mere abuse of the process of law and same is liable to be dismissed. They further added that the Ld Ombudsman has exceeded his jurisdiction as vested by virtue of the regulations and has passed the order dated 11/02/2021 on the wrong premises and application of mind. They submitted that since the proforma Respondent herein i.e. M/S Rama Steel had defaulted the payment of electricity due of the HPSEBL, the amount of security deposit has been adjusted at the time of overhauling of the account and after overhauling, the concile statement has also been signed by the Director of proforma Respondent. thereafter, HPSEBL has instituted a Civil Suit No 31 of 2016 before the Hon'ble High Court of HP for the recovery of outstanding dues. Hence, there is no question of refund of security deposit either to the proforma Respondent or any successor, more so, on the basis of alleged sale deed which was executed in between the parties where HPSEBL is not party. Hence, as per law, a contract cannot be executed to detrimental the rights of the third party who is alien to the contract.
7. The Respondents submits that the terms and conditions of the alleged sale deed are not applicable to the replying Respondents/ HPSEBL. Since, the order dated 11/02/2021 in case No. 36 of 2020 is under challenge by way of filing review application by the HPSEBL, instant application of the Applicant/ Complainant is not- maintainable in the eyes of the law.
8. The Respondents submits that the application filed by the Complainant is mere sheer process of law and moreover, if the prayer clause is seen i.e. 3.2, there is no such provision of regulation 33 (8) in HPERC (CGRF & Ombudsman) Regulations, 2013, hence, applicant is not entitled for any relief.

PRAYER

9. The Respondents thus prayed that keeping in view the facts and circumstances narrated herein above, the present review application filed by the Applicant/ Complainant may very kindly be dismissed and the review filed by the HPSEBL against the order dated 11/02/2021 in case No. 36 of 2020 may be allowed in the interest of justice and fair play.



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D – The Complainant’s additional submissions through rejoinder:

1. The Complainant submits that he repeats, reiterate and confirm all the statements and averments made in the complaint and denied all the statements and averments made in the said reply unless and until the same are specifically admitted by the Complainant Company.

Preliminary Submissions:

2. The Complainant submits that the content of the reply is alleging collusion and connivance, which is suggestive in nature and lacks merit and evidence. Both the proforma Respondents and the Complainant are separate Companies, with distinct different managements and board of directors. The allegation of the Respondent is baseless and hence denied.
3. The Complainant submits that the contents of reply is based on another review application filed by the Respondents listed as Case No. 7 of 2021, the proceedings in which are completed before the Hon’ble Ombudsman and hence the question of the orders dated 11/02/2021 passed by the Ld. Ombudsman in case No. 36 of 2020 will be settled, once the Case No.7 is decided. The Hon’ble Ombudsman may look into this aspect after the disposal of Case No. 7 of 2021 and its outcome.
4. The Complainant submits that the Respondents have stated that the Ld. Ombudsman has erroneously held the sale deed dated 07/03/2019 as the basis of his impugned order dated 11/02/2021. The Respondents have stated repetitively in the reply that the they were not a party to the sale deed. The Respondents is not recognizing the difference between a sale agreement and a sale deed. A sale deed is purely a document for transfer of assets, whereas sale agreement is an agreement or contract for execution of sale containing binding terms and conditions which have to be fulfilled. In the present case, the assets which stood fully acquired by the State Financial Corporation (Lending Institution) and the sale deed is merely transferring of the assets in favour of the Complainant on a settled price. The assets in terms of security deposit available with HPSEBL and other assets were transferred to the Complainant based on the account statement furnished by the Respondents to the lending institution. The lending institution has only transferred, the surplus amount stated by the Respondents themselves. As the HPFC was the seller and there were no assets belonging to the Respondents, which were being sold under the sale deed, there was actually no legal requirement of the HPFC to make the Respondents a party in the assets. The Complainant further submits that if the Respondents feel that the HPFC has wrongly sold the assets, which belonged to them, then they should have raised an issue and challenged the actions of the HPFC in the appropriate court of law. The



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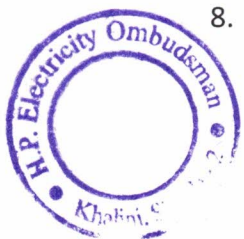
judgements as cited by the Respondents are not binding on the sale deed. Parties to sale deed are the persons such as seller and buyer, but not the third parties.

Parawise Comments on Reply on merits:

5. The Complainant submits that the stand of the Respondents that the impugned order dated 11/02/2021 is already under challenge before the Ld. Ombudsman is a repetition of the Preliminary Objections and hence the comments are same as above of this rejoinder.

Contentions of the Appellant/ Complainant

6. The Complainant denied that the filing of the present review application is the abuse of the process of law, whereas the Respondents themselves have also filed a review before the Ld. Ombudsman in Case No. 7 of 2021. The review has been filed well within the provisions of the HPERC (CGRF and Ombudsman) Regulations, 2013 and the said provisions have already been specifically mentioned in the review application. The Complainant further denied that the Ld. Ombudsman has exceeded his jurisdiction in passing the order dated 11/02/2021 as the regulations notified by HPERC under section 181 duly empowers the Hon'ble Ombudsman to decide such matters related to electricity dues etc. The Respondents on one hand have shown a surplus of 1,56,02,798/- to HPFC and on the other hand have kept on adding the dues even after the disconnection of the previous occupier. The security and lien on such security amount stood transferred in favour of HPFC, on the date of actual liquidation and realization of the bank guarantee. The HPFC has rightly transferred the security through the sale deed including other assets. The reconciled statement referred to by the Respondents is of no concern to the Complainant, as the previous occupier might have been trying to negotiate and restore the activity in his factory which was acquired by HPFC. The dues against which the Respondents have stated to have adjusted the security, appear to be arbitrary and without any substantiation. The Respondents are also misinterpreting the law in respect of Contracts, which does not apply on a sale deed.
7. The Complainant submits that the Respondents have accepted the provisions of the security regulations, but rest of the contentions have nothing new and have been addressed / Respondent in the foregoing paras. The typing error in terms of mention of Regulation 33 (8) in place of 37 (8) is accepted as typographical error only. He further submits that it is clearly mentioned in the title of the application and many other places in text of the application, where clearly regulation 37(8) has been stated. The Respondents is merely trying to raise trivial points to get away with his contentions.
8. The Complainant thus prayed to allow this review on merits and averments made in the complaint as well as this rejoinder.



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E – Order in Case No. 36/2020

1. The orders passed by the Consumer Grievance Redressal Forum on dated 20/08/2020 in Complaint No. 1453/4/19/053, dated 14/10/2019 are quashed and set aside.
2. The Respondent Board is hereby 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/- on 14/05/2013 within a period of 21 days from the date of issue of this order or latest by 04/03/2021.
3. The Respondent Board is further directed to calculate interest @ 12% on Rs 1,56,02,798/- w.e. from 07/04/2019 onwards (i.e. 30 days after the Complainant obtained legal rights over the security) and intimate the same to the Complainant within a period of 15 days from the date of issue of this order or latest by 26/02/2021.
4. The Respondent Board is further directed to pay interest as calculated above to the Complainant within a period of 21 days from the date of issue of this order or latest by 04/03/2021.
5. The Respondent Board is directed to report compliance of the direction No. 2, 3 & 4 above within a period of 30 days from the date of issue of this order or latest by 15/03/2021 positively failing which the matter shall be reported to the Hon'ble Commission for violation of directions under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Electricity Act, 2003.
6. The Complaint filed by M/S Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103 is hereby disposed off.
7. No cost to litigation.

F – Analysis of the Complaint:

1. The case file No. 36/2020 have also been referred to.
2. The Complainant have filed this review on the orders dated 11/02/2021 in Case No. 36/2020. He has specifically prayed for interest on security deposit to be paid w.e. from 14/05/2013 onwards instead w.e. from 07/04/2019 onwards as ordered in para K-3 of the order part on surplus amount of security deposit amounting to Rs 1,56,02,798/- after invoking the Bank Guarantee for Rs 2,21,28,000/-.



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3. The review has been filed by the Complainants under Regulation 37 (8) 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 –

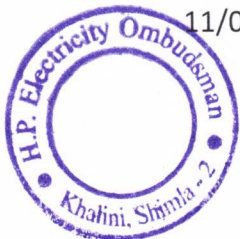
- (i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;"*
- (ii) on account of some mistake or error apparent from the face of record;*
- (iii) for any other sufficient reasons.*

4. 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) 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, or on account of some mistake or error apparent on the face of record or for any other sufficient reasons. The Complainant has stated the reasons as some mistake or apparent error on the face of record which is well within his rights under provisions of Regulation 37 (8) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 as reproduced above.

5. The Complainant has cited provisions of the Sale Deed dated 07/03/2019 reproduced at para B-8 above clause ix which states:

"That the Buyer shall be entitled to refund of security and any other amount or claim, if any, from the Himachal Pradesh State Electricity Board"

6. The Complainant's contention is that he is entitled for interest w.e. from 14/05/2013 onwards, the date since the Respondents invoked the Bank Guarantee for Rs 2,21,28,000/- and further intimated to HPFC vide letter dated 29/05/2013 having surplus amount of Rs 1,56,02,798/- instead of dated 07/04/2019 as ordered in para K-3 of Orders dated 11/02/2021 in Case No. 36/2020.

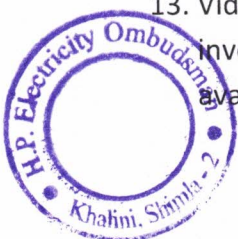


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7. The Complainant has also cited Regulation 8 of Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2004 reproduced at para B-6 above and have claimed that the interest became due since 14/05/2013 onwards even though the deemed PDCO was effective since 23/02/2013.
8. The Respondents has contended that they have already filed a review on orders dated 11/02/2021 in case No. 36/2020 in entirety and is under challenge. They further contended that this review, being abuse of the process of law, deserved to be dismissed. They have further contended that the HP Electricity Ombudsman has no jurisdiction in the whole case.
9. The review filed by the Respondent Board registered as Case No. 07/2021 has already been decided as dismissed vide orders dated 14/07/2021 before the last date of hearing i.e. before 15/07/2021.
10. The Respondents has also raised the jurisdiction issue and has also stated that the HP Electricity Ombudsman has passed the order dated 11/02/2021 on the wrong premises and application of mind. The jurisdiction issue has since not been raised at any stage by the Respondent Board in replies/ Written arguments in Case No. 36/2020 orders of which were issued on 11/02/2021, the issue can't be raised at the review stage and is not admissible. The orders dated 11/02/2021 in Case No. 36/2020 has been passed after due deliberation and addressing each issue raised by either of the parties which can be observed at para 'H' of the said order. Further, the HP Electricity Ombudsman has full jurisdiction in the case.
11. The Respondents have raised another issue that the Complainant has sought relief under Regulation 33 (8) and hence applicant is not entitled for any relief. The Complainant has cited Regulation 37 (8) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 in the application at various places and mere mentioning the relief at the time of prayer appears to be a typographical error and should be treated as such.
12. The Respondents have again raised the issue of the Sale Deed dated 07/03/2019 not applicable to them since they were not party to the same. The sale deed is in fact deed between the Seller and Buyers and there is no third party. The applicability of the Sale Deed dated 07/03/2019 have already been addressed in para 'H' of orders dated 11/02/2021 in Case No. 36/2020 and need not to be addressed again.
13. Vide orders dated 11/02/2021 in Case No. 36/2020, it has already been ordered that after invoking the Bank Guarantee for Rs 2,21,28,000/-, an surplus of Rs 1,56,02,798/- is already available with the Respondent Board and the Complainant is entitled to interest. As per



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understanding at that particular time, the interest was allowed since 07/04/2019 (K-3 of orders dated 11/02/2021), 30 days after the present Complainant became owner of the Assets through sale deed dated 07/03/2019.

14. Refund of security was allowed vide orders dated 11/02/2021 in case No. 36/2020 since the Complainant became owner of the assets but the contention of the Complainant is that actually they are entitled for the interest since 14/05/2013 when the Respondent Board invoked the Bank Guarantee. They further argued/ contended that no interest has been passed on to HPFC when they were owner of the assets prior to the sale deed dated 07/03/2019 through acquisition under Section 29 of The State Financial Corporations Act, 1951 somewhere in 2013 (Exact date is neither available in record nor mentioned by any of the parties) and passed on the rights for same including Bank Guarantee, for which they had asked the Respondent Board to mark the lien vide letter dated 10/05/2013, through Sale Deed dated 07/03/2019. This fact that the present Complainant became owner of the assets including the Bank Guarantee has already been established and deliberated/ decided in orders dated 11/02/2021 in case No. 36/2020 under para 'H' Analysis of the Complaint at length.

15. Now let us examine the clause ix of Sale deed dated 07/03/2019 again which states:

"That the Buyer shall be entitled to refund of security and any other amount or claim, if any, from the Himachal Pradesh State Electricity Board"

16. Further scrutiny of Clause ix of the Sale deed dated 07/03/2019 reveals that the Complainant is entitled also to any other amount or claim, if any which is nonetheless interest on the Bank Guarantee for the period between acquiring the assets and transfer of same to the Complainant vide Sale Deed dated 07/03/2021. It is also understood that the HPFC has not availed the interest for the period between acquiring the assets and transfer of same to Complainant otherwise the same could have find mention in the Sale Deed dated 07/03/2019. **This fact has escaped my notice while considering the issue at the time of orders dated 11/02/2021 in case No. 36/2020 and hence in line with provisions under 1st proviso of Regulation 8 of Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2004 (Reproduced at para B-6 above), the indulgence of this Court is warranted.**

G – Issues at Hand:

1. There is only one issue whether the Complainant is entitled to the interest claim w.e from 14/05/2013 onwards instead of 07/04/2019 on the surplus amount of Rs 1,56,02,798/- with the Respondent Board after invoking the Bank Guarantee for Rs 2,21,28,000/- or not?



*Leapt
10/07/2021*

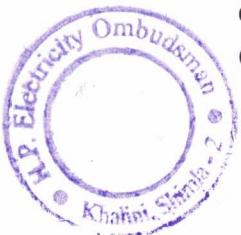


H – Findings on the Issues

1. As is evident from the analysis and deliberations done above, the Complainant is entitled for the Interest on Rs 1,56,02,798/-, the surplus amount with the Respondent Board after invoking the Bank Guarantee for Rs 2,21,28,000/- on 14/05/2013.
2. It is also clear that the HPFC, who had the possessions of the assets before transfer to the Complainant through Sale Deed dated 07/03/2019, have not claimed any interest on the surplus Security Deposit of Rs 1,56,02,798/- and they had already intimated the Respondent Board to mark lien on the entire Bank Guarantee for Rs 2,21,28,000/- through letter dated 10/05/2013.
3. In line with provisions under 1st Proviso of Regulation 8 of Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2004, the Complainant is entitled to simple interest @ 12% per annum if the same is delayed beyond the period of one month.

I- Order:

1. The review application filed by the Complainant in Case No. 36/2020 is hereby allowed.
2. The orders passed on dated 11/02/2021 in Case No. 36/2020 are modified to the following extent (Para K-3 & K-4):
 - a) The Respondent Board is directed to calculate interest @ 12% on Rs 1,56,02,798/- the surplus amount intimated to the HPFC vide letter dated 29/05/2013, w.e. from 14/06/2013 onwards (i.e. 30 days after the Respondent Board invoked/ encashed the Bank Guarantee for Rs 2,21,28,000/-) and intimate the same to the Complainant within a period of 15 days from the date of issue of this order or latest by 02/08/2021.
 - b) The Respondent Board is further directed to pay interest as calculated above to the Complainant within a period of 21 days from the date of issue of this order or latest by 09/08/2021.
3. The Respondent Board is directed to report compliance of the directions in this order as well as the Direction No. 2 of Orders dated 11/02/2021 in Case No. 36/2020 within a period of 30 days from the date of issue of this order or latest by 19/08/2021 positively failing which the matter shall be reported to the Hon'ble Commission for violation of directions under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations,



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19/07/2021



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2013 for appropriate action by the Commission under the provisions of the Electricity Act, 2003.

4. The Review application filed by M/S Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103 is hereby disposed off.
5. No cost to litigation.



Given under my hand and seal of this office.

Lept
12/07/2021
Electricity Ombudsman