HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
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In the matter of:

M/S Him Technoforge Ltd., Village Kishanpura, PO Manpura, Tehsil Nalagarh, District Solan, HP-174102 - Complainant

Vs

1. **Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Assistant Engineer (E), Electrical Sub-Division, HPSEBL, Manpura, Tehsil Nalagarh, District Solan, HP-174102**
3. **The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Baddi, District Solan, HP-173205**
4. **The Sr Executive Engineer, ES Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101**

- Respondents

Complaint No. 09/2022 (Registered on 27/05/2022)
(Last heard on 15/10/2022, Orders passed on 26/10/2022)

Counsel for:

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

CORAM

Er. K.L.Gupta
HP Electricity Ombudsman

Order

The case was received and registered on 27/05/2022. The Respondents were to file their reply by 10/06/2022 and the Complainant was to file his rejoinder by 17/06/2022. The case was listed for admission hearing on 25/06/2022. The proceedings at Consumer Grievance Redressal Forum were also put on hold pending case at HP Electricity Ombudsman. Since the Respondents didn't file their reply by 10/06/2022 or even by 25/06/2022, the Respondents were directed to file their reply by 08/07/2022 and the Complainant was to file his rejoinder by 16/07/2022. The case was listed for arguments on 23/07/2022.

In the meantime, the Consumer Grievance Redressal Forum didn't proceeded as directed to put the proceedings before them on hold but instead heard the case on 04/06/2022 and passed orders dismissing the case. The Forum also remarked against the jurisdiction of the HP Electricity Ombudsman. In the meantime, the Complainant filed additional information on 25/06/2022

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regarding orders passed by the Forum despite directions to put on hold the proceedings before them wherein the Complainant also placed on record the orders passed by the Forum.

The Respondents again sought time to file their reply on the next date of hearing. The case was listed for arguments on 12/08/2022 and the Respondents were to file their reply by 30/07/2022 and the Complainant was to file his rejoinder by 06/08/2022.

The Respondents again failed to submit their reply by 30/07/2022 and the case was further listed for arguments on 17/09/2022. The Respondents were to file their reply by 27/08/2022 and the Complainant was to file his rejoinder by 03/09/2022. The Respondents filed their reply on 25/08/2022 and the Complainant was to file his rejoinder by 24/09/2022. The case was further listed for arguments on 15/10/2022. The Complainant filed his rejoinder on 12/10/2022.

Both parties agreed that this Appellate Forum have a limited issue of deciding the disputed amount and the case is to be decided by the Forum first on merit and no further arguments are required. The orders were reserved on 15/10/2022, hence the delay.

A – Brief facts of the case:

1. M/S Him Technoforge Ltd., Village Kishanpura, PO Manpura, Tehsil Nalagarh, District Solan, HP-174102 have filed a representation through Sh. Rajiv Aggarwal (hereinafter referred to as 'The Complainant') under provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the Interim Order passed on 22/04/2022 by the Consumer Grievance Redressal Forum in Complaint No. 1451/02/22/13. They had prayed for directions to the Forum to interpret the disputed amount and quash the orders dated 22/04/2022 of the Forum wherein they were ordered to pay Rs 16,15,400/- to prevent disconnection.

B – The Complainant's submissions:

PROLOGUE/BACKGROUND

1. The Complainant submits that he is a limited Company duly incorporated under the Companies Act and has a factory located under Manpura sub-division for manufacture of forged steel products.

2. The Complainant submits that Complaint No. 1451/02/22/13 was filed on 19/04/2022 before this Hon'ble Forum challenging the demand notice dated 12/06/2017 for Infrastructure Development Charges amounting to Rs. 1,67,85,000/- on various grounds submitted in the Complaint. Further, he in the Complaint disputed the entire amount of demand notice i.e. Rs. 1,67,85,000/-, while Rs. 1,24,38,800/- already stood deposited before approaching the Forum vide Complaint no. 1451/02/22/13.

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3. The Complainant submits that he had also filed an application seeking interim stay in respect of disconnection of supply of electricity along with the grievance, stating that 73% of the disputed amount already stood deposited by him.

4. The Complainant submits that the Forum issued interim orders dated 22/04/2022, vide which an interim stay was granted subject to a further additional deposit of Rs. 16,15,400/- by 04/05/2022. The orders passed by the CGRF could not reach him for the reasons not known to him, who was approached by the Respondents for disconnection of electricity.

5. The Complainant submits that he, aggrieved by the interim orders dated 22/04/2022, is filing this representation.

FACTS OF THE CASE

1. The Complainant submits that he had an ongoing dispute in respect of Infrastructure Development Charges in respect of his load released from Akkanwali 66/33 kV sub-station at 33 kV supply voltage. Infrastructure Development Charges were calculated to Rs. 1,67,85,000/- and demanded vide demand notice dated 12/06/2017. The Respondents deducted a sum of Rs. 1,19,38,800/-, which already stood deposited with the Respondents as advance cost share towards IDC. The Complainant was asked to deposit the balance amount of Rs. 48,46,200/- vide the demand notice dated 12/06/2017, which detailed the calculation of the balance amount.

2. The Complainant submits that he had challenged the recovery of IDC and also the demand notice dated 12/06/2017 for Rs. 1,67,85,000/- before the Hon'ble High Appellate Forum of Himachal Pradesh vide CWP No. 2530 of 2017. The Hon'ble High Appellate Forum disposed the petition on the issue of maintainability as alternate appropriate remedy was available under the Electricity Act, 2003. The said petition was dismissed as withdrawn with liberty to avail the appropriate remedy before the competent Forum while waiving the period of litigation before the High Appellate Forum for the purpose of limitation. As the CGRF is the competent Forum to redress the electricity disputes under the Electricity Act, 2003, he preferred Complaint No. 1451/02/22/13 before the CGRF. Further, on the directions passed by the Hon'ble High Appellate Forum he had paid additional amount of Rs. 5.00 lakhs over and above the amount Rs, 1,19,38,800/- which already paid earlier.

3. The Complainant submits that he has in all deposited the following amounts at various stages:

Date	R. No.	Amount
14/12/09	0232439	30,00,000/-
08/08/11	0115719	32,01,000/-
01/03/12	0087436	42,37,800/-
23/05/12	0263998	15,00,000/-
05/12/2017	--------	5,00,000/-
Total		**1,24,38,800/-**

4. The Complainant submits that he had in the Complaint disputed the entire amount of IDC calculated to Rs. 1,67,85,000/-, the very applicability of the IDC in his case in view of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 in Para 8.3 of the Complaint.

5. The Complainant further submits that in the prayer section of the Complaint filed with the CGRF, he had prayed for quashing of the demand notice dated 12/06/2017 amounting to Rs. 1,67,85,000/- and had also prayed for refund of the amount of Rs. 1,24,38,800/- already deposited by him.

6. The Complainant further submits that in the application for interim directions under the Regulation 25 of the HPERC (CGRF and Ombudsman) Regulations, 2013 was also filed before the Forum along with the grievance. Further, it was specifically mentioned in the application that he had already deposited a sum of Rs. 1,24,38,800/-, constituting 74 % of the disputed amount of Rs. 1,67,85,000/-, which was higher than the required one-third of the disputed amount under the Regulation 25. Further, it was prayed that directions be issued suitably so that the Respondents do not disconnect his electricity supply.

7. The Complainant submits that the Forum has erred in treating the balance amount payable in the demand notice i.e. Rs. 48,46,200/- as the disputed amount for the calculation of one-third amount to be deposited by him, while passing the interim orders dated 22/04/2022.

CONTENTION OF THE APPELLANT/ COMPLAINANT

8. **The interim orders dated 22/04/2022 passed by the CGRF are contrary to the provisions of Regulation 25 of the HPERC (CGRF and Ombudsman) Regulations, 2013.** The Regulation 25 of the HPERC (CGRF and Ombudsman) Regulations, 2013, reads as under:

"25. Interim Order. - Upon request of the Complainant, the Forum may issue such interim orders pending final disposal of the grievance as it may consider necessary:

Provided that the Forum shall have the power to pass such an interim order in any proceeding, hearing or matter before it, as it may consider appropriate if the Complainant satisfies the Forum that prima facie, the distribution licensee has threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any of the provisions of the Act or any rules and regulations made thereunder or any order of the Commission, provided that the Forum has jurisdiction on such matters:

Provided further that, except where it appears that the object of passing the interim order would be defeated by delay, no such interim order shall be passed unless the opposite party has been given an opportunity of being heard and an amount equal ***to ⅓ rd of the disputed amount*** *is*

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deposited in cash with the licensee and documentary evidence of such deposit has been furnished."

9. The Complainant submits that the meaning of the word *'disputed amount'* is obviously the dictionary meaning in the event when it is specifically not defined specifically in the regulation. The plain reading would mean the amount which is in dispute. The Complaint filed by him in its content has time and again mentioned that the amount in dispute is Rs. 1,67,85,000/-, whereas the Ld. Forum has erred in treating the amount already paid i.e. Rs. 1,24,38,800/- as undisputed. Had it been the case, he would not have prayed for refund of the already deposited.

10. **Prayer:** In view of above submissions, the Complainant firm prayed; **a)** to quash the interim orders dated 22/04/2022 passed by the Consumer Grievances Redressal Forum of HPSEBL, vide which he was directed to deposit Rs. 16,15,400/- to prevent disconnection; **b)** to issue directions to the CGRF to correctly interpret the meaning of the disputed amount; **c)** to pass any other orders that may seem fit in view of the facts and circumstances of the case; **d)** cost of Complaint to an extent of Rs. 50,000/-, and **e)** call for the record of the case.

C – The Complainant's additional submissions dated 25/06/2022:

PROLOGUE/BACKGROUND

1. The Complainant submits that the Forum issued interim orders dated 22/04/2022, vide which an interim stay was granted subject to a further additional deposit of Rs. 16,15,400/- by 04/05/2022. The orders passed by the CGRF could not reach him for the reasons not known to him, who was approached by the Respondents for disconnection of electricity.

2. The Complainant submits that aggrieved by the interim orders dated 22/04/2022 he had approached the Hon'ble Ombudsman through representation No. 09 of 2022.

3. The Complainant submits that the Hon'ble Ombudsman issued interim orders dated 27/05/2022, ordered that the demand notice dated 12/06/2017 issued by the Respondents be stayed and also restrained the Respondents from taking any coercive action during the pendency of the matter before the Appellate Forum. The Hon'ble Ombudsman in the same orders, also directed to Forum to put the proceedings before it in Complaint No. 1451/02/22/13 on hold till the decision on the application filed by him.

4. The Complainant submits that even after the stay on proceedings ordered by Hon'ble Ombudsman in his orders dated 27/05/2022 in respect of representation No. 09 of 2022, the CGRF passed judicial orders dated 04/06/2022, while dismissing the Complaint, instead of putting the proceedings on hold as had been ordered by the Ombudsman.

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5. The Complainant submits that being further aggrieved by the order of dismissal of the Complaint by the CGRF he is now submitting these additional submissions, while also amending the earlier representation now challenging, in addition to the interim orders dated 22/04/2022, the final orders passed by the Forum in Complaint No. 1451/02/22/13, approaching the Hon'ble Ombudsman under Regulation 28 (1) (b), being not satisfied by the interim as well as the final orders passed by the Forum.

ADDITIONAL CONTENTIONS OF THE APPELLANT/ COMPLAINANT

Whether the Ld. Ombudsman has a jurisdiction to entertain any representation, when the matter has not been disposed off by Ld. CGRF:

1. The Complainant submits that the Forum in its order has primarily stated that the application/ representation No. 09 of 2022, should not have been entertained by the Ld. Ombudsman, while the matter was pending before the Forum. The Forum has also stated that the entertaining of the representation by the Ld. Ombudsman constrained them into a situation leading to the dismissal of the Complaint before CGRF. In the following paras he has taken the liberty to explain the aspect of the jurisdiction and the relevant provisions in the regulations/ applicable law in the present situation.

2. The Complainant submits that a "grievance" as defined in Reg.3 (e) states that the Complaint against the licensee for their action/ inaction and that the same is not limited to just the "demand notice" but is an inclusive definition. Therefore, it is open to the Consumer to raise any dispute, whereby he has been aggrieved by the conduct of the licensee or any violation under the Electricity Act, 2003.

3. The Complainant further submits that there is nothing which bars a Consumer to approach the CGRF, raising a dispute, even when a demand notice is not in question. There are several instances when a dispute is raised by a Consumer to seek refund of the amount overcharged by the licensee in the past. There are other instances, when dispute involves the issue of quality of power or safety. So, prima facie, there is no mandate that a demand notice is necessary for raising a dispute before the CGRF as per the HPERC (CGRF and Ombudsman) Regulations, 2013. Further that, the Complaint filed before the CGRF raises a dispute for Rs. 1,67,85,000/- towards IDC. There is nothing under the enabling regulation which bars the Consumer to raise such dispute. That dispute also forms an important part of the impugned demand notice as the net amount of Rs. 48,46,200/- has arisen from the principal amount of Rs. 1,67,85,000, which sought to be disputed by him.

4. Further, that the Ld. CGRF while passing the interim order dated 22/04/2022 did not address his grievance as per Reg 25 which specifies "1/3rd of the Disputed Amount" and not the "demanded amount".

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5. The Complainant submits that he filed an application for interim orders along with the main Complaint before the Forum, who adjudicated on the application and passed interim orders, disposing the application for interim finally. He being dissatisfied by the non-adjudication of his application for interim relief as per Reg. 25 vide order dated 22/04/2022 passed by Ld. CGRF, chose to file a representation before Ld. Ombudsman.

6. The Complainant submits that Reg. 28 (1) (b) states that if the Complainant is not satisfied then the representation before the Ld. Ombudsman may be filed. The same can even be seen under reg 3 (j) which states that in case a Complainant is dis-satisfied by the order of the CGRF, he can file representation. It is pertinent to mention that under both the regulations, the word "order" has been mentioned. The regulation has not limited the scope of "order" to only orders passed under Reg. 26 by the CGRF. Hence any interpretation which restricts the scope of the regulation by limiting the same to only the final orders under Reg. 26 would go against the mandate of the regulations.

7. The Complainant submits that the Ld. CGRF has vide order dated 04/06/2022 has passed the order dismissing his Complaint on the ground that the Ld. Ombudsman, even though barred under Regulation 33 (1) (c), which states that the representation by the Complainant, in respect of same grievance is not pending before any other authority. It is important to note that the word "any other authority" will not include the authorities under the 2013 regulations. If any other view is undertaken, the same will make reg. 28 (1) (a) r/w 33(1) (e) redundant, which gives the right to approach the Ombudsman in case the Complaint being not adjudicated within the period specified for the disposal of the Complaint. Further, that it is pertinent to note that in given facts and circumstances of the case, if the Ld. CGRF does not dispose the Complaint in a specified time, then even though the Complaint is still pending before the Ld. CGRF, the Complainant can proceed to file representation before the Ld. Ombudsman. If "any other authority" under regulation 33(1) (e) will include Ld. CGRF, then there will be always a bar on the Ombudsman to entertain a representation, even though the same can be filed as per Reg. 28 (1) (a) r/w 33 (1) (e). He further submits that such an interpretation done by the Ld. CGRF will lead to absurdity, which is impermissible.

8. The Complainant submits that further the regulation 33 (2) gives finality to the decision of the Ombudsman as to entertainment of a representation.

9. He further submits that in given facts and circumstances of a case, if the Ld. CGRF choose to reject the application of interim relief preferred by the Complainant, going by the interpretation of the Ld. CGRF, he would be left remediless, which is impermissible and not the object of the 2013 Regulation.

10. He submits that therefore, in view of above, the jurisdiction of the Ld. Ombudsman in entertaining a representation, where the Complainant has approached after first approaching

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the CGRF is fully established, in the circumstances when a Complainant is dissatisfied by any orders of the CGRF.

Whether the order dated 04.06.2022 passed by the Ld. CGRF dismissing the grievance of the petitioner is an order passed in nullity, keeping in view the order dated 27.05.2022 passed by Ld. Ombudsman staying the operation of the proceedings before Ld. CGRF?

11. The Complainant submits that when the order passed by the Ld. Ombudsman dated 27/05/2022 whereby the direction was given to Ld. CGRF to hold the proceedings till the matter is pending for adjudication before the Ld. Ombudsman, the Ld. CGRF passing a final order dated 04/06/2022 dismissing the Complaint is in nullity as the Ld. CGRF could not have been proceeded at all, when there is a specific direction by the appellate authority to hold the proceedings. Subsequently, CGRF proceeding with passing of a substantive order whereby his rights have been adjudicated to his prejudice is also against Judicial Propriety, which forms an important part of fair trial which is a part of Article 21. If such violations or flouting of the order of the appellate authority being done by the lower authority, then it will shackle the confidence of the litigant towards the judiciary, the judicial process, and the rule of law, which cannot be allowed.

12. The Complainant submits that once Ld. Ombudsman decided to entertain a representation, the decision towards such entertainment is final per regulation 33 (2) unless challenged before the Writ Appellate Forum. Now admittedly, no challenge was laid before the Hon`ble High Appellate Forum against the order of entertainment, which gives finality to the order of the Ld. Ombudsman. The Complainant further states that, even if the Ombudsman vide passing the order dated 27/05/2022 has wrongly exercised his jurisdiction, then also, the same is binding upon the Ld. CGRF unless being laid challenge before the Hon`ble High Appellate Forum and set-aside/stayed. In the absence of any such circumstances and in view of the finality attached by the Regulations under Reg. 33 (2) towards the entertainment of representation by the Ld. Ombudsman, the Order passed by the Ld. Ombudsman must have been given full effect to, by the Ld. CGRF.

13. The Complainant submits that Ld. CGRF has commented on the conduct of the Ld. Ombudsman in its order dated 04/06/2022, which yet again is impermissible. The judicial propriety demands that a strict discipline must be maintained between the lower Forum and an appellate Forum and the hierarchy established under the statute must be respected in letter and spirit, to achieve the end results for which such regulations have been enacted.

14. The Complainant submits that in the final orders passed by the CGRF it has been stated that

"We are constrained to further observe that Ld Ombudsman instead of either referring the representation of the Complainant to this Forum for appropriate action or asking the Complainant to withdraw the Complaint from this Forum, the matter being sub judice, went on

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to pass another Interim direction / Order to this Forum to put the proceedings on hold till its decision."

Incorrect/ adverse comments in the dismissal orders dated 04.06.2022 passed by the Forum:

15. The Complainant submits that the Forum has at various places put adverse remarks against the action of the Hon'ble Ombudsman.

    "The remaining amounts of Rs 1,19,38,800/= already having been deposited prima facie pertain to previous Demand Notices from the Respondent HPSEBL which have not been placed on record and are not under challenge."

16. Further it is evident from the various paragraphs in the Complaint that he had challenged the entire amount of IDC claimed by the Respondents which amounted to Rs 1,67,85,000/-. The CGRF is wrong in saying that the amount of Rs. 1,19,38,800/- was not under challenge.

17. The Complainant submits that mere perusal of the contention in para 8.3.1, he has alleged that he falls under regulation 4 (1) (a), on which the expenditure on the sub-station is not applicable in entirety, thus nullifying the levy of entire IDC of Rs. 1,67,85,000/-.

18. In contention No. 8.3.2 in the Complaint filed with CGRF, he has again stated his logic that the IDC will not be applicable in his case if the same is funded under CAPEX or other schemes/ grants etc.

19. Further, in contention No. 8.3.3, he has referred to the clarification issued by HPERC in Petition No. 315/05 in support of his claim.

20. Further, in contention No. 8.3.4 also, he has pointed out the irregularities in arriving at a sum of Rs. 1,67,85,000/-, which is an amount related to several demand notices on the single subject issued by the Respondents from time to time.

21. The Complainant submits that the Forum has ignored the prayer section (wrongly number as 8) in which he has sought relief of the entire amount of Rs. 1,67,85,000/-.

22. The Complainant submits that the CGRF is wrong in stating that the demand notices forming a part of the sum of Rs. 1,19,38,800/-, in all probability may be time barred and are hit by limitations under regulation 19 (c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. This cannot be accepted as the Respondents are issuing demand notices on the strength of affidavits procured from the Consumers. The notice served by the Respondents is itself time barred as the same was issued in 2017, when even the regulations of 2005 under which the demand of IDC is raised was superseded in 2012 and the Commission in its wisdom passed clarificatory orders in Petition No. 25 of 2016 consequent to the directions issued by APTEL. Also, he is at a liberty granted by the final order issued by

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Hon'ble High Appellate Forum of Himachal Pradesh, who has allowed the Complainant to approach and seek remedy before the appropriated Forum.

23. The Complainant submits that surprisingly, the final orders passed by the CGRF finds no mention or adjustment of the sum of Rs. 5.00 lakhs, which was deposited after the issuance of the demand notice, which clearly shows that the approach of the CGRF is biased towards the utility and not in Consumer interest. The CGRF has been constituted under the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, which have in enacted for the purpose of "Protection of Consumer Interest'. These regulations are Consumer centric regulations and any bias against the Consumer is not healthy practice on the part of the CGRF.

24. The Complainant submits that the Ld. CGRF has erred in concluding that

"Confronted with this situation, the Forum after going through the Interim Orders of Ld. Ombudsman and the contentions of the Respondent Board, the Forum finds that a similar cause of action has been raised by the Complainant before the Ld Ombudsman on the same issues which are sub-judice before this Forum in terms of extant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. It is settled position of law and the express provisions of CGRF regulations, 2013 that a similar or same cause of action cannot be raised before two different authorities/Appellate Forums. Once the Ld Ombudsman has taken cognizance of the cause of action of the Complaint despite well-knowing the fact that the same is pending adjudication before this Forum, in that eventuality this Forum has no option but to dispose of the Complaint being raised before two different Forums simultaneously and to let the Ld Ombudsman pass appropriate Orders on the same in pursuance of the provisions of the Regulations.

The Forum observes that the Complainant by abusing the process of law has indulged in avoidable litigation while preferring a representation on the Interim Order of this Forum dated 22/04/2022. It is also observed that instead of complying with the mandatory directions of this Forum, the Complainant in gross disregard to the lawful Orders has indulged in abusing the process of law, to raise a similar issue before the Ld. Ombudsman. We are constrained to further observe that Ld Ombudsman instead of either referring the representation of the Complainant to this Forum for appropriate action or asking the Complainant to withdraw the Complaint from this Forum, the matter being sub judice, went on to pass another Interim direction / Order to this Forum to put the proceedings on hold till its decision. It appears that the Ld Ombudsman has failed to appreciate the express provisions of CGRF Regulations, 2013 and the settled exposition of law on the issue that no similar cause of action can be agitated simultaneously before two authorities as expressly stipulated pre-condition / limitation for entertaining Complaints, by CGRF under Regulation 33(1)(c) of CGRF Regulations ibid."

25. The Complainant submits that it is on record that he has only approached the Hon'ble Ombudsman on the issue of computation of the disputed amount and consequently the one-

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third amount that is required to be deposited by the Complainant under regulation 25 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, whereas the CGRF has been approached to decide the grievance of the Complainant on merits. The CGRF is wrongly stating that there is any dual litigation in the matter before the two authorities. However, it is clear from the record, that the application for interim stay was already decided by the CGRF and the Complainant had approached the Hon'ble Ombudsman only to the extent of challenging the interim orders. The matter of interim was not at all pending with the CGRF, when the Complainant approached the Hon'ble Ombudsman by way of representation vide Case No. 9 of 2022. He has nowhere prayed for any decision on merits from the Hon'ble Ombudsman. Therefore, there is no error on the part of the Hon'ble Ombudsman in entertaining the representation as Case No. 09 of 2022 as the matters of the two grievances are separate and not the same as the matters for adjudication are distinct and not overlapping in any manner.

26. **Prayer:** In view of above submissions, the Complainant firm prayed in addition to the prayers already mentioned in earlier representation filed by him as Complaint No. 09 of 2022; **a)** to allow the interim stay to prevent coercive action of the Respondents to continue till such time that this representation is disposed by the Hon'ble Ombudsman, while also allowing additional period after the disposal for filing representation on merits before the appropriate Forum after the disposal of this representation; **b) t**o quash the final orders dated 04/06/2022 passed by the Consumer Grievances Redressal Forum of HPSEBL vide which the interim orders dated 22/04/2022 were ordered to be vacated and, **c)** to pass any other orders that may seem fit in view of the facts and circumstances of the case.

D – The Respondents' submissions:

Preliminary submissions:

1. The Respondents submit that the instant representation of the Complainant is not maintainable in the eyes of law hence, liable to be rejected in terms of the provisions of the Regulation 33 (3) of the HPERC (CGRF & Ombudsman) Regulations, 2013. Further, that the Complainant has committed gross misuse of the process of law by filing the instant representation which is from the face of the record is frivolous, baseless, vexatious, *malafide* and without any sufficient cause before this ld Ombudsman. Further, that the Consumer Grievance Redressal Forum (herein after referred to CGRF) established under the provisions of the section 42 (5) of the Electricity Act, 2003 read with sub-rule (1) of Rule 7 of the Electricity Rules, 2005 and Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and the Electricity Ombudsman appointed/ designated by the Hon'ble HPERC under section 42 (6) of the Act read with sub-rule (2) of the Electricity Rules, 2005 and provisions regulation 30 of the CGRF and Ombudsman) Regulations, 2013 (herein after referred as 2013 Regulations), are the creature of the statute i.e. the Electricity Act, 2003 and same are governed by the express provision of the Act/ Rules or regulations while discharging their functions. As per Regulation 28(1) (b) of the 2013 Regulations, a Complainant may prefer representation before the Ombudsman

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appointed/ designated by the Commission if the Complainant is not satisfied with the order passed by the Forum. However, in the instant Complaint before the ld Ombudsman, the Complainant has preferred representation against the interim order passed by the ld CGRF under Regulation 25 of the 2013 Regulation, wherein, the Complainant was directed to comply with the mandatory provisions qua deposit of 1/3rd of the disputed amount in cash with the Respondent/ licensee. However, it is very shocking to the conscious of the Respondents that the Complainant instead of complying of the mandatory directions ibid, filed representation under regulation 28 (1) (b) of the instant regulations, which is otherwise not maintainable and the representation is liable to be dismissed.

2. The Respondents submit that as per the mandate of regulation 28 (1) (b) of the 2013 regulations, representation is maintainable against the 'order' passed by the Forum and it is not provided that 'interim order' passed under regulation 25 is amenable to the jurisdiction of the ld Ombudsman. Further, that it is the 'order' under regulation 26 fulfills the requirements of the Regulation 28 (1) (b), wherein, a representation is maintainable before the ld Ombudsman. Further, that this ld Ombudsman cannot take or assume jurisdiction to entertain any Complaint which is not expressly provided under the instant Regulations. The instant Complaint thus being devoid of any merits, is liable to be dismissed outrightly.

3. The Respondents submit that without prejudice to above, as per provisions of regulation 33 which spells out the preconditions/ limitations for entertaining Complainant's representation before the ld Ombudsman if all of the conditions enumerated under regulation 33 (1) are fulfilled or satisfied. Under clause (b) of the ibid regulation it provides that the Complainant has, before making a representation to the Ombudsman, approached the Forum constituted under sub-section (5) of section 42 of the Act for redressal of his grievance. Further, it one of the vital pre-conditions of the entertaining representation under clause (g) that Complainant has to deposit with the ombudsman, an amount equal to 50 % of the amount assessed by the Forum. But, the Complainant in the instant case did not comply with the all the preconditions referred to under regulation 33 of the 2013 Regulations as such the instant Complaint is not maintainable as same is liable to be dismissed.

4. The Respondents submit that the instant Complaint/ representation filed by the Complainant is pre-mature one and *dehores* the provisions of the law/ regulations cited supra as such same is liable to be dismissed. Further, that until the ld CGRF has not disposed of the Complaint on merits or the Complaint is not disposed of in the time bound manner as prescribed under the 2013 regulations, representation under regulation 28(1) (b) of the regulation is not maintainable.

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Reply on merits

5. The Respondents submit that the Complainant was well aware of the interim order dated 24/04/2022 passed by the ld CGRF and in was incumbent upon the Complainant to comply with the same qua the deposit of 1/3rd amount of the dispute before the ld Forum.

Reply to the facts of the case

6. The Respondents submit that the impugned demand notice dated 12/06/2017 pertains to Rs 48,46,200/- before the ld forum and ld Forum has rightly issued interim order dated 24/04/2022 under regulation 25 of the 2013 Regulations wherein 1/3rd of the disputed amount was directed to be deposited, which is pre-condition for the maintainability of the Complaint before the ld Forum in terms of the regulations.

7. The Respondents submit that only moot issue in the matter is that whether the ld Forum was justified in directing the Complainant to comply with the statutory provision contained under regulation 25 of the 2013 regulation or not. The impugned notice appended with the Complaint of the Complainant before the ld Forum is to the tune of Rs 48,46,200/- and Complainant is liable to pay the 1/3rd of it for the continuation of the Complainant before the ld Forum.

8. The Respondents submit that the Complainant has miserably failed to appreciate the true import of regulation 25 wherein is provided that to entertain a Complaint by the ld Forum, it is incumbent to deposit 1/3rd of the disputed amount qua the impugned demand before the ld Forum.

Reply to the contention of the Complainant

9. The Respondents submit that it is denied that the interim order dated 24/04/2022 passed by the ld Forum is contrary to the provisions of the regulations 25 of the 2013 regulations. Further, as submitted in the preliminary submissions, the ld Forum has passed the interim order dated 24/04/2022 strictly in view of the extent regulations and the Complainant has trying to twist the arms of law just to get the undue relief from this authority which is not permissible in the eyes of law. The submissions made in the preliminary submissions are reiterated and reasserted in this para for the sake of brevity.

Reply to the additional contentions of the Complainant made after the order dated 04-06-2022 passed by the ld CGRF.

10. The Respondents submit that as submitted in the para supra, especially in the preliminary submissions, the ld Ombudsman does not have any power or jurisdiction qua the interim order passed by the ld Forum under Regulation 25 of the 2013 Regulations.

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11. Tr submit that the definition of the term 'grievance' under regulation 3 (1) (e) has its significance w.r.t to the right of the consumer to file or approach CGRF for the Redressal of its grievance. Further, that Complainant has failed to appreciate this aspect and filed instant representation before this ld Ombudsman without any cause of action.

12. Tr submit that That the impugned interim order dated 24/04/2022 has been passed by the ld Forum strictly in terms of the provisions of the regulations as such the instant Complaint/ representation before this ld Ombudsman is not maintainable. Further. that Complainant is trying to mislead the ld Ombudsman while offering interpretation of the disputed amount as contained under regulation 25 of the 2013 regulations. Moreover, since under regulation 28 (1) (b), it is 'order' passed by the forum not the 'interim order' which is subject to the intervention of the ld Ombudsman. There is no express provision in the regulations and as such in the absence of same in the regulations, Ld Ombudsman cannot assume jurisdiction to entertain the Complaint.

13. The Respondents submit that the Complainant is trying the mislead this ld Ombudsman by way of filing such Complaint which is not maintainable.

14. The Respondents thus prayed that the instant representation being devoid of any merits, may kindly be dismissed in the interest of justice and fair play.

E – The Complainant's additional submissions through rejoinder:

1. The Complainant submits that he at the outset repeat, reiterate and confirm all the statements and averments made by him in the Complaint and deny all the statements and averments made in the said reply unless and until the same are specifically admitted by him. The objections raised by the Respondents are lacking merit.

2. The Complainant submits that keeping in view the complaint filed by him and the reply filed thereafter by the Respondents, no matter of the Complaint stands resolved. The Respondents have missed or have denied the main issues raised by him, which still need redressal by this Hon'ble Forum.

Rejoinder to Preliminary Submission:

3. The Complainant denied that the present representation is not maintainable, while the same is well within the provision of applicable rules and regulations. Further, he has rightly approached the Hon'ble Ombudsman, which is the only remedy available under the law available to him. The Regulation 33 (3) of the HPERC (CGRF & Ombudsman) Regulations, 2013 only gives powers to the Hon'ble Ombudsman, in case of specific circumstances mentioned therein. This complaint being bona fide, which has been filed against the unlawful orders passed by CGRF is well maintainable as has been already submitted to the Hon'ble Ombudsman. There is no denial that the CGRF has been constituted under the Electricity Act,

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2003 but it is once again re-iterated that the regulation 28(1)(b) of the HPERC (CGRF & Ombudsman) Regulations, 2013 does not specifically differential between the interim or the final orders, whereas it refers to the orders passed by the CGRF. The Respondents contention if accepted, will result in leaving him remediless, in cases like the present case and the CGRF may continue to pass unlawful orders contravening the rules and regulations, which is against the principle of natural justice.

4. The Complainant submits that it is denied that the Hon'ble Ombudsman lacks jurisdiction in the matter as has been put before by him. As already explained in the foregoing para, the jurisdiction of the Hon'ble Ombudsman is not restricted only to the final orders passed by CGRF, while its jurisdiction includes all the orders passed by the CGRF.

5. The Complainant submits that the present dispute is only in the matter of the initial amount required to be deposited in order to approach the CGRF. Until and unless the same is decided, and since, the final orders have already been passed by the CGRF and the impugned interim orders which have been vacated vide the final orders dated 04/06/2022, there is no reason why he should deposit the 50% of the amount ordered to be deposited vide the impugned interim orders. Further, it is pertinent to mention that 74% of the disputed amount already stand deposited by him and hence the pre-conditions under regulation already stand complied in all manners.

6. The Complainant thus prayed that initially he had approached the Hon'ble Ombudsman challenging and seeking adjudication only on the matter of the interim orders passed by the CGRF, wherein a difference arose with regards to the minimum amount that is required to be deposited by him while approaching the CGRF. Thereafter, he filed afresh another Complaint for disposal on merits as the CGRF had finally disposed the Complaint filed by him. Therefore, he prays for the disposal of grievance on merits once for all, as he will be required to back and forth again and again, which is time consuming exercise on his part.

Rejoinder to Reply on Merits:

7. The Complainant denies that it is incumbent on him to deposit the one-third of the disputed amount while approaching the CGRF. Further, it is only that the interim orders dated 22/04/2022 is asking him to deposit the one-third of the balance amount that remains out of the total disputed amount. The dispute constitutes the entire amount in dispute, which is Rs. 1,67,85,000/- that has been demanded from him toward Infrastructure Development Charges. The CGRF while passing orders, did not justify as to why they have considered the Rs.48,46,200/- as disputed amount, even not considering the Rs. 5.00 lakhs also, which too was deposited by him on the directions issued by the Hon'ble High Appellate Forum of Himachal Pradesh. While the interim orders are in contravention of the HPERC (CGRF & Ombudsman) Regulations, 2013, the same deserves to be quashed and set aside. The Complainant further submits that it has been ordered by HPERC in the suo- moto petition 25 of 2016 that the advance cost shares deposited by the Consumers have also to be considered while determining

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the final liability towards IDC under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. **Also, It has been incorrectly mentioned in the reply that the date of interim order under challenge was 24/04/2022 whereas in fact, the orders were dated 22/04/2022.**

8. The Complainant submits that the Respondents have not denied the deposit of the amounts stated in these paras being deposited by him. Further, that even in 2017 he had approached, the CGRF towards the same disputed amount of Rs. 1,67,85,000/- and similar interim orders were passed by the CGRF contravening the HPERC (CGRF & Ombudsman) Regulations, 2013 in computation of one-third of the amount payable by him. This was one of the reasons that he chose to file a writ petition before the Hon'ble High Appellate Forum of Himachal Pradesh. The issue of calculation one-third amount to be deposited has already been dealt in the rejoinder to preliminary objections above and are not being repeated over here for the sake of brevity.

9. The Complainant submits that the contents have been accepted by the Respondents and denied that he has failed to appreciate the provisions of the Regulation 25, while the amount demanded as one-third is in much excess to the 74% amount already deposited by him out of the disputed amount of Rs. 1,67,85,000/- The Forum has failed to evaluate the contents of the Complaint, to understand the extent of the dispute and consequently the disputed amount.

10. The Complainant denied that he has been trying to twist the provisions of law. On the other hand, it the CGRF and not even the Respondents, who has acted contrary to the provisions of Regulation 25 of the HPERC (CGRF & Ombudsman) Regulations, 2013.

Rejoinder to Reply to the additional contentions:

11. The Complainant submits that the matter of jurisdiction has already been submitted in the submissions before the Hon'ble Ombudsman and for the sake of brevity, the same are not being repeated in the rejoinder further, it is denied that there is anything misleading in his submissions.

12. The Complainant submits that it has been already submitted in detail the matter related to the jurisdiction and other contents of the reply are merely a repetition of what has been said earlier in the reply. Hence, no further comments are being submitted.

13. The Complainant further submits that the reply of the Respondents is not accepted as nothing has been elaborated in the contention of the Respondents. Merely stating that he is misleading the Hon'ble Ombudsman is not sufficient to prove their stand.

14. The Complainant submits that the Respondents have chosen not to reply to his contention, whereas this is a very valid contention that deserves the attention of the Hon'ble Ombudsman, so that such irregularities are not repeated in future. His contentions must be taken seriously by the Hon'ble Ombudsman.

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15. Further, in view of submissions made herein above he prayed that the representation filed by him be allowed after appreciating the provisions judiciously.

F - CGRF orders:

a) Interim Order dated 22/04/2022:

1. M/s Him Teknoforge Ltd., Village Kishanpura, Post Office Manpura, Tehsil Nalagarh, being a consumer of HPSEBL, has filed a complaint through authorized representative Sh. Rakesh Bansal on 19.04.2022. The Complaint is accompanied with an Application for Interim Relief requesting therein to stay operation of impugned Demand Notice dated 12.06.2017 issued by the HPSEBL. From the record, it is seen that advance copies have been sent through India Post to the Respondent parties. In the Complainant, the consumer has placed on record aforementioned impugned Demand Notice issued by the HPSEBL to the consumer demanding therein payment of Rs. 48,46,200/- only, while the Complainant consumer in his complaint is disputing entire amount of Rs. 1,67,85,000/- towards infrastructure Development Charges. In the Application it is stated that the amount of Rs. 1,24,38,800/- (being Rs 1,19,38,800/- stated to be paid in the year 2012 and earlier + Rs 5,00,000/- stated to be paid in the year 2017) stands deposited with the Respondent which is more than 1/3rd amount as is17 required under the HPERC Regulations to be deposited. However, from the perusal of impugned Demand Notice dated 12.06.2017, it is seen that the Demand Notice dated 12.06.2017 is only for a balance amount of Rs. 48,46,200/-. This Demand Notice also speaks of an Undertaking/Affidavit furnished by the consumer Complainant at the time of sanction of load / release of load and on this condition load was released by the HPSEBL. It is evident from record that the impugned Demand Notice is not for Rs.1,67,85,000/- but is for Rs. 48,46,200/- only and this is a balance amount demanded by the HPSEBL to be paid by the Complainant . No other Demand Notice of the HPSEBL is under challenge in the Complaint.

2. The Complaint is admitted. Complainant is directed to deposit 1/3rd of the amount of Rs.48,46,200/- demanded vide impugned Demand Notice dated 12.06.2017 which amounts to Rs. 16,15,400/-. This amount will be deposited within 10 days i.e. on or before 4 th May, 2022. In the mean time operation of impugned Demand Notice of Rs.48,46,200/- shall be Stayed however, subject to deposit of the 1/3rd amount as aforesaid. The Respondent Board is directed to file the para-wise Reply to the Complaint within three weeks time of this Order with advance copy to the Complainant

b) Final Order dated 04/06/2022:

1. The present complaint was listed for hearing / reply on 04.06.2022. During the course of hearing this Forum was apprised of an Interim Direction / Order dated 27.05.2022 by Ld. Ombudsman on the Representation stated to be preferred by the present Complainant before

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the Ld Ombudsman against the Interim Order dated 22.04.2022 on the issue pending adjudication before this Forum.

2. At the time of filing the Complaint, the consumer Complainant M/s Him Technoforge Ltd had prayed for Interim Relief by way of Application accompanying the main Complaint. In the Complaint the impugned Demand Notice issued by the Respondent HPSEBL dated 12.06.2017 (Annexure C1) required that balance amount of Rs 48,46,200/= was to be paid. The remaining amounts of Rs 1,19,38,800/= already having been deposited prima facie pertain to previous Demand Notices from the Respondent HPSEBL which have not been placed on record and are not under challenge. As the complaint is in its initial stages of process and has not been determined, those Demand Notices that are not under challenge, in all probability may be time barred and covered under provisions of 'Limitation/ pre-conditions for submission of grievances' contained in sub regulation (c) of regulation 19 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013, thus preventing their 'direct' challenge by the Complainant but challenge in 'disguise' by challenging the amounts pertaining to Demand Notices not under challenge and which were already deposited. This Forum cannot take cognizance of such challenges in disguise for the purpose of determination of the complaint.

3. In pursuance to the Application for Interim Relief filed by the Complainant/ Applicant, Interim Relief was granted vide Forum Interim Order dated 22.04.2022. The relief granted was in accordance with provisions of regulation 25 of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013 with regard to regulations on 'Interim Order' specifying therein the deposit of 1/3 rd of the disputed amount and this disputed amount is Rs 48,46,200/= as specifically Demanded in the Demand Notice raised in the Impugned Notice dated 12.06.2017 and no other Notice. Regulation 25 reads as follows:-

Quote

25. Interim Order. *– Upon request of the Complainant, the Forum may issue such interim orders pending final disposal of the grievance .....*

Provided that .....

Provided further that, except where it appears that the object of passing the interim order would be defeated by delay,.....1/3rd of the disputed amount is deposited in cash with the licensee.....

Un Quote

4. Confronted with this situation, the Forum after going through the Interim Orders of Ld Ombudsman and the contentions of the Respondent Board, the Forum finds that a similar

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cause of action has been raised by the Complainant before the Ld Ombudsman on the same issues which are sub-judice before this Forum in terms of extant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. It is settled position of law and the express provisions of CGRF regulations, 2013 that a similar or same cause of action cannot be raised before two different authorities/Appellate Forums. Once the Ld Ombudsman has taken cognizance of the cause of action of the complaint despite well-knowing the fact that the same is pending adjudication before this Forum, in that eventuality this Forum has no option but to dispose of the Complaint being raised before two different Forums simultaneously and to let the Ld Ombudsman pass appropriate Orders on the same in pursuance of the provisions of the Regulations.

5. The Forum observes that the Complainant by abusing the process of law has indulged in avoidable litigation while preferring a representation on the Interim Order of this Forum dated 22.04.2022. It is also observed that instead of complying with the mandatory directions of this Forum, the Complainant in gross disregard to the lawful Orders has indulged in abusing the process of law, to raise a similar issue before the Ld. Ombudsman. We are constrained to further observe that Ld Ombudsman instead of either referring the representation of the Complainant to this Forum for appropriate action or asking the Complainant to withdraw the Complaint from this Forum, the matter being sub judice, went on to pass another Interim direction / Order to this Forum to put the proceedings on hold till its decision. It appears that the Ld Ombudsman has failed to appreciate the express provisions of CGRF Regulations, 2013 and the settled exposition of law on the issue that no similar cause of action can be agitated simultaneously before two authorities as expressly stipulated pre-condition / limitation for entertaining complaints, by CGRF under Regulation 33(1)(c) of CGRF Regulations ibid. The LD Ombudsman appears to have lost sight of the above regulations or settled law on the issue or erroneously accepted a representation when the Grievance before the Forum was pending adjudication in pursuance of the Regulations ibid. The Ld Ombudsman at the same time has done away with the requirement of deposit of 50% of amount assessed by the Forum that would arise out of Redressal of grievance and final decision and this is against sub-regulation (g) of Regulation 33(1). The relevant extract of the Regulation 33 (1) are reproduced below-

Quote

33. Pre-condition /limitations for entertaining Complainant's representation

(1) The representation may be entertained by the Ombudsman only if all of the following conditions are satisfied :-

.....

(b) the Complainant has, before making a representation to the Ombudsman , approached the Forum..... for redressal of grievance;

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(c) the representation by the Complainant, in respect of the same grievance, is not pending in any proceedings before any Appellate Forum,..... Any other authority .....

.....

(e) the Complainant is not satisfied with the redressal of his grievance by the Forum or the Forum has rejected the grievance or has not passed the order within the time-limit specified.....

.....

(g)the Complainant has deposited with the Ombudsman, an amount equal to 50% of the amount assessed by the Forum .....

Unquote

6. This Forum is now faced with a situation to either ask the Complainant to withdraw its Representation before the Ld. Ombudsman so as to proceed further in the matter as per regulations or to dismiss the present Complaint so as to facilitate disposal of the Representation before the Ld Ombudsman. This has created an avoidable and un-warranted situation which may set a bad precedent in future, if same cause of action is allowed to be agitated simultaneously before two Authorities. Moreover, such action in the matter is not envisaged by the Hon'ble HPERC in the ibid CGRF regulations, 2013 nor conducive to proper effective and speedy adjudication of the Complaints by the Forums under Regulations ibid. In foregoing terms to uphold the sanctity of directions of the Ld Ombudsman Office and in order to prevent duality of proceedings as same matter being agitated before two Authorities simultaneously in violation of the settled exposition of law and Regulations ibid; this Forum is constrained to 'Dismiss' the Complaint without going into its merits, to facilitate its further effective adjudication, by the Ld Ombudsman, in terms of Interim Order dated 27.05.2022. The Interim Order of this Forum dt. 22.04.2022 stood vacated and all accompanying pending Applications if any, shall stand disposed off accordingly.

7. Copy of the Complaint be retained and consigned to the record room along with this order. The original case file record pertaining to the Complaint be sent under proper receipt to Ld. Ombudsman in compliance to the directions issued vide Interim Order dated 27.05.2022. Parties left to bear their own costs.

G – Analysis of the Complaint:

1. The case file in Complaint No. 1451/02/22/13, dated 22/04/2022 at Forum final orders on which were passed by the Forum on 04/06/2022 have also been requisitioned and gone through.

2. The arguments advanced by both parties on 15/10/2022 alongwith documents on record have also been gone through.

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3. Now let us examine the case pending before this Appellate Forum.

4. The case pertains to the Complainant approaching this Appellate Forum against the Interim Order passed by the Consumer Grievance Redressal Forum on 22/04/2022. The Complainant had disputed the entire amount of Rs 1,67,85,000/- towards IDC and have questioned the calculations done for arriving at the rates of Rs 5,595/- per kVA which were worked out for the scheme cost of Rs 22.38 Cr.

5. The Complainant contention at the Forum below was that original scheme cost was Rs 16.03 Cr and the Distribution Licensee had flouted the norms of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 which permits maximum ± 3% variation in original scheme cost and the demand note issued by the Respondent Board is in direct conflict to the clarifications issued by the Himachal Pradesh Electricity Regulatory Commission also in Case No. 315/05 for working out the rates.

6. His further contention was that since he had already deposited Rs 1,19,38,800/- plus Rs 5,00,000/- on compliance of the directions of the Hon'ble High Court which is around 74% of the disputed amount of Rs 1,67,85,000/- worked out by the Respondent Board, the Interim Orders passed by the Forum below on 22/04/2022 dismissing his additional prayer under provisions of Regulation 25 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for refusing to consider 74% of the disputed amount already deposited by the Complainant and directing him to deposit Rs 16,15,400/- and in default the Complainant was fearing disconnection of his electricity connection.

7. The Complainant further contended that the Respondent Board have also not considered an amount of Rs 5,00,000/- deposited by him in compliance to the orders of Hon'ble HP High Court in its demand note dated 12/06/2017.

8. The Forum below had issued an Interim Order dated 22/04/2022 acknowledging Rs 1,67,85,000/- as disputed amount towards IDC at one hand and on the other hand ignored the said amount and considered Rs 48,46,200/- which is part of the entire disputed amount, and disputed amount for the proceedings pending before them which is erroneous in the facts and circumstances of the case.

9. Now let us examine the provisions of the Regulations 25, second proviso reproduced as under:

*Provided further that, except where it appears that the object of passing the interim order would be defeated by delay, no such interim order shall be passed unless the opposite party has been given an opportunity of being heard and an amount equal to **⅓ rd of the disputed amount** is*

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deposited in cash with the licensee and documentary evidence of such deposit has been furnished.

10. Scrutiny of the provisions of the Regulation stated above clearly indicates that the Forum below can ask for depositing 1/3rd of the **Disputed amount**. Now what is disputed amount. The disputed amount is the amount disputed by the Complainant in his Complaint which is Rs 1,67,85,000/- in this case and has also been acknowledged by the Forum in its opening paragraph of Interim Order dated 22/04/2022.

11. Now to consider the balance amount demanded by the Respondent Board of Rs 48,46,200/- as disputed amount on their own is erroneous in view of the fact that the challenge of the Complainant was against the alleged IDC amount demanded by the Respondent Board amounting to Rs 1,67,85,000/- against which the Complainant had already deposited an amount of Rs 1,19,38,800/- plus Rs 5,00,000/- which works out to 74% of the disputed amount. Therefore, there was no occasion to bifurcate the said amount to the suitability of the Consumer Grievance Redressal Forum for the purpose of adjudication. This amount could have been considered only if the dispute of the Complainant would have been dismissed and the Respondent Board might have been made entitled to recover the balance.

12. Aggrieved with the erroneous direction of the Forum below to deposit Rs 16,15,400/-, additional amount enabling the Forum to entertain his Complaint, the Complainant was forced to approach this Appellate Forum for redressal of his grievances and further seeking the quashing of the said orders dated 22/04/2022.

13. This Appellate Forum in exercise of the powers vested in it under Regulation 33 (2) read with Regulation 3 (1) (j) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 entertained the said Complaint after going through the averments made in the Complaint and the documents annexed therewith. This Appellate Forum was prima facie convinced that some wrong orders has been passed by the Forum below and consequently to ascertain the contentions made by the Complainant and consider the matter on merits, the Forum below was directed to withhold the proceedings till decisions of the Appellate Forum vide orders dated 27/05/2022 but the it is strange to note the anxiety of the Forum below to thrust its wrong orders on the aggrieved parties despite directions to the contrary from this Appellate Forum.

14. Not only this, the Forum below further went on to exceed its authority by making adverse remarks against the superior Appellate authority without touching the merit of the case and dismissed the Complaint. This action on the part of the Forum below is a clear case of defeating the basic purpose of formation of the Forum for redressal of the grievances of the Consumers which is clear violation and disrespect to the law and the regulations formulated by the Hon'ble Regulatory Commission occupying the field.

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15. The Regulation 3 (1) (j) is reproduced below:

(j)"representation" means the representation made to the Ombudsman by a Complainant, who is aggrieved by the ***order of the Forum (including the partial or full dismissal order),*** *or non-redressal of his grievances by the Forum within the specified time or dissatisfaction with the order issued by the Forum or non-implementation of the Forum's order by the licensee within the specified time;*

16. In their reply, the Respondent Board defended the decision of the Forum vide Interim Order dated 22/04/2022 stating that this Appellate Forum had no jurisdiction to entertain the appeal filed by the Complainant. However, during arguments held on 15/10/2022, both the counsels were of the opinion that the issue before this Appellate Forum is only to decide the disputed amount and nothing else. Further, they were in agreement that the case has to be referred back to the Forum below for decision on merit.

17. The Counsel for the Respondent Board never argued on the maintainability/ jurisdiction issue of the current appeal before this Appellate Forum at any stage of the proceedings and only stated that this Appellate Forum have only limited issue of decision on disputed amount only.

18. The Forum vide order dated 04/06/2022 has passed the order dismissing the Complaint of the Complainant on the ground that the Ombudsman, even though barred under Regulation 33 (1) (c), which states that the representation by the Complainant, in respect of same grievance is not pending before any other authority. **It is important to note that the word "any other authority" will not include the authorities under the 2013 Regulations**. If any other view is undertaken, the same will make Regulation 28 (1) (a) read with 33 (1) (e) redundant, which gives the right to approach the Ombudsman in case the Complaint being not adjudicated within the period specified for the disposal of the Complaint. It is pertinent to note that in given facts and circumstances of the case, if the Forum below does not dispose the Complaint in a specified time, then even though the Complaint is still pending before them, the Complainant can proceed to file representation before the Ombudsman. If "any other authority" under Regulation 33 (1) (e) will include CGRF, then there will be always a bar on the Ombudsman to entertain a representation, even though the same can be filed as per provisions under Regulation 28 (1) (a) read with 33 (1) (e). Further, such an interpretation done by the Forum will lead to absurdity, which is impermissible.

19. Further, the provisions under Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 gives finality to the decision of the Ombudsman as to entertainment of a representation.

20. Further, in given facts and circumstances of a case, if the Forum choose to reject the application of interim relief preferred by the Complainant, going by the interpretation of the Forum, the

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Complainant would be left remediless, which is impermissible and not the object of the 2013 Regulation.

21. In view of the above, Ombudsman has the jurisdiction to entertain a representation by the dis-satisfied Complainant.

22. Further, when the order passed by this Appellate Forum on dated 27/05/2022 whereby the directions were given to Consumer Grievance Redressal Forum to withhold the proceedings till the matter is pending for adjudication before Ombudsman, the Forum's passing a final order on dated 04/06/2022 dismissing the Complaint is in nullity as the Forum below could not have proceeded at all, when there is a specific direction by the Appellate Forum to withhold the proceedings. Subsequently, the Forum's proceeding with passing of a substantive order whereby the rights of the Complainant has been adjudicated to his prejudice is also against Judicial Propriety, which forms an important part of fair trial which is a part of Article 21 of the Constitution of India. If such violations or flouting of the order of the Appellate Forum is being done by the lower Forum, then it will shackle the confidence of the litigants towards the adjudication process, judiciary, the judicial process, and the rule of law, which cannot be allowed.

23. Further, once Ombudsman decided to entertain a representation, the decision towards such entertainment is final per Regulation 33 (2) unless challenged before the Hon'ble High Court. Now admittedly, no challenge was laid before the Hon'ble High Court against the order of entertainment, which gives finality to the orders of the Ombudsman. Further, even if the Ombudsman by passing the order dated 27/05/2022 has wrongly exercised his jurisdiction, then also, the same is binding upon the Forum below unless being laid challenge before the Hon'ble High Court and set-aside/ stayed. In the absence of any such circumstances and in view of the finality attached by the Regulations under provisions of Regulation 33 (2) towards the entertainment of representation by the Ombudsman, the Order passed by the Appellate Forum must have been given full effect to, by the Forum below.

24. Further, that the Forum below has commented on the conduct of the Electricity Ombudsman in its order dated 04/06/2022, which yet again is impermissible. The judicial propriety demands that a strict discipline must be maintained between the lower Forum and an Appellate Forum and the hierarchy established under the statute must be respected in letter and spirit, to achieve the end results for which such regulations have been enacted. In view of the above and specifically the order dated 27/05/2022 passed by the Ombudsman, the order passed by the Forum dated 04/06/2022 is an order in nullity and required to be quashed and set aside.

H – Issues at hand:

1. **Issue No. 1:** Whether the Appellate Forum has the jurisdiction to entertain the appeal filed by the Complainant against the Interim Order passed by the Forum below on 22/04/2022?

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2. **Issue No. 2:** Whether the dismissal orders passed by the Forum below on 04/06/2022 despite the directions to the contrary and adverse remarks against the Appellate Forum are in line with the provisions of the Regulations and the settled position of the law?

3. **Issue No. 3:** Whether the disputed amount is the amount disputed by the Complainant in his Complaint at the Forum below or the part of the disputed amount as demanded by the Respondent Board as balance amount and considered by the Forum below?

I – Findings on the Issues:

Issue No. 1:

1. As is evident from the analysis done above and facts and circumstances of the case, the Appellate Forum has full jurisdiction to entertain such application even on Interim Orders under the provisions of Regulation 3 (1) (j) read with provisions of Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

2. Moreover, since the orders by the Appellate Forum on dated 27/05/2022 have not been laid challenge before the Hon'ble High Court, the same has already taken finality.

Issue No. 2:

1. As is evident from the analysis done above and facts and documents on record, the Forum's passing a final order on dated 04/06/2022 dismissing the Complaint is erroneous, without jurisdiction and is in nullity, as the Forum below could not have proceeded at all when there is a specific direction by the Appellate Forum to withhold the proceedings.

2. Further, the judicial propriety demands that a strict discipline must be maintained between the lower Forum and an Appellate Forum and the hierarchy established under the statute must be respected in letter and spirit, to achieve the end results for which such regulations have been enacted.

3. This action on the part of the Forum below is a clear case of defeating the basic purpose of formation of the Forum for redressal of the grievances of the Consumers which is clear violation and disrespect to the law and the regulations formulated by the Hon'ble Regulatory Commission occupying the field.

Issue No. 3:

1. As is evident from the analysis done above and facts/ documents on record, the disputed amount by the Complainant is Rs 1,67,85,000/- as has also been acknowledged by the Forum below also in its opening paragraph of the Interim Order dated 22/04/2022 and not Rs 48,46,200/- which is part of the disputed amount demanded by the Respondent Board.

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2. Further, the Complainant have already deposited Rs 1,24,38,800/- (Rs 1,19,38,800/- plus Rs 5,00,000/- for implementation of the orders of the Hon'ble High Court) which is equivalent to approximately 74% of the amount disputed by the Complainant.

3. There was no occasion to bifurcate the said amount to the suitability of the Consumer Grievance Redressal Forum for the purpose of adjudication. This amount could have been considered only if the dispute of the Complainant would have been dismissed and the Respondent Board might have been made entitled to recover the balance.

J – Order:

1. **The Interim Order orders passed by the Consumer Grievance Redressal Forum on dated 22/04/2022 in Complaint No. 1451/02/22/13 are hereby quashed and set aside.**

2. **The Orders passed by the Consumer Grievance Redressal Forum on dated 04/06/2022 in Complaint No. 1451/02/22/13 dismissing the same are erroneous, not sustainable and without jurisdiction and are hereby quashed and set aside.**

3. **The matter is remitted back to the Consumer Grievance Redressal Forum to entertain the Complaint of the Complainant with directions to consider the entire amount of Rs 1,67,85,000/- disputed by the Complainant towards IDC as disputed amount and also to consider Rs 1,24,38,800/- as the amount already deposited with the Respondent Board which works out to approximately 74% of the disputed amount.**

4. **The Consumer Grievance Redressal Forum is further directed to decide the case in Complaint No 1451/02/22/13 on merit after affording the opportunity of being heard to respective parties in order to adhere to the principal of natural justice.**

5. **The Complaint filed by M/S Him Technoforge Ltd., Village Kishanpura, PO Manpura, Tehsil Nalagarh, District Solan, HP-174102 is hereby disposed off.**

6. **No cost to litigation.**

Given under my hand and seal of this office.

H.P. Electricity Ombudsman Khalini, Shimla-2

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Electricity Ombudsman