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

Yash Pal & Ors, Shivam Industries, VPO Shoghi, District Shimla, HP-171219
- Complainant

Vs

1. **Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Jutogh, District Shimla, HP-171011**
3. **The Sr Executive Engineer, Electrical Division No. 1, HPSEB Ltd, Shimla, District Shimla, HP-171009** **- Respondents**

Complaint No. 18/2022 (Registered on 26/08/2022)
(Orders reserved on 19/11/2022, Passed on 30/11/2022)

Counsel for:

The Complainant: **Sh. Rakesh Bansal Authorised 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 26/08/2022. The Respondents were to file their reply by 12/09/2022 and the Complainant was to file his rejoinder by 16/09/2022. The case was listed for admission hearing on 17/09/2022. Since the Respondents failed to submit their reply by 12/09/2022 and they were again directed to file their reply by 24/09/2022 and the Complainant was to file his rejoinder by 01/10/2022. The case listed for 15/10/2022.

Since reply and rejoinder were received, the case was listed for arguments on 19/11/2022. The arguments were concluded on 19/11/2022 and the orders were reserved. Hence the delay.

A – Brief status of the case:

1. Yash Pal & Ors, Shivam Industries, VPO Shoghi, District Shimla, HP-171219 filed an application through Sh. Yash Pal Taneja (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory

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Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for quashing and setting aside the orders of the Consumer Grievance Redressal Forum passed on 29/07/2022 in Complaint No. 1212/3/21/08, dated 27/07/2021. They have also prayed for quashing and setting aside the initial demand for Rs 6,98,143/- and subsequent demand for Rs 12,00,134/- and refund the amount already recovered alongwith simple interest @ 15% per annum.

B – The Complainant's submissions:

PROLOGUE

1. The Complainant submits that this representation is being filed in accordance with the HPERC (CGRF & Ombudsman) Regulations, 2013 as he is aggrieved by the orders dated 29/07/2022 passed by the Ld. Forum in the Complaint No. 1212/3/21/08 titled as Shivam Industries vs. HPSEBL and others, whereby the Forum had observed that an amount of Rs. 12,00,134/- is payable by him towards defaulter notice dated 27/02/2021. Further, while the Forum has passed entirely different orders in many other similar cases, the Forum has largely differed while deciding the present case, even though the facts were almost the same. The Complainant submits that the Ld. Forum has denied his almost each and every contention and has thus determined his liability to pay the disputed charges in the grievance. The Complainant further submits that he being unsatisfied with the orders passed in Complaint number 1212/3/21/08, is thus approaching the Hon'ble Electricity Ombudsman. Besides this, he also has specific grievances against the orders of the Forum. Further that he is filing the present representation under Regulation 28 (1) (b) of the HPERC (CGRF and Ombudsman) Regulations, 2013. He had earlier deposited a sum of Rs. 2,32,831/- as ordered vide the interim orders dated 27/07/2021 as one-third of the arrears demand notice of Rs. 6,98,493/-. To avoid ambiguity, the first demand notice which was raised in 2018 for the amount of Rs. 6,98,493/- is required to be considered as a legal demand notice for the purpose of limitation and jurisdiction of this Hon'ble Ombudsman so that the amount i.e. 50% of the disputed amount is deposited by him. He shall deposit the balance amount of of Rs. 1,16,416/- after receiving appropriate interim directions from the Hon'ble Ombudsman.

FACTS OF THE CASE

2. The Complainant submits that he has an industrial connection for the operation of the flour mill under the name Shivam Industries for 99.22 kW of Connected Load with 99.22 kVA of Contract Demand and is being billed as MIPS (Medium Industrial Power Supply) Consumer.

3. The Complainant submits that two-part tariff and also the ToD (Time of the day) tariff was applicable to him as per tariff orders issued from time to time for past several years. Bills were issued on monthly basis by the Respondents and he has regularly paid all such bills as were raised by the Respondents, without going into the nitty gritty and the calculations of the amount in such bills.

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4. The Complainant submits that he was surprised to see an amount of Rs. 6,98,493/- charged as Sundry Charges charged in the bill dated 19/09/2019. The bill contained a note at Sr. No. 1 stating " **6,98,493.00 RAO Audit 2381/149"**. There was no further description mentioned in the said bill. Further that after verbal discussions with the Respondent he only paid the amount of SOP, for the particular month excluding the sundry charges.

5. The Complainant submits that the Respondents wrote letter dated 15/11/2018 in respect of detail of Sundry Charges, intimating that the sum of Rs. 6,98,493/- was worked out by the RAO Audit Party on account of PLVC (Peak Load Violation Charge/ Peak Load Exemption Charges) as not charged and the copy of RAO letter was attached. The Respondents further directed to pay a sum of Rs. 7,12,247/-, which included late payment surcharge over and above the arrear charges of Rs. 6,98,493/-, and threatened to disconnect the power supply of the unit, which is strictly barred under section 56 of the Electricity Act, 2003. He further submits that from the perusal of the audit para it was noted that the audit observed that the MRI data was not downloaded from the meters of the seven Consumers, because of which the month-wise, peak load consumption / usage could not be ascertained. The audit observed that not downloading the data from the meter on monthly intervals has resulted in less charges for consumption during the peak hours, which was actually negligence on the part of the Respondents.

6. The Complainant submits that the audit party on the basis of the break-up of the cumulative consumption data for several years up to October 2014 estimated the revenue lost on account of less billing due to billing of units consumed during peak hours as normal hours. The audit party calculated 59928 units consumed during the peak hours on cumulative basis assuming that the initial reading of the peak hours would be zero. The audit party also assumed the sanctioned light load allowed to him as zero, which is impossible to believe. Thus, the audit team assumed the entire consumption was under violation, which was not the actual case as the light load carried a blanket approval for use during peak hours, and calculated the additional energy charges @ Rs.6.10 per unit on 59,928/- units working out to Rs. 3,65,560.80. Strangely, the audit party also took 11.10 kVA as lighting load, which was converted to 18.50 kVA at 60% load factor, while somehow an additional amount of Rs. 3,32,933/- was calculated as payable in addition by him.

7. The Complainant submits that in his best knowledge and guidance by his advocates he approached the Court of Ld. Civil Judge, Senior Division, Shimla, with his grievance who ordered stay in recovery of the disputed arrears vide orders dated 30/04/2019. The said suit was dismissed as withdrawn on 31/08/2020. in light of the view of the Court that the appropriate remedy available to him was to file his grievance before the Consumer Grievances Redressal Forum of HPSEBL.

8. The Complainant submits that the Respondents did not transfer the amount disputed by him to the category of disputed amount, which was to be shown as separately in the bills.

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But, instead kept on levying the late payment surcharge on the disputed amount every month. As a result, the amount grew to Rs. 12,00,134/- by 27/02/2021. The Respondents on 27/02/2021 issued a notice regarding non-payment of this amount, failing which the electricity was threatened to be disconnected.

9. The Complainant submits that he preferred a Complaint before the CGRF vide Complaint No. 1212/3/21/08 which was admitted and the CGRF directed vide the interim orders dated 27/07/2021 directed to deposit one-third of the original amount of demand notice of Rs. 6,98,493/-.

10. Further, during the course of hearings and at the behest of the directions issued by the CGRF, the Respondents had recalculated the amount of arrears which were reduced to Rs. 3,26,791.20.

11. The Complainant submits that without considering the revised demand issued by the Respondents, the CGRF refused to consider the original demand notice of Rs. 6,98,493/-, stating that the same was not placed on record by either of the parties. While the CGRF issued interim orders based on the notice of Rs. 6.98,493/-, but took a U-turn to acknowledge the existence of any such notice in the final orders. CGRF only dealt with the defaulter notice/ disconnection notice dated 27/02/2021.

12. The Complainant submits that aggrieved by the orders passed by the CGRF he is preferring this representation under regulation 28 of the HPERC (CGRF and Ombudsman) Regulations, 2013.

CONTENTIONS OF THE COMPLAINANT VIZ A VIZ. OBSERVATIONS OF THE FORUM:

Whether the observation of the audit is binding on the Respondents or on the Consumer?

13. The Complainant submits that the RAO audit is particularly carried out to assess the revenue loss/ pilferage from the revenue that was ought to be recovered under the rules and regulations. The audit party has merely pointed out that the action/ inaction / improper billing on the part of the Respondents has resulted in a loss to the utility and as such observations are merely to point out the improper working of the officers of the utility. They are never directed to recover such amounts from the Consumer, because the Consumer has no control over the billing. The Respondents on the other hand, try to cover up the loss by raising such demands after a lapse of many years at times, by raising the demand from the Consumer and then report recovery, in order to cover up their inefficiencies / errors, which would otherwise. Further that it is illegal to pass on the impugned demand based on audit observation to him and there is no error on his part.

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Whether the Consumer is liable to pay for peak hour units worked out merely on assumptions in the absence of MRI data?

14. The Complainant submits that the billing is carried out in terms of the tariff orders notified by the Himachal Pradesh Electricity Regulatory Commission from time to time usually on year to year basis. He falls under MIPS category and is liable for two part tariff and ToD metering and billing. While it is notified that there are three time slots normal, peak and night during the 24-hour consumption cycle. The peak hour consumption is charged at a higher rate, whereas the night hour consumption is to be billed at a lower rate than the rate for normal hours consumption. The pattern of billing is totally based on the capability of the meter, which records the consumption in each time slot. The breakup of the total consumption is obtained by downloading the data from the meter which splits the consumption on the basis of time zones. The Respondents as well as the audit observation, clearly states that the meter data was not downloaded till October 2014, then how can the peak hour consumption be billed on hypothetical basis in the absence of absolute date.

15. The Complainant submits that while going through the provisions of the Supply Code, 2009, it is apparent that billing on average basis is only allowed in the case of defective metering. This dispute, not being a demand raised on account of defective metering cannot be considered to be eligible for average billing or billing on the basis of past or future consumption.

16. Further, that the approach adopted by the Audit may make sense in order to estimate the loss occurring to the utility, which is not actual value. But for the billing it is required that the exact number of each time slot is ascertained before raising the bill.

17. The Complainant submits that the CGRF in several earlier orders on identical matter has held that the amount of such arrears cannot be claimed from Consumer in the absence of the MRI data. Two such orders in the following Complaints are attached with this representation (Orders in Complaint Nos. 1421/4/21/062 and 1421/1/20/002) in which it has been clearly held by the Forum in Paras 9 and 10 of the orders. **The orders passed by the Forum in identical cases cannot be allowed to differ to an extent that they are opposite and discriminatory and this would deny justice to the Consumers at the whims and fancies of the Forum of the utility.**

18. **Further, that the above said orders passed by the Forum stand complied and accepted by the Respondents and have not been assailed before any court of law.**

Whether peak load violation can be proved without MRI data or not?

19. The Complainant submits that as is apparent on the face of record that the audit has held that there has been a peak load violation. The method of determining the peak load violation is purely based on the recorded demand during peak hours, which if exceeding

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the permissible level is treated as peak load violation. There is not an iota of evidence that there has been peak load violation as there is no MRI data available with the Respondents. Merely, consumption during peak hours does not determine that there is a peak load violation. First of all, we need to find out the permissible level of demand that was allowed to him. Only then it would be possible to determine the violation in excess of the permissible level. Merely, treating the entire consumption during peak hours as violation by the audit team makes no sense and is against the provisions of tariff orders.

20. He further submits that it is clear that there is no evidence to prove that the peak load violation has occurred in the present case. Even if it is determined on the cumulative basis that the violation has occurred, it would not be appropriate to treat violation for the entire period of sixty months. It could be merely a particular month, when such violation has occurred. So, it is wrong to assume that the violation has occurred continuously.

21. The Complainant submits that a simple calculation will further ascertain that no case for peak load violation can be proved indirectly either. In the calculation chart prepared by the audit team, a light load of 18.5 kVA has been considered on which the theoretical maximum consumption works out as below:
    18.5 kVA x 24 hours x 30 days = 13320 kVAh per month

    For 60 months = 13320 kVAh x 60 = 7,99,200 units for 60 months.

    Against this only 59928 units have been stated to be consumed in this period. Hence, no violation is proved.

Whether the calculations carried by the audit team are justified in the case of the Complainant?

22. The Complainant submits that several anomalies have been observed while calculating the amount of difference arising out of the contention of the audit party, some of which are listed below, which requires to be clarified before allowing the demand notice.

    a) There is clear ambiguity about the period of sixty months taken for the calculations. Although in the audit para it has been mentioned that no meter data was downloaded during the period April 2010 to October 2014, it is very clear that this period is less than 60 months and works out to only 54 months.

    b) While peak load violation has been alleged, it has nowhere been shown as to how much demand was drawn (recorded) during the peak hours, which forms the basis of the peak load violation. It is incorrect to assume that the violation may have occurred during the entire period. As per billing by the tariff, violation is to be charged only in a particular month in which it occurred and not for all months that are to follow.

    c) The energy charges differential has been taken as Rs. 6.10 per unit as a difference between the violation rate of Rs. 9.15 and Rs. 3.05. Different tariffs were applicable

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during the period of five years for which the arrears have been calculated. Assuming a flat rate of PLVC energy charges is not fair. The PLVC energy charges as per tariffs are tabulated below:

Peak Load Energy Charges difference(Rs./kVAh) (Medium Supply)

	Effective	Normal	PLEC	Difference	PLVC	Violation Diff
2005-06	1.7.2005	2.55	5.10	2.55	7.65	5.10
2006-07	8.7.2006	2.75	5.50	2.75	8.25	5.50
2007-08	1.4.2007	2.85	5.70	2.85	8.55	5.70
2008-09	1.4.2008	3.05	6.10	3.05	9.15	6.10
2009-10	1.9.2009	3.05	6.10	3.05	9.15	6.10
2010-11	1.4.2010	3.05	6.10	3.05	9.15	6.10
2011-12	1.4.2011	3.30	6.60	3.30	9.90	6.60
2012-13	1.4.2012	3.70	6.60	2.90	9.90	6.20
2013-14	1.4.2013	4.50	6.60	2.10	9.90	5.40
2014-15	1.8.2014	4.50	6.20	1.70	6.20	1.70

d) The audit team has considered the same rate difference over the entire period, which is not the correct approach.

e) The peak load exemption and peak load violation energy units have not been segregated properly and the entire peak load consumption has been treated as peak load violation.

Whether the Respondents have followed the procedure defined under the Billing Chapter of the Supply Code?

23. The Complainant submits that the Respondents have failed to take the MRI data readings in a periodical matter in order to issue proper bills as per tariff and have miserably failed in discharging their duty, due to which he is being made to suffer.

24. Further, that the clause 5.7 of the Supply Code, 2009 deals with the disputed bills. The clause 5.7.1 (b) strictly bars the Respondents from taking any action against a Consumer, provided he deposits the amount equal to the average of his last six months' bills. The Respondents have initiated action and issued disconnection notice in contravention of the said provision even though he had deposited the amount equal to average of the last six months bill.

25. The Complainant submits that the Respondents continued to show the disputed amount as payable even though the same was under interim stay issued by the Court/ Forum. The

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Respondents did not deduct even the amount paid as one-third on the directions of the CGRF from the disputed amount and levied late payment surcharge even on the amount paid by him. The Respondents should have transferred immediately after the grievance was filed, the disputed amount to the separate column provided in the monthly bill for such amounts. The Respondents' failure in doing so resulted in other sundry allowances such as interest on security etc. also into the arrears amount appearing in the bills

Whether the audit team was correct in saying that there was revenue loss, while even the night concession, which also had to be passed on to the Complainant for past several years?

26. The Complainant submits that he, while being liable to pay the time of the tariff, the Respondents failed to provide for night concession allowed in the tariff in the electricity bills issued to him for many years. Even the audit did not point out this anomaly as this would have not added to their performance. He is eligible for night concession for the entire period as per tariff and the calculations made by the Respondents should also include the night concession.

Whether the demand being raised after the passage of such a long time is permissible to be recovered under the law?

27. The Complainant submits that the impugned demand raised by the Respondents is time barred under the provisions of the section 56 of the Electricity Act, 2003. The Respondents even went to the extent of issuance of the disconnection notice twice in the matter contravening the provisions of section 56 of the Electricity Act,2003. The Respondent is liable for action against him for contravention of the provisions of the Act.

28. The Complainant submits that the demand raised by the Respondents is also hit by limitation under The Limitations Act, 1963, which provides a time limit of three years unless and until it is established as a bona fide mistake. This is a clear case of negligence.

Prayer:

29. The Complainant thus prayed that the representation may kindly be allowed and the findings of the Consumer Grievances Redressal Forum in the order dated 29/07/2022 passed in the Complaint number 1212/3/21/08 in the Complaint titled as Shivam Industries Vs. HPSEBL and others, whereby the Ld. Forum has denied the relief sought in the Complaint as the order is vague, is bad in law and deserve to be set aside or modified suitably in the interest of justice or any further orders which this Hon'ble Electricity Ombudsman may deem fit and proper in the facts and circumstances of the case may kindly be passed in his favour and against the Respondents/ distribution licensee.

30. The Complainant further in view of above submissions, prays to Hon'ble Ombudsman: **a)** to quash in the interest of justice the orders dated 29/07/2022 issued by the Consumer Grievance Redressal Forum of HPSEBL in Complaint number 1212/3/21/08; **b)** to quash the demand notices for Rs. 6,98,143/- and the subsequent notice dated 17/01/2021 for Rs.

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12,00,134/-; **c)** to direct the Respondents to refund the amount already recovered by them which are contrary to the provisions of the regulations; **d)** to pass such orders to impose penalty on the Respondents for not complying with the provisions of the Supply Code, 2009 and the provisions of the Electricity Act, 2003; **e)** to order payment of simple interest @ 15% per annum as per Regulation 26 (6) of the HPERC (CGRF and Ombudsman) Regulations, 2013 or as per Clause 5.7.3 of the Supply Code, 2009 on the amounts recovered in excess, or any other regulation as may be legally applicable in the present case; **f)** cost of the Complaint amounting to ₹ 5,00,000/-; **g)** call for the record of the case and; **h)** any other or further orders which this Hon'ble Forum 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.

C – The Respondents' submission:

Preliminary Submission:

1. The Respondents submit that the Complaint/representation is not maintainable in the present from and same is liable to dismissed. Further, that the Id. Forum has passed a very reasoned and speaking order dated 29/07/2022 on the proper appreciation of the material on record and having due regard to the provisions of the Electricity Act, 2003 as also the Regulations framed there under. As such the impugned order dated 29/07/2022 call for no interference.

2. The Respondents submit that the Complainant is stopped to file the present Complaint by his conduct and conduct and same is liable to be dismissed.

3. Further, that the Complainant has no cause of action and locus standi to file the present Complaint hence the Complaint deserves to be dismissed.

4. Further, that the Complainant has not come to his Hon'ble Ombudsman with clean hands and has concealed and suppressed the material facts from this Hon'ble Ombudsman as such representation as preferred by the Complainant is not maintainable in the eyes of law.

5. Further, that the Complainant is liable to pay the PLVC as per tariff in as much as it has violated the peak Load Restrictions. Therefore, the demand raised is just and proper and is being reflected accordingly in the bills. Since the Respondents have raised the legal dues recoverable, therefore, the representation is not maintainable and deserves only dismissal.

On Merits: -

6. The Respondents submit that the Id. Forum has passed a very reasoned order while disposing of the Complaint No. 1212/3/21/08 vide its order dated 29/07/2022 Since there is no infirmity or illegality in the impugned order, therefore, the interference of this Hon'ble

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Ombudsman is not called for under Regulation 28 (1) (b) of the HPERC (CGRF & Ombudsman) Regulation,2013.

Facts of the case

7. The Respondents submit that Complainant cannot be permitted to set entirely a new case in this Appellate Forum of this Id. Ombudsman. Detailed reply has already been given by them to the Complaint filed by the Complainant before the Id. Forum and same may be read as part as part and parcel in reply to this representation. Further, that the amount in question herein is related to the peak load Violation Charges (PLVC) as detected later on by them. Further, that the Peak Load Violation Charges being the integral component of the schedule of the tariff being issued by the Hon'ble HEPRC in exercise of the power vested in it under section 62 of the Electricity Act, 2003. The Complainant in no stretch of imagination is exempted from making the payment of the statutory charges. Insofar as the issue of the disconnection of the electricity supply to the premises of the Complainant is concerned, the Respondents are very authorized and empowered by the statue to disconnect the electricity supply of the Consumer in the eventuality of the failure to make the payment of the electricity dues or any sum other than the charge for electricity dues or any sum other than the charge for electricity due under Section 56 of the Electricity Act, 2003. Further, that if the Complaint preferred by the Complainant before the Id Forum is seen, there appears nowhere challenge to the defaulter Notice issued by the Respondents. The only premise of the Complainant before the Forum is the non-supply of the basis/ calculation of the amount towards the Peak Load Violation charges. It is settled law that when there was no such specific challenge before the Forum below, it is impermissible to raise additional plea in the Appellate Forum, and the Appellate Forum is only entrusted with the task only to check the legality of the impugned order which is under challenge before it. Since there is no infirmity legal or procedural, in the impugned order dated 29/07/2022 passed by the Id. CGRF therefore, the representation/ Complaint is not maintainable and deserves only dismissal.

8. The Respondents submit that the contents of sub para are misleading one hence not admitted. Further, that Complainant had withdrawn the suit before the Id. Civil Court without taking any liberty to file afresh before the Hon'ble Civil Court or other statuary for available under the Electricity Act, 2003. The Respondents submit that it is settled proposition of law that when a lis is withdrawn by the party from a court of competent jurisdiction without taking liberty to file afresh, any subsequent suit/proceeding are totally barred under law by invoking the principles of resjudicata and on this sole ground the representation is liable to be dismissed.

9. The Respondents submit that the amount which is payable by the Complainant towards them has to carry the late payment surcharge at the rates specified by the HPERC in the tariff order.

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10. The Respondents submit that during the course of the hearing the Id. Forum directed to Respondents to overhaul the account of the Complainant by taking into consideration the light load of the Complainant hence Respondents have re-calculated the demand to the tune of Rs. 3,26,791/- which was communicated vide letter dated 22/04/2022.

11. The Respondents further submit that the contentions of the Complainant are totally misplaced and misconceived one hence not admitted. Complainant has miserably failed to appreciate the entire gamut of the case and has posed a very hypothetical grounds which are neither tenable on facts nor on law. The observation of the audit are not blindly followed by the Respondents but when the Bonafide mistake of the less billing/ under recovery is pointed out, it is Respondents who are authorized to raise the additional/revised demand on the Consumers are the Consumers are liable to honor the demand as raised by the Respondents/distribution licensee inasmuch the Complainant is bound by the Contact Agreement to liquidate the demand raised. If the Complainant was not billed properly on account the Peak Load Violation charges and when this mistake muchless Bonafide one, detected by any one, be it audit, from the scrutiny of the record, and then the Respondents are bound to raise the additional demand. This act of raising the additional demand is perfectly valid in law as this issue is no more res integra as the Hon'ble Apex Court in M/S Prem Cottex versus Utter Haryana Bijli Vitran Nigam Limited Civil Appeal No. 7235 of 2009 decided on 05/10/2021 has held as under:

    "2.1. in raising of an additional demand in the form of short assessment notice". On the ground that in the bills raised during a particular period of time, multiplying factor was wrongly mentioned, cannot tantamount to deficiency on service. If a licensee discovers in the course of audit or otherwise that a Consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the Consumer does not dispute the correctness of claim made by the licensee that there was short assessment, it is not open to the Consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of "escaped assessment" and deficiency in service".

12. The Respondents submit that hence, the contention of Complainant that observation of audit is not applicable to the Respondents or the Complainant is totally baseless and imaginary.

13. **Whether the Consumer is liable to pay for peak hour units worked out merely on assumptions in the absence of MRI data?** The Respondents submit that the contentions of the Complainant in these paras are totally wrongly and incorrect hence denied and it is specifically denied that the impugned demand raised by the Respondents is having no base. However, the data stands retrieved from the HCL software which clearly substantiates the demand of the Respondents. However, as stated herein above, taking light load of the Complainant in to consideration, the revised demand stands issued vide letter dated

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22/04/2020, the account stands overhauled. The foundation of the totally misplaced one and liable to rejected out rightly.

14. The Respondents thus prayed that the representation filed by the Complainant may kindly be dismissed in the interest of justice and fair play.

D – The Complainant's additional submissions through rejoinder:

1. The Complainant submits that at the outset he repeats, reiterates 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.

3. The Complainant submits that he has rightly approached the Hon'ble Ombudsman, which is the only remedy available under the law available to him. The Complainant is not satisfied with the orders dated 29/07/2022 passed by the CGRF.

4. Further, that he has every right to bring up the matter before the Electricity Ombudsman under the rules and regulations enacted under the Electricity Act, 2003.

5. Further, that he has sufficient cause of action and locus standi to file the Complaint and nothing contrary has been specifically pointed out by the Respondents.

6. Further, that he has approached the Electricity Ombudsman with clean hands and nothing has been concealed or suppressed as has been replied by the Respondent. The Respondent should come out with any such concealment, suppression, specifically, rather than simply making an allegation.

7. The Complainant submits that it is accepted that he is liable to pay PLVC as per tariff, but at the same time it is the responsibility of the Respondent to issue the correct bills, rather than take recourse of the arrears. The PLVC demanded by the Respondents are not strictly as per the provisions of the tariff, but are being claimed in an indirect manner based on assumptions and analogy. Further, that the Respondents do not have enough data to raise the revised monthly bills as per requirement of tariff and the supply code.

8. The Complainant submits that the Respondents' contention that the Forum has passed a reasoned order is denied by the fact that the CGRF has failed to go into the details required

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for issuance of the bills on the fixed periodicity as per rules and regulations, while simply stating that the demand of the Respondents was legitimate.

9. The Complainant further submits that the submission of the Respondent that an entirely new case has been set up, is devoid of merits. The same demand raised by the Respondents is in question, while the same provisions of tariff, are being stated in these paras. Further, that the Respondents are wrongly stating that an entirely new case has been presented. While the Respondent has time and again in their reply submitted that the PLVC being an integral part of the schedule of tariff, which is not being denied by him. Further, that it is only the roundabout manner in which these PLVC as been ascertained and levied and the demand raised, and also not adhering to the provisions of the schedule of tariff has resulted in an inflated demand. In the absence of month-wise maximum recorded demand, it is impossible to determine as to whether peak load violation has occurred in any month. He is not seeking exemption from the statutory charges at all as is being submitted by the Respondents but the Respondents cannot exceed the provisions of tariff and the billing procedure notified under the tariff and the relevant regulations. The defaulter notice issued by the Respondents, is only a consequence of the original demand on account of PLVC and such notice is without any consequence while the basic demand being under challenge. Further, it is wrongly stated by the Respondents that the only premise of the Complaint is non-supply of the basis/ calculation of the amount towards Peak Load Violation Charges. Further, that it is logical that unless and until the basis and calculation is provided, how can he react on the correctness of the amount demanded by the Respondents. The Respondents are trying to confuse the Ld. Ombudsman on the basis of technicalities of court procedures, rather than justifying the demand on merits. Electricity Act, 2003 is a beneficial legislation and CGRF and Ombudsman being part of the grievance redressal mechanism are required under the law to protect Consumer interest. The genuineness and the lawfulness of the demand has to be the primarily considered, while passing any demand whatsoever from the Consumers.

10. The Complainant submits that he had withdrawn the suit as the same had been filed by him in error and hence was withdrawn. The Respondents are raising a technical issue, which is meaningless. No liberty was required in the present case because he approached the CGRF well within the time limit provided in the regulations. Further, that since the Apex Court has already ruled that the Covid period March 15, 2020 to February 2022 be excluded from computing the limitation period. Hence, the contention of the Respondent is meritless and deserves to be ignored. Res judicata is not applicable in the present circumstances.

11. The Complainant submits that the Respondents are missing the point raised, that they should have reflected the impugned amount as disputed amount in the electricity bills, while the dispute was pending, while the disputed amount was being shown as payable by the due date of each bill. However, whether they continued to calculate the late payment surcharge is not of his concern as the same would have had an impact on him only after the matter being adjudicated by the appropriate courts of law.

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12. The Complainant submits that the Respondents have submitted his account regarding the demand notice was overhauled to Rs. 3,26,791/-, which is almost half of the demanded amount. The Respondents clearly has admitted that the calculations earlier were carried out incorrectly, without even considering the light load which was allowed to be used even during peak hours, without any separate sanction. The CGRF has overridden even the overhauled calculations submitted by the Respondents, which clearly shows the bias of the CGRF to the towards the Respondent board, and is total ignorance of justice.

13. The Complainant submits that the Respondents is using a wrong term in the present context as arrears having arisen due to a bona fide mistake. The term 'bona fide" literally means "real or genuine". The present dispute is in no way on the basis of a bona fide mistake. The ToD tariff was to be levied in his bills and the Respondents cannot be allowed to plead ignorance of the tariff provisions, as day in day out they deal with these matters. Further, that it is more of negligence on the part of the field officers, who did not carry out their duty in the manner and who contravened the provisions of the tariff order. It would have been rightful for him to initiate proceedings under section 142 of the Electricity Act, 2003 for contravening the provisions of the tariff order. The observation of the audit party has also established the contravention and there remains nothing to be proved further. However, since it is not within the powers of the Hon'ble Ombudsman to initiate such proceedings, the Complainant is not pressing for the same in the present representation. It would be rather justified, if the Hon'ble Ombudsman takes a serious view and pass directions recommending action against the concerned field officers for not carrying out their duty as was required under the rules and regulations. Why is it that why is always the Consumer penalized for the mistakes of the employees of the Respondents? The judgement cited by the Respondents is relevant as this is not a case of assessment, where the same considered relevant. The said judgement being passed in the case of wrong multiplying factor, which particularly is a metering dispute, cannot be applied in the present context, as it is a clear case of not following the tariff orders notified by the HPERC. This is not a case of short billing, as has been stated by the Respondents, as the Respondents for years and years continued to ignore the provisions of the tariff order. While billing for the LS Consumers, the Respondents were very conscious of the provisions of the same tariff order, and the same tariff category which was applicable to the industrial Consumers. On one hand the Respondents failed to provide the night concession to him, while on the other hand he failed to segregate the consumption into different time slots. Unless such month wise consumption is available, the electricity bills for the relevant period cannot be revised due to non-availability of such data as is required to raise this demand. It may be a case, that his night concession may work out to a larger amount than the peak load extras, thus making the Complainant eligible for refund.

14. The Complainant submits that the Respondents are denying the submissions made in the Complaint merely stating that the demand has been raised on the basis of the MRI data. The claims and submissions of the Respondents is wrong and unjustified and merely a

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caver-up for the lapse on their part. The Respondents were required to have the following data for raising a monthly bill to the Complainant:

a) Bifurcation of his monthly consumption into three time slots, i.e. peak, normal and night for levy of energy charges;

b) His Light Load and the maximum recorded demand during peak hours during that particular month for levy of Peak Load Exemption Charges (PLEC) and Peak Load Violation Charges (PLVC) as these charges have been fixed in the tariff order to levied on each month basis;

c) Maximum recorded demand during entire monthly billing period for levy of Demand Charges.

15. The Complainant submits that the Respondents are trying to cover a very large period on the basis of some data, which may only have indicated that there has been peak load violation, which may have occurred only during one month and not the entire period as has been assumed while calculating the Complainant's liability.

16. Further, that the Hon'ble HPERC in its orders dated 03.08.2002 in the case of Parwanoo Industries Association versus HPSEBL had passed detailed orders, which even include the illustrative examples, illustrating the manner in which the bills were to be prepared in Annexures -1 to 5 of the said order. Further, that the maximum recorded demand has been defined in the tariff orders as

"Maximum Demand Charge (MDC) – Consumers billed on the basis of KVAh tariff as applicable for the relevant category under this Schedule Of Tariff, shall also be charged at the rate specified, in addition to the KVAh charges per month, the „Maximum Demand Charges" per month per KVA, calculated on the [Maximum Demand (in KVA) recorded on the energy meter during any consecutive 30 minute block period of the month] OR the [Contract Demand (in KVA) or 80% of the Connected Load (computed in KVA assuming 0.9 power factor) in the absence of Contract Demand] whichever is higher."

17. The Complainant submits that the Maximum recorded demand during peak hours on the monthly basis is the basic requirement to compute Peak Load Violation charges. The electronic meters are capable of recording readings of each half an hour and highest demand recorded in any half an hour is the maximum on which the bills are to be raised.

18. Further, that the Respondent be asked to present before the Hon'ble Ombudsman, the MRI data for preparation of at least one bill, during the period of dispute, say in the year 2006 as a sample data, so as to verify and establish that the claim of the Respondent is hypothetical or is supported by proper data.

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19. The Complainant thus in view of above and the submissions already made in the representation, prayed that the representation filed by the Complainant be allowed after appreciating the provisions judiciously in the interest of justice.

E – CGRF Order:

1. This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and record as facts alongwith pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

2. At the outset, so as to effectively decide the contention raised by the Complainant, this Forum sets aside the revised Demand of Rs 3,26,791.20 raised by the Respondent HPSEBL vide letter No 87-89 dated 22.04.2022, such having been raised merely out of compliance to Interim Orders passed by the Ld Forum wherein only amicable settlement was intended and where the raising of a revised Demand was not sought. The setting aside of ibid revised Demand of Rs 3,26,791.20 is also imperative considering that amicable settlement between the parties had failed and because this revised demand is neither impugned nor the subject matter of dispute between parties before this Forum;

3. For the sake of convenience, sub-regulations 19(b) and 19(c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 are reproduced below which read as

   – Quote ..... 19. Limitation/ pre-conditions for submission of grievance.- The Forum may reject the grievance at any stage under any or more of the following circumstances:- ..... (b) in cases which fall under sections 126,127, 135 to 139, 152, and 161 of the Act; (c) in cases where the grievance is submitted two years after the date on which the cause of action has arisen; and ..... UnQuote

4. On examination of the matter on delays and latches it was observed that from the Order dated 31.08.2020 passed by the Ld Civil Judge when the suit / plaint was unconditionally withdrawn to the date of filing of instant Complaint on 27.07.2021, ie for 11 months the consumer/Complainant herein did not take recourse to legal remedy. However, because the Complainant was before the Ld Civil Court from the year 2019 to August 2020, ie almost 1 year and 8 months, this Forum observes that the instant complaint is not barred by limitation under sub-regulations 19(c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 despite suit / plaint having been withdrawn unconditionally;

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5. Further, it has also been noticed by this Forum that ibid Defaulter Notice dated 15.11.2018 and Bill No 1100078275 dated 19.09.2018 have not been placed on record by the Complainant and are also not under challenge in the instant complaint and neither is there any specific challenge to any item that may be contained therein. Defaulter Notices with 15 days Notice period conform to statutory requirement prescribed in subsection 56(1) of the Electricity Act, 2003 for non-payment of any charge for electricity or any sum other than charge for electricity before action for disconnection of electricity is taken. However, the complainant has sought relief from this Forum against some amount of Rs 6,98,493/- contained in the said Bill / Notice but because both the ibid Bill dated 19.09.2018 and the Notice dated 15.11.2018 have not been placed on record by the Complainant and are not under challenge before the Forum and neither is there any specific challenge to any item of the said Bill / Notice, therefore this Forum restricts its observations, finding and decision to only the impugned Defaulter Notice dated 27.02.2021 (Annexure- C1) for Rs 12,00,134/- issued by the Respondent HPSEBL;

6. This Forum also observes that the Complainant in the instant complaint has not challenged the legal vires of the Notice dated 27.02.2021 (Annexure C-1) for Rs 12,00,134/-. However, in the matter before the Ld Civil Judge Senior Division Shimla, the matter was agitated relying upon sub-section 126 (2) of the Electricity Act, 2003 which is in terms of assessment for unauthorized use of electricity. The issue of unauthorized use and assessment therein under section 126 of the Electricity Act, 2003 is not the subject matter of dispute before the Forum. Moreover, scope of section 126 is also beyond the authority /jurisdiction of this Forum as proscribed in sub-regulation 19(b) of the ibid HPERC Regulations. The Complainant in the instant complaint has only pressed before this Forum the issue of non-providing the Complainant with the underlying basis / mode of calculating the readings of the electricity meter by the Respondents;

7. The Forum also observes that the Complainant has also not laid any challenge to the correctness of the demand, as being in contravention of the relevant Tariff Orders issued by the Ld HP Electricity Regulatory Commission (or the HPERC), which essentially requires showing month-wise-item-wise consumption parameters, applicable tariff as per relevant Tariff Orders issued by the Ld HPERC and amounts due vis-à-vis those charged by the Respondent. It is evident from settled law that while the consumer uses electricity being a good, as has been held by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity which are determined by the Ld HPERC for a Financial Year vide its Tariff Orders under the Electricity Act, 2003 and Regulations framed there under. These tariffs / charges are applied to the consumption or good and thereafter a Bill or Demand is raised to the consumer. This Forum is also of the considered opinion that the Respondent HPSEBL being a distribution licensee cannot charge any tariff in excess of that specified by the Ld HPERC. At the same

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time, it is also relevant to mention that the Respondent HPSEBL being a distribution licensee is bound to recover the cost / price of electricity consumed by a consumer strictly as per tariffs /charges that are determined and specified by the Ld HPERC vide its Tariff Orders and consumer is bound to pay these tariffs / charges accordingly. Any lapse, mistake or bona-fide error by the distribution licensee with regard to under recovery of actual tariff / cost / price of electricity, if not recovered from the respective consumer who has availed the good, may result either in permanent loss to the distribution licensee being a public utility or with the burdening of this utility's loss upon other consumers, both of which are bad and against mandated provisions of Tariff Regulations on the matter;

8. In the instant matter, this Forum is of the considered opinion that if the consumer Complainant regularly pays bills as are raised by the Respondent HPSEBL, then presumption is raised that consumer complainant herein would not at anytime pay his electricity bills without ascertaining their correctness by way of applying the tariffs as were ordered by the Ld HPERC on its electricity consumption and calculating the charges actually payable which in the instant matter could also have been calculated by the Complainant for the monthly bills in respect of which arrears were evolved by the Respondent for Peak Load Violation Charges (PLVC) by making some effort and by showing to this Forum any discrepancy whatsoever and then disputing the demanded amount;

9. The moot issue for determination as made out by this Forum from the complaint is whether the Respondent HPSEBL can or cannot raise amount towards short recovery of peak load hour violations in excess of peak load exemption availed for the past period which is March 2010 to October, 2014 which was neither noticed nor raised in the past being a bona-fide mistake / error and whether such is hit by limitation under sub-section 56(2) of the Electricity Act, 2003 and consequently therefore whether complainant consumer of the HPSEBL, is or is not liable to make payments raised vide impugned Defaulter Notice;

10. In the matter, this Forum holds that the Respondent did make a bona-fide mistake / error in the past by missing to raise the peak load hour violation amounts in the original Bill which was later pointed out by the Audit. This fact has not been disputed by the Complainant. The Respondent is certainly within his legal rights to raise past arrears or dues if not discovered earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly or is hit by limitation of 2 years prescribed in ibid section 56(2) which is conspicuously missing on the part of the Complainant;

11. Having gone through the case and having heard the matter by way of arguments extended by the parties, this Forum holds that the action of raising impugned Defaulter Notice dated 27.02.2021 by the Respondent cannot be held to be an illegal one or a wrong one unless otherwise proved to be so. The Defaulter Notice with 15 days Notice period is for non-

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payment of previous charges as may have been raised by the licensee and conforms to statutory requirement prescribed in section 56(1) of the Electricity Act, 2003 for non-payment of any charge for electricity or any sum other than charge for electricity as a precondition before any action for disconnection of electricity is taken by the licensee. This Forum sees no reason to interfere with this Defaulter Notice dated 27.02.2021 when the original Bill or any of its components are not under challenge before this Forum. This Forum does not find merit in the complaint and arguments given by the Complainant. The issue is accordingly decided against the Complainant and in favour of the Respondent HPSEBL on foregoing terms.

12. The Complainant, after adjusting for the amount of Rs 2,32,831/- as ordered to be deposited vide Forum's Interim Order dated 27.07.2021, shall pay / deposit within 30 days of this Order, the remaining amount from the total amount of Rs 12,00,134/- contained in the impugned Defaulter Notice dated 27.02.2021, failing which the Respondent HPSEBL shall be at liberty to invoke the provisions of law on disconnection of electricity under Section 56(1) of the ibid Act.

F – Analysis of the Complaint:

1. The case file at Consumer Grievance Redressal Forum Kasumpti bearing No. 1212/3/21/08, dated 27/07/2021 orders on which were passed on 29/07/2022 have also been requisitioned and gone through.

2. The documents on record and the arguments made by both the parties have also been gone through.

3. The present application has been filed by the Complainant under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

4. The Complainant has a MIPS category connection with Connected Load of 99.22 kW and 99.22 kVA of Contract Demand. Two-part tariff is applicable to the Complainant. As per Revised calculation sheet submitted by the Respondent Board at Forum below, the Complainant's light load is 9 kW/ 10 kVA.

5. The Complainant was served an energy bill dated 19/09/2018 wherein the Respondent Board raised a Sundry Charge for Rs 6,98,493/- simply stating RAO Audit 2381/149. Further, a written communication was issued by Respondent No. 2 on dated 15/11/2018 stating that Audit party have worked out Rs 6,98,493/- on account of PLVC not charged earlier. The period of audit and date of Audit memo is not available on record. A copy of the Audit memo was also attached alongwith a sheet wherein 59928 units were worked out for purpose of Peak Load Violation with '0' light load. The charges were worked out at Rs 6.10 per unit for the 59928 units. In separate Table of same calculation sheet, the Audit

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considered 18.5 kVA as light load for the purpose of exemption during peak hours and further calculation for short recovery of demand.

6. The contention of the Complainant was that the Respondents have not placed the disputed amount in separate column as per requirement and had shown the same in payable and subject to monthly surcharge. They further contended that the amount has now grown to Rs 12,00,134/- by 27/02/2021.

7. The Complainant have further contended that as per Himachal Pradesh Electricity Supply Code 2009, billing on average basis is allowed in case of defective metering which is not the case with them. They also shared a Table depicting different rates available for different years. They further contended that even while working out the revised calculations, the night time concession has not been considered.

8. They also contended that the demand raised by the Respondents is time barred in view of provisions under Section 56 (1) of Electricity Act, 2003. But in absence of the date and period of Audit, the same is very difficult to ascertain.

9. On the other hand, the Respondents have contended that the Complainant is liable to PLVC as per Tariff as it has violated the peak load restrictions and the demand raised by them is just and proper. They further contended that the Complainant have set a new case at this Appellate Forum. But the pleadings at the Forum below reveals that the Complainant sought details of the charges and justification and thereafter settle the account but the Respondents paid no heed to their request through notice under Section 80 C of CPC and they were forced to file the application at Consumer Grievance Redressal Forum. They had also raised the limitation issue. Their prayer at the Forum below and in this Appellate Forum are almost similar and they were ready to settle the matter amicably subject to production of details of the Charges.

10. The RAO observed that Medium Supply and Water Pumping Consumers were though being billed under two-part tariff and was liable to pay Contract Demand and Peal Load Violation Charges applicable from July 2005 onwards yet up to April 2010/ October 2014. They further stated that no data relating to normal, night and peak hour reading consumption was downloaded through Meter Reading Instrument (MRI) April 2020/ October 2014 when the data was downloaded through MRI. The cumulative consumption of 319617 kVAh was recorded during peak hours in respect of Consumers detailed at Annexure-'M'. They further observed that in case of four Consumers, the light load was '0' and in one case the light load was only 3 kVA which was not enough to justify the peak load consumption of 103679 kVAh recorded in peak hours. They further observed that on downloading the cumulative energy consumption data the field units had not charged peak load exemption/ violation charges resulting in short recovery of Rs 34,29,057/- from the Consumers.

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11. In the instant case pertaining to the Complainant, the Audit worked out 59928 units with '0' light load and worked out Rs 3,65,560.80 as short recovery for non-levy of PLVC. In another Table, the Audit worked out 18.5 kVA as light load and worked out Rs 3,32,933/- of short recovery which is again for non-levy of PLVC. (*However, in the revised calculation sheet prepared by Respondent No. 3 shows the same as PLDC i.e. Peak Load Demand Charges*) Thus, the total recovery was worked out at Rs 6,98,493/-.

12. Initially the Complainant approached Civil Courts who ordered a stay in recovery of the disputed arrears on 31/04/2019. The civil suit was dismissed as withdrawn on 31/08/2020. The Respondent Board kept on charging surcharge on the disputed amount even after filing the case at the Forum below and the amount grew to Rs 12,00,134/- by 27/02/2021, the date of notice served again on the Complainant.

13. The Complainant preferred representation at the Consumer Grievance Redressal Forum which was admitted on 27/07/2021 and also deposited 1/3rd of the initial disputed amount i.e. Rs 2,32,831/- as directed by the Forum below on 27/07/2021. The Forum below at Kasumpti also directed Respondent Board on 16/12/2021 to reconcile/ settle the matter amicably with the Complainant.

14. On directions from the Consumer Grievance Redressal Forum, the Respondent Board came up with the revised calculation sheet and worked out Rs 3,26,791.20 as the final charges to be paid by the Complainant. The Respondent No. 2 intimated the Complainant as well as the Consumer Grievance Redressal Forum at Kasumpti about the same through letter dated 22/04/2022.

15. The Forum below observed in its final orders that the Complainant was not agreeable to settle the matter amicably despite revised demand vide Interim Order dated 03/06/2022. The perusal of the Interim Order dated 03/06/2022 reveals that none for the Complainant was present during hearing and the Forum below relied on the statement of the Respondent Board that the Complainant is not agreeing to settle the matter. However, the written submission made by the Complainant on dated 22/03/2022 presented on the 23/03/2022, date of hearing that the Respondent Board have not responded to their notice under 80 C of CPC to disclose the details of the charges and settle the account due to which they have filed the present suit.

16. Scrutiny of the above record shows that the Complainant was agreed to settle the account provided the details are supplied to them about the charges which the Respondent Board failed to do so. The Forum below have without hearing the other party on 03/06/2022 came to conclusion after hearing only one party i.e. the Respondent Board that the Complainant is not agreeing to the settlement.

17. The Forum below even didn't take cognizance of the revised settled account of Rs 3,26,791.20 stating that the same was merely on the compliance of their orders and revised

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demand was never sought. They set aside the revised calculation sheet without hearing the other party on the statement of the Respondent Board. They further observed that revised demand is neither impugned nor subject matter of dispute.

18. Now if the orders dated 16/12/2021 were to reconcile/ settle the matter amicably between the parties then what was the intention of the Forum below. The idea behind reconciliation/ settlement as per their Interim Order dated 16/12/2021 was only to reconcile the matter and come up with final amount to be recovered from the Complainant but the Forum below took a U turn and rejected the final settlement amount presented by the Respondent Board on hypothetical grounds which is quite surprising.

19. Now let us examine the main issue of the Audit para. The scrutiny of the Audit memo reveals that the Respondent Board had failed to take MRI of the Complainant since March 2010 to October 2014 and found that on downloading the MRI in September 2014, there is cumulative consumption data of peak load for 59928 units. They further stated that data in respect of normal, night and peak hours is not available. They assumed that the cumulative units consumed during peak hours is for the period when the MRI was not done and calculated the amount of violation on the entire consumption of peak load period @ 6.10 per unit (applicable in 2014 wherein the rates were different for the previous period). They further calculated the demand charges during peak hours assuming that the total demand of 18.5 kVA was there during peak hours and further assuming that light load was '0'. They also observed that month wise downloaded data is not available.

20. One of the documents attached by Assistant Engineer, ESD Dhalli suggests that the Audit was for the period 2015-16 done in somewhere 2018 possibly in September 2018 when the demand was included first time in the energy bill issued on 19/09/2018.

21. Scrutiny of the Audit memo further reveals that instead of actual peak load or demand violation, they just assumed the data based on cumulative consumption during peak hours and further assumed the demand in kVA assuming light load as '0' to work out the less charges. The audit worked out the charges to be recovered from the Complainant on assumption only in absence of month wise data which the Respondent Board failed to take through MRI month after month.

22. As is understood, the meters installed in the Distribution Licensee can record load surveys between 45 to 180 days only wherein they can record demand for a maximum period of 12 months or up to 12 demand resets. The meter can however store complete tempered data which is not the present case since no tempering have been found/ reported in their audit report. The Audit party assumed that the Cumulative MRI data was for a period of 60 months without checking the meter capacity to record the data and further calculating the short recovery for PLVC/ PLEC and their short recovery of demand during peak was based on wrong facts and on assumption only. That means the Audit party worked out the charges for PLVC and demand during peak hours based on Assumption and without the support of

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month wise MRI data. They were either ignorant about the meter capacity to record the load survey data/ demand or they just ignored the same. There is no justification and proof of peak load violation by the Complainant.

23. The Respondent Board was directed vide Interim Order dated 26/08/2022 to present the month wise MRI record alongwith their reply which they failed to do so. The Respondent Board even failed to justify their demand raised and stated that they had submitted the revised calculations for Rs 3,26,791.20 after considering the rates applicable for PLVC during different times and also considering the light load of 10 kVA. The further stated that the demand initially raised by them was as per Audit memo which they revised after the reconciliation/ settlement order of the Forum below.

24. Now let us examine the similar situated two orders of the Forum below placed on record by the Complainant. First case was Complaint No. 1421/1/20/002 dated 11/12/2019 titled M/S Quality Packages Vs HPSEB Ltd & others passed by the Consumer Grievance Redressal Forum at Kasumpti on 13/07/2020. In this case the Forum below had quashed and set aside the demand raised by the Respondent Board for Rs 1,20,720/- based on the Audit report for 2011-12 and on single year rate of tariff difference without proof and justification for raising the demand for arrear/ sundry charges for period 11/2009 to 12/2010. They further observed that there is no actual data produced to ascertain the correctness of peak load tariff arrears which are not justifiable and appears to be illegal and arbitrary in the facts and circumstances. They also observed that there is no MRI data available and this amount has been charged by the Respondents on the basis of the Audit report.

25. The second case was Complaint No. 1421/1/20/002 dated 11/12/2019 titled M/S Luxmi Industries Vs HPSEB Ltd & others passed by the Consumer Grievance Redressal Forum at Kasumpti on 13/07/2020. The observations of the Forum below were similar except for demanded amount was Rs 73,899/- and they also quashed the said demand in absence of actual data which was claimed by the Respondent Board based on the Audit report for 2011-12 for period 04/2013 to 12/2010 without actual MRI data.

26. In the present case, the Forum below, ignoring their own past orders for similar situated cases, took a different view and relied on the Audit report which was based on assumptions without actual data. They even rejected to settlement amount of Rs 3,26,790.20 worked out by the Respondents which was ordered by them on 16/12/2021 stating that the Respondents have merely complied with their orders and the said they never sought revised calculations and the revised calculations are neither challenged nor impugned which appears to be discriminatory and having biased view towards the Respondent Board without hearing the other party. They just ignored another fact that the settlement was ordered by them.

27. The Complainant has contended that both the earlier orders of the Forum below passed on 13/07/2020 have taken finality and are not under challenge in any court of Law.

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28. The Respondents on other hand raised the issue of taking liberty at the Hon'ble HP High Court, while withdrawing the case, without taking liberty to file afresh and prayed that the Complaint/ Appeal be dismissed. The Forum below didn't address this issue and it is not advisable to rack up this issue at this stage. The Forum below have however addressed the issue of limitation and observed that the application before them was not time barred.

29. The Respondents however stressed that they had provided revised calculations to settle the issue for Rs 3,26,791.20 communicated on 22/04/2022 and also placed arguments that the Forum below didn't consider the revised calculations towards settlement ordered by them.

30. The Respondents have also quoted a judgement of the Apex Court in M/S Prem Cottex Vs UHBVNL civil appeal 7235/2009 stating that the bonafide mistake of less billing/ under recovery is pointed out and they are authorized to raise additional/ revised recovery. The said case was for wrong multiplying factor which is covered under bonadide mistake but the Respondents failed to look in to this aspect that this is not a case of bonafide mistake but they themselves have failed to take monthly MRI readings for almost five years and this is a clear-cut case of non-implementation of the provisions of the Tariff Orders and they themselves are at fault. Further, they failed to provide month wise details to the Complainant even after notice under 80 C of CPC resulting in to the present dispute. The Respondent Board in this case appears to have penalized the Complainant based on assumptions made by the Audit and their own failure to take the month wise MRI readings.

31. The Respondents have also contended in their reply that they have raised the demand in view of MRI data but they failed to prove that they have done so based on the month wise MRI data. The audit only assumed after scrutinizing the downloading of data for first time in September 2014 that there are cumulative units consumed during peak hours. The audit also agreed that the Respondents have not taken MRI data regularly and normal, peak and night-time consumption data is not available.

32. Now let us examine the facts. There is no month wise MRI data available since April 2010 till October 2014, the period for which the audit made assumptions. First time MRI was done in September 2014 and the Audit made assumption for cumulative units during peak hours as violation ignoring the facts that meter had maximum capacity to record the data for only one year for demand and maximum six months for load survey to ascertain the Peak Load violations.

33. The Respondents failed to provide month wise MRI data or details sought by the Complainant since the same is not available with them. They also failed to provide proof for same in this Appellate Forum even after directions to do so. They have also failed to justify the rates worked out earlier or even after the revised calculations done by them on the instance of the Forum below.

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34. The Respondents have also failed to correct the mistake of the Audit party and instead of replying the wrong Audit party observations, they have simply placed the short recovery of Rs 6,98,493/- observed by the Audit first on simple assumptions and without actual MRI data in Sundry Bill issued on 19/09/2018 without proper notice of 15 days as is mandatory under the provisions of Himachal Pradesh Electricity Supply Code 2009.

20. Further, the Respondents have also flouted the orders issued by the Hon'ble Commission dated 03/08/2002 in the case of Parwanoo Industries Association versus HPSEBL, which even include the illustrative examples, illustrating the manner in which the bills were to be prepared in Annexures -1 to 5 of the said order. Further, that the maximum recorded demand has been defined in the tariff orders as:

"Maximum Demand Charge (MDC) – Consumers billed on the basis of KVAh tariff as applicable for the relevant category under this Schedule Of Tariff, shall also be charged at the rate specified, in addition to the KVAh charges per month, the „Maximum Demand Charges" per month per KVA, calculated on the [Maximum Demand (in KVA) recorded on the energy meter during any consecutive 30 minute block period of the month] OR the [Contract Demand (in KVA) or 80% of the Connected Load (computed in KVA assuming 0.9 power factor) in the absence of Contract Demand] whichever is higher."

35. The Forum below have also not kept in mind the procedure to be followed for working out the charges in two-part tariff. The Forum below can't act on their whims and fancies to decide the case which is very much apparent in this case from their final order dated 29/07/2022.

36. As already discussed above, the Forum below didn't consider their own similar situated orders and relied on the Audit Assumptions which is quite surprising. They even ignored the fact that month wise MRI supporting data to calculate the less recovery is not available. They even ignored the revised settlement for Rs 3,26,791/- done by the Respondents on their own orders stating that the same was not sought and the same is also neither impugned nor under challenge. They have sidelined the issues raised by the Respondents on flimsy grounds and even without hearing them declared that the Complainant is not agreeing to the settlement.

37. The Forum below also didn't consider the initial demand for Rs 6,98,493/- and notice dated 15/11/2018 since they were not on record but failed to took notice of the pleadings made by the Complainant and only considered the final notice dated 27/02/2021 for Rs 12,00,134/- and relied on same in their final orders which is quite surprising. They hold that the final notice is not illegal one and ordered to be paid after adjusting the 1/3rd amount deposited by the Complainant.

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G – Issues at hand:

1. **Issue No. 1:** Whether the short recovery worked out by the Audit based on MRI data for September 2014 is correct or not?

2. **Issue No. 2:** Whether the revised calculations done by the Respondents at the instance of the Forum below can be taken in to consideration and whether the Respondents have rightly demanded the initial short recovery of Rs 6,98,493/- pointed out by Audit?

3. **Issue No. 3:** Whether the orders passed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1212/3/21/08 dated 27/07/2021 passed on 29/07/2022 is in line with the settled provisions of law/ Rules/ Regulations/ Tariff/ Codes etc?

H – Findings on the Issues:

Issue No. 1

1. As is evident from the analysis done above and the documents placed on record/ arguments, the short recovery made out by the Audit is not based on the actual MRI month wise data but on the MRI data taken in September 2014 only during audit done apparently in September 2018.

2. Further, the Audit have also pointed out that no MRI data showing normal, peak and night-time consumption is there for April 2010 till October 2014 and the Respondent Board have failed to take MRI data for almost five years.

3. The Audit observation of the short recovery for almost 60 months are based on assumption of cumulative 59928 units during peak hours treating the whole consumption as violation and worked out violation and demand charges short recovered. Their observation is not based on the actual MRI data but on assumption and ignoring the limitation of the meter to record demand for 12 months only and load survey for maximum six months.

Issue No. 2:

1. As is evident from the analysis done above and facts/ circumstances of the case available on record, the revised calculations done by the Respondent Board is also not based on the actual MRI data but on the assumptions made by the Audit correcting to the extent of average rates for PLVC and after considering 10 kVA of light load.

2. The Respondents also agreed during arguments that no actual MRI data is available for the period in question. Their calculations are also based on the assumptions made by the Audit that violations have occurred. Even they failed to provide night time concession while working out the revised rates since no such actual data is available with them

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3. The Respondent Board have also miserably failed to implement the Two-Part Tariff provisions by taking regular MRI Readings. They have also failed to correct the mistake of the Audit party and instead of replying the wrong Audit party observations, they have simply placed the short recovery of Rs 6,98,493/- observed by the Audit first on simple assumptions and without actual MRI data in Sundry Bill issued on 19/09/2018 without proper notice of 15 days as is mandatory under the provisions of Himachal Pradesh Electricity Supply Code 2009.

Issue No. 3:

1. As is evident from the analysis done above and facts/ circumstances available on record, the orders passed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1212/3/21/08 dated 27/07/2021 passed on 29/07/2022 is not in line with the settled provisions of law/ Rules/ Regulations/ Tariff/ Codes etc.

2. The Forum below have ignored that their own orders passed on 13/07/2020 in two different cases which were on the similar situated grounds. The Forum below had quashed the demand raised by the Respondents in both cases which were not based on the actual MRI data for PLVC and demand but took a U turn in the instant case showing their discrimination approach towards the Complainant's pleadings and facts on record and taking biased approach.

3. The Forum below have also ignored the revised calculations done by the Respondents on their own instance vide orders dated 16/12/2021 on flimsy grounds showing the discriminatory approach followed by them.

<u>I – Order:</u>

1. **The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 29/07/2022 in Complaint No. 1212/3/21/08 dated 27/07/2021 is hereby quashed and set aside.**

2. **The demand raised by the Respondents vide Sundry in Energy bills issued on 19/09/2018 for Rs 6,98,493/- and further communicated later to the Complainant on 15/11/2018 through letter is also quashed and set aside being erroneous, not based on the actual MRI data and simple on assumptions made by Audit on single MRI data of September 2014 without any justification and proof.**

3. **The subsequent revised demand raised by the Respondent Board on dated 27/02/2021 for Rs 12,00,143/- after accumulating month on month surcharge is also hereby quashed and set aside.**

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4. **The Respondents are directed to refund the 1/3rd amount deposited by the Complainant with them amounting to Rs 2,32,831/- by way of adjustment in the energy bills of the Complainant within a period of 30 days from the date of issue of this order or latest by 30/12/2022 failing which the interest @ 15% per annum shall be automatically applicable on the non-refunded amount in line with Clause No. 5.7.3 of the Himachal Pradesh Electricity Supply Code 2009.**

5. **The Respondents are further directed to report Compliance of above directions within a period of 30 days of issuance of the orders or but not later than 30/12/2022 positively failing which the matter shall be reported to the Hon'ble Commission for violations of the 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 Act.**

6. **The Complaint filed by Yash Pal & Ors, Shivam Industries, VPO Shoghi, District Shimla, HP-171219 is hereby disposed off.**

7. **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