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

In the matter of:

M/S Sunoxx International, VPO Panjhera, Swarghat Road, Tehsil Nalagarh, District Solan HP-174101

- Complainant

Vs

1. **Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Assistant Executive Engineer (E), Electrical Sub-Division No. 2, HPSEBL, Nalagarh, District Solan, HP-174101**
3. **The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101**
4. **The Sr Executive Engineer, Electrical System Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101** **- Respondents**

Complaint No. 12/2022 (Registered on 04/07/2022)
(Orders reserved on 19/11/2022, Passed on 07/12/2022)

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 04/07/2022. The Respondents were to file their reply by 19/07/2022 and the Complainant was to file his rejoinder by 21/07/2022 and the case was listed for admission hearing on 23/07/2022. Since the Respondents failed to submit their reply by 19/07/2022, the revised date was by 06/08/2022 and the Complainant was to file his rejoinder by 10/08/2022 and the case was listed for hearing on 12/08/2022.

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

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19/11/2022. The arguments were concluded on 19/11/2022 and the orders were reserved. Hence the delay.

A – Brief facts of the case:

1. M/S Sunoxx International, VPO Panjhera, Swarghat Road, Tehsil Nalagarh, District Solan HP-174101 have filed an application through Sh. Sandeep Sharma (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 04/06/2022 in Complaint No. 1432/3/21/07, dated 24/07/2021. The Complainant have prayed for quashing and setting aside the orders passed by the Forum below and to compensate fully amounting to Rs 9,39,83,175.76 since the dedicated line has now been converted in to a transmission line.

B – The Complainant's submission:

PROLOGUE/BACKGROUND

1. The Complainant submits that he is a private firm and has a factory located in Nalagarh area. The power connection of his factory has been provided by the Respondents on dedicated 66 kV line emanating from Uperla Nangal Sub-station, which was constructed under self-execution mode after obtaining sanction from the Respondents. His dedicated 66 kV line of was later connected to the provide 66 kV supply to Baglehar 66/33, 66/11 substation, which is in owned by the Respondents and is located very close to his factory. As the Respondents refused to compensate him for the cost of the 66 kV line and exercised their control rights on the line to take supply from the said line for their own sub-station, he was aggrieved and had approached the Consumer Grievances Redressal Forum of HPSEBL for redressal of his grievance vide Complaint No. 1432/03/21/07. The CGRF after completing the proceedings in the matter, passed the final orders dated 04/06/2022, which were uploaded on the website of the Forum on 08/06/2022. The Complainant submits further that he did not receive a hard copy of the final orders passed by CGRF till date. He, on the basis of the downloaded copy of the orders, is filing this Complaint within the time period of 30 days allowed under the Regulations.

2. The Complainant submits that this present representation is being filed under Regulation 28 (1) (b) of the HPERC (CGRF & Ombudsman) Regulations, 2013 as the Applicant/ Complainant is aggrieved by the orders dated 04/06/2022 passed by the Ld. Forum in the Complaint No. 1432/3/21/07 titled as Sunoxx International vs. HPSEBL and others, whereby the Consumer Grievance Redressal Forum of HPSEBL has ordered only partial relief against the relief prayed for by him in the Complaint. He is not satisfied with the orders passed by the Forum on several issues, and is thus approaching the Hon'ble Ombudsman vide this representation.

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FACTS OF THE CASE

1. The Complainant submits that he applied for 66 kV industrial connection for 6000 kW with 2500 kVA of Contract Demand in the year 2010. Power Availability Certificate (PAC) was issued on 11/03/2010 stating the terms and conditions of the Supply. Availability of power was committed by the Respondents through PAC subject to the construction of a 66kV dedicated line, to be constructed at the cost of the Complainant for obtaining supply from Uperla Nangal 220/66 kV sub-station to his factory site. While condition No. 7 and 8 of the PAC, specifically provided for cost of such arrangements to be borne by him. The said condition being reproduced below:

   "7. The entire cost of the dedicated feeder along with bay and associated terminal equipment(s) at both ends and metering arrangement will have to be borne by you. ***The cost of 66 kV dedicated feeder will be intimated by the CE (Transmission), HPSEB, Hamirpur/ SE (Transmission), Totu, Shimla."***

   8. In case, if construction of joint feeder or augmentation of existing feeder along with bay and the associated equipment(s) at both ends if required, the entire cost shall be shared proportionately by the group of industrial Consumers. The cost of the same shall be intimated by the CE (Transmission), HPSEB, Hamirpur /SE (Transmission), Totu, Shimla."

2. The Complainant submits that the ES Wing on behalf of the Respondents issued demand notice containing the abstract of cost estimated at 717.75 lakhs and demanded a sum of Rs. 107.13 lakhs to be deposited towards supervision and departmental charges etc. for providing supply on 66 kV supply voltage from 220/ 66 kV Sub-station Nangal Uperla. The Abstract of Cost also included at Sr. No. 11, a sum of Rs. 5.42 lakhs on account of cost sharing of existing 66 kV S/C line on 132 kV Double Ckt Tower of M/s Ambuja Cement i.e. Tower 1 and 2 up to substation. The amount of Rs. 107.13 lakhs were deposited by him vide Rct. No. 0906925 dated 20/08/2011.

3. The Complainant submits that he undertook the work on the 66 kV line on self-execution basis in the year 2011 and was able to complete the line in the year 2018. The said line was charged during the month of April, 2018. There were delay in energizing the line due to disputes between land owners and him and the matters got delayed as some matters were sub-judice before courts of law. The load was released at 66 kV voltage on 11/04/2018 since which the line is in operation. Further, that the actual cost incurred on the line was worked out to Rs. 9,39,83,175.76 (Rupees Nine Crore Thirty Nine Lakhs Eighty Three thousand one hundred seventy five and paise seventy six only).

4. Further, that while his power demand was only 2.5 MVA, he had to construct a line with a very huge capacity, whereas his own usage was a very small percentage of the total capacity.

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5. The Complainant submits that he received a letter dated 07/06/2018 from the Addl. Superintending Engineer, Electrical System Division, HPSEBL Nalagarh stating that they want to utilize the line constructed by him for supplying to Baglehar S/ Stn. which was planned to be augmented and is in the vicinity of his factory premises.

6. Further, that on 28/11/2018, he wrote a letter to the Chairman, HPSEBL citing his willingness to share the line with the Respondents, provided the infrastructure cost is settled as per applicable regulations.

7. The Complainant submits that he wrote another letter on 12/02/2019 addressed to the Managing Director, HPSEBL on the subject requesting him to resolve the matter at the earliest. On 25/03/2019, the Chief Engineer (ES), HPSEBL, Hamirpur (H.P.), wrote a letter in response to the letter written to the Managing Director, HPSEBL, denying the provisions of cost sharing of the line citing Regulation 4 and Regulation 11 of the HPERC (Recovery of cost for Supply of Electricity) Regulations, 2012.

8. Further, that on 19/05/2021, the Executive Engineer, Electrical Systems Division, Nalagarh, visited the factory premises and intimated that they will require a shut down of the 66 kV Supply Line, supplying to our factory, for carrying out work in respect of connecting the supply through our line to Baglehar 66/33/11 sub-station. He immediately wrote a letter on 21/05/2021 addressed to the Sr. Executive Engineer, Electrical System Division, Nalagarh objecting to such connection proposed to be drawn from the dedicated 66 kV line which up to that date was solely feeding to his factory, until and unless the matter of compensating the cost of the line was settled between him and the Respondents as per applicable regulations.

9. The Complainant submits that despite the objections raised by him, the Respondent No. 4 wrote and email to him on 15/04/2021, seeking consent for shut down on our 66 kV feeding line for carrying on work to provide supply to Baglehar Sub station. He responded to the email stating that the proposed connection will amount to encroachment on his rights and hence requested the Respondents to refrain from such connection. Paying no heed to his contention, the Respondents continued with their plan and connected the Baglehar sub-station from our dedicated line on 19/06/2021.

10. The Complainant submits that on 24/06/2021, he received a letter dated 14/06/2021 written by Respondent No. 4, denying his claim. In the letter it was also stated that the capacity of the line was rated to be 82 MVA, out of which HPSEBL is utilizing to an extent of 32 MVA to supply Baglehar sub-station. Further, that he do not have any knowledge of any further drawal of load from the said line at a later stage.

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11. The Complainant submits that he filed the grievance as Complaint No. 1432/3/21/07 on 24/07/2021. The Respondents filed reply in the matter and further submissions were made as a rejoinder to the reply before the CGRF. CGRF finally disposed the matter after arguments and deliberations and passed final orders dated 04/06/2022 in the matter partly allowed the Complaint in his favour.

12. The Complainant submits that he then chose to prefer the instant appeal in the form of representation before the Hon'ble Electricity Ombudsman being unsatisfied with the final orders passed by the Forum.

Orders Passed by the Forum:

13. The Complainant submits that the Ld. Forum in Para (2) has stated that he has become a Consumer on 11/04/2018, which is incorrect, whereas he had become a Consumer on the date of application of PAC in the year 2010. The exhaustive definition of the Consumer in the Supply Code, 2009 is reproduced below:

"1.2.13 "Consumer" means any person who is supplied with electricity for his own use by a
licensee or by the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes bulk supply Consumer, any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be and shall also include-

(a) Consumer whose installation has been temporarily disconnected;
(b) prospective Consumer i.e. any person who has applied for an electricity connection and whose supply has not commenced; and
(c) in case of death of a Consumer, his legal heirs or representatives

14. The Complainant submits that the Ld. Forum has wrongly concluded in Para 24 of the order that the resultant 66 kV line, after it being put to use for supplying to a distribution substation of the utility, can still be called a distribution line upto the T-Off point from which the supply to him branches off into two lines, one leading to the Baglehar Sub station and the other leading to his sub-station. The Ld. Forum has wrongly concluded that the averments in this respect are far-fetched and based on conjectures. The Ld. Forum has quoted the definitions of the "transmission line" and the "distribution system" in the Electricity Act, 2003, in order to arrive at this conclusion. For the purpose of clarity, the complete definitions in the Act, is reproduced below:

"(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a

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generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works;

(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the Consumers;

15. Further, that in the present case, after the connection (tapping) of the feeding line of the Baglehar sub-station to the 66 kV line emanating from Uperla Nangal 220/66 kV Sub-station, the portion of line from the Uperla Nangal sub-station upto the tapping point has become a transmission line. Even the portion of line, constructed from the Tapping Point to the Baglehar Sub-station is a transmission line.

16. The Complainant submits that it is also very clear that from the definition of the distribution system that it consists of system of wires between the delivery points on the transmission lines and the point of connection to the installation of the Consumers. In the present case, the delivery point for him was earlier at the Uperla Nangal Sub-station from where his system was connected. But, after the connection of the other end of the 66 kV line, the delivery point got changed to a point on the last tower, from where the tapping was taken. The entire line connecting the Uperla Nangal Substation to Baglehar, sub-station automatically got covered under the definition of the transmission line as it became a line connecting the two sub-stations, not ending at a Consumer installation. The electricity once transmitted (transported), gets distributed through common feeders or from lines which connect the transmission lines to the Consumer premises. The Ld. Forum has failed to distinguish between the distribution system and the transmission line.

17. Further, that the Ld. Forum has wrongly concluded that the status of the line is common feeder after its connection to the Baglehar sub-station.

18. The Complainant submits that the Ld. Forum in Para 27 of the final order has rightly concluded that the 66kV line ceased to be a "service line", with effect from 19/06/2021. Further, that it has also been concluded in this para that the said 66 kV line after 19/06/2021, fell within the ambit of the "Works Other than service line" as per terminology used in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.

19. The Complainant submits that the Ld. Forum in Para 28 is wrong in its finding that in the present case the **HPERC** (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applicable. The Power Availability Certificate and the Sanction Letter are kind of agreements, which between the Consumer and the supplier, in which the terms and

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conditions are laid down. The decision of the Forum, merely on the basis of the date of release of supply from the 66 kV line, is in error as the terms and conditions of any legally binding agreement, understandings cannot be changed at a later date, without the mutual consent of the parties. The specific mention of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 in the PAC and sanction letter leaves no scope of interpretation in the present case.

- The Condition No. 6 of the Power availability certificate (PAC), clearly states that the recovery of expenditure shall be carried out as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 bearing No. HPERC/ 419.

- Condition No. 23 of the sanction letter also that the Consumer shall deposit cost as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005

20. Further, that a plain reading of these conditions, make it amply clear that HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 should be applied in the present case.

21. The Complainant submits that the Ld. Forum in its findings in Para 30 of the final orders dated 04/06/2012 has wrongly concluded that the for the simple reason that the Baglehar Substation was connected to the dedicated feeder line on 19/06/2021. It is important to mention here that the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 has repeatedly used the word prospective Consumers in the various parts of the Regulations. However, it never mentioned anywhere that the future regulations shall apply on the basis of the date of connection of the prospective Consumers. For example, if a future legislation does away with the recovery of expenditure from any prospective Consumer, it does not mitigate the right of the original Applicant towards recovery of the cost on pro- rata basis, based on reasonable actual cost or the estimated cost. The basis of cost to be compensated to the original Complainant is well defined in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and is not based on cost that may be found recoverable at future rates. If that is the case, the compensation/ royalty payable to the original Applicant will never come to a level as desired by the regulations.

22. The Complainant submits that the Ld. Forum in Para 31 has wrongly concluded that the orders passed by the HPERC in Petition No. 138 of 2012 are not tenable in the present case particularly on the basis that it talks of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. It is brought into the specific notice of the Hon'ble Ombudsman, that the orders passed by HPERC are very general in nature and not specific

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to the issue discussed in that petition, as the same was to be decided by the adjudicating authorities i.e. CGRF and Ombudsman, it being an individual dispute.

23. The Complainant submits that the Hon'ble Commission has come out with the very basic principles in the said judgement, which is an eye opener. The Hon'ble Commission has laid strong emphasis that the State and its instrumentalities are obligated to act in fairness. The Hon'ble Commission has cited various judgements passed by the Apex Court.

24. In Para 17 of the judgement the Hon'ble Commission has observed that

"17. It is appropriate to state that the recovery of expenditure incurred through cost sharing is not a new concept. The past practice of sharing cost had its roots in the Indian Electricity Act, 1910 and is being continued in the regulations framed by various Regulatory Commissions in the Country. Every distribution licensee under section 43 of the Electricity Act, 2003, (which corresponds to section 22 of the Indian Electricity Act, 1910) is duty bound to supply to any premises on application filed by the owner or the occupier. Where such supply requires extension or commissioning of new sub-stations, the distribution licensee is to supply electricity to such premises immediately after such extension or commissioning of the sub-station.

25. The Complainant submits that the Hon'ble Commission has acknowledged that the cost sharing is a settled law and is not specific to 2005 or 2012 regulations, but is mandated under section 43 of the Electricity Act, 2003. In Para 23 the Commission has concluded that the cost sharing is permissible under the law even though there is no privity of contract between the parties.

26. It is further stated in the documents such as PAC as below:

"In the Condition No. 8 of the PAC, it has been accepted by the Respondents that proportionate cost sharing mechanism is applicable in the present case in the case when a group of Consumers share the line. The present case is a step further and instead of a group of Consumers, the Respondents themselves have taken the rights to use the line for supplying to numerous Consumers falling in different Consumer categories, the number and type of such Consumers not being known to the Complainant."

27. The Complainant submits that the Ld. Forum has wrongly concluded in Para 32 and 33 of the Final order that the ownership of the dedicated feeder shall ly with the Respondents. The propriety of the said line however, is only limited to the extent of maintenance, removal and unrestricted access to provide further connections of the line. The line is not a property of the Respondents until and unless they pay for it in their books of accounts. The said line is the property in his books of accounts, who claims depreciation/ apportions the cost of line over a number of years.

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28. The Complainant further submits that this regulation does provide that the licensee shall have to maintain and shall have the right to provide connections to prospective Applicants, if there is sufficient capacity after maintaining 30% redundancy in the system. The same regulations also provide for sharing of cost among the Consumers. If the ownership of the line erected at the cost of the original Consumer was to lye with the licensee in totality, then why would have this compensation mechanism defined in the same regulations, which appear contradictory in literal sense. It can be derived from these regulations that the ownership of licensee is restricted to the following extents:

    a) that the Consumer cannot remove the line at his will. In the case of closure the Consumer is not allowed to dismantle the line as this would create disturbance to other Consumers who may also be using that line;

    b) that the licensee has exclusive rights to maintenance of such lines, which may not be possible had the lines not been handed over to them;

    c) that the licensee can put to use the infrastructure once created for supply to other Consumers also, if the spare capacity is available in the system, which otherwise would have resulted in wastage of resources.

    d) that the original owners do not restrict the right of way to the licensee and the prospective Applicants for use of such line;

    e) that the cost/ value of such line is booked as an asset in the account books of the Applicant, who claims it depreciation on it or claims it as an expense. In no way, such assets can form part of the assets at the original cost as these lines comes to the licensee as free of cost.

29. The Complainant submits that therefore, it can be concluded from above that it is not the absolute ownership of the Respondents in commercial terms as it can be understood derived from these regulations.

30. Similar provisions are also laid down in regulation 11 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations 2012.

31. The Respondents are misguided by the interpretation as the same cannot be correct as it shall lead to undue enrichment of the utility at the cost of the Consumers. Certain rights have been given to the utility in the interest of the maintenance and progression of the transmission and distribution system.

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32. The Complainant submits that the Ld. Forum in Para 34 has relied on the provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012, which as per him is not applicable in the present case and has already been explained in the foregoing paras.

33. The Respondents in this para has also observed that the cost share be calculated on the basis of 717.75 lakhs, which was estimated by the Respondents themselves. He had incurred much higher actual cost in the construction of this line. At least 3% variation as is allowed to the Respondents for recovery under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, must also be allowed to him.

34. Further, that the Ld. Forum has not addressed the issue of interest applicable on the cost share refundable to him. The Ld. Forum has neither denied nor accepted his contention while passing the final order.

35. **Prayer:** The Complainant thus in view of above submissions, prays to Hon'ble Ombudsman; **a)** to quash the orders of the Forum and pass such just orders in the interest of justice; **b)** to direct the Respondents to fully compensate the entire cost of the 66 kV line amounting to Rs. 9,39,83,175.76 which has now been converted into a transmission line for the use by the Respondents in order to become absolute ownership of the line; **c)** to direct the Respondents to pay compound interest @ 8% per annum compounded annually from the date of actual expenditure, up to the actual date of payment to him, as per provisions of Regulation 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 upto 19/06/2021; **d)** to direct the Respondents to pay interest as per para 5.7.3 of the Supply Code, and Regulations 26(2)(a)(ii) for the period after 19/06/2021, the date of energization of Baglehar S/Stn from his dedicated line; **e)** to direct the Respondents to pay interest on the period of delay, if any, in implementation of the orders at the rate specified in 5.7.3 of the Supply Code, 2009, in case is refund is determined by the Hon'ble Ombudsman; **f)** cost of the Complaint amounting to Rs. 5.00 lacs and; **g)** 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' submissions:

Preliminary Submission:

1. The Respondents submit that the representation/ Complaint as preferred by the Complainant is neither maintainable nor competent in the eyes of law hence liable to be dismissed. Further, that the Complainant has filed the present representation before this Id Ombudsman on false and distorted fact which are far off from the reality as such the same is liable to be dismissed.

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2. The Respondents submit that the present representation/ Complaint is an afterthought of the Complainant just to get the undue advantage from this ld Ombudsman on the false and concocted story as such the Complaint is liable to be dismissed. Further, that the relief as prayed by Complainant in totally are not sustainable in the eyes of law hence the Complaint is liable to be dismissed.

Reply of Merits.

3. The Respondents submit that the Respondents have filed detailed reply to the Complaint filed by the Complainant before the ld Forum below, the same may be read as part and parcel to the reply to the instant representation filed by the Complainant under Regulations 28 (1) (b) of the HPERC (CGRF & Ombudsman) Regulations, 2013 for sake of brevity.

Order passed by Forum:-

4. The Respondents submit that the Complainant has misconstrued the clause No. 1.2.13 of the Electricity Supply Code, just to extract the benefiting part of the same. However, the ld Forum has rightly observed that the Complainant is covered under the definition of Consumer w.e.f. 11/04/2018. It is supplied that mere issuance of the PAC does not entail any rights and liability as it is just a positive commitment of the distribution licensee for the proposed supply of electricity. If the clause (b) of the ibid regulation 1.2.13 of the Electricity Supply Code is read, it is prospective Consumer i.e. who applied for the electricity connection by completing the codal formalities as required under the abridged conditions of the supply.

5. The Respondents submit that the ld Forum has rightly returned to its finding that the said 66 kV line in question is essential part of the distribution system and does not fail under the definition of the transmission line. Further, that the Complainant has miserably failed to appreciate this vital aspect of the matter and to its own understanding has construed that the 66 kV line is transmission line which is totally incorrect and contrary to the provisions of the Electricity Act, 2003 read with the regulation/ code framed there under. Further, that it is very strange that at the one side Complainant is making its case that it is transmission line and other side, also admits that it is not service line and its "Work other than service line" which is mutually destructive in itself.

6. The Respondents submit that the ld Forum has rightly held that the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applied to the present case. Further, that just mere issuance of PAC does not cover the case of the Complainant under the ambit and scope of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 regulations.

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7. The Respondents submit that since there is no applicability of the 2005 Regulations to the present case, the discussion offered by the Complainant does not have any effect.

8. The Respondents submit that the ld Forum has passed very reasoned and speaking order which warrants no interference from this authority. The applicability of the regulations is quite clear and ld Forum has rightly observed that the 2005 regulations do not have any application and as a necessary corollary to this, the order passed by the Hon'ble HPERC does not have any bearing on the present case.

9. The Respondents submit that the ld Forum has passed a detailed speaking order based on the proper appreciation of the material and also due consideration of the extent regulations which warrants no interference such the Complaint filed by the Complainant is liable to be dismissed. Further, that as per the provision of Regulation 11 of the HPERC (Recovery of Expenditure for supply of Electricity) Regulations,2012, notwithstanding the fact that work was erected by any person, the said work be the property of the distribution licensee. Further, that since the provisions of the regulations are very much crystal clear, no such interpretation is required to the offered as it is the settled proposition of the law. The statute cannot be interpreted in such a manner which frustrate the same.

10. The Respondents thus, keeping in view the facts and circumstances narrated herein above, prayed that the representation filed by the Complainant before the Ld Ombudsman is devoid of any merits, 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 confirms 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 further 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. The pointwise rejoinder to the reply and objections raised by the Respondents is as below:

Rejoinder to Preliminary Submission:

1. The Complainant submits that it is denied that the present representation is not maintainable, while the same is well within the provision of applicable rules and

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regulations. He has rightly approached the Hon'ble Ombudsman, which is the only remedy available under the law available to him.

2. The Complainant submits that it is denied that any false and distorted facts have been stated in the representation. The Respondents have not put before the Hon'ble Ombudsman any specific points to prove his statement. Further, that the Respondents is calling the present representation a story, which is not the case. The Complaint is purely based on facts and rules.

3. The Complainant submits that the relief sought by him is very reasonable and is based on the rules and regulations notified by HPERC. The Respondent is free to contest the same if such relief demanded by him is without the support of the rules and regulations.

Rejoinder to Reply on Merits:

4. The Complainant submits that the Respondents stated in the reply filed before the CGRF and have requested the Hon'ble Ombudsman to consider the same as part and parcel of this representation. He also prays that the rejoinder filed with CGRF may also be considered part and parcel of this rejoinder.

5. The Complainant submits that it is unbelievable that the Respondent is denying the lawful definition of a Consumer notified in the Himachal Pradesh Electricity Supply Code, 2009. The CGRF cannot over ride that definition.

6. The Complainant submits that the Respondents are arriving at a wrong conclusion of the meaning of the distribution system. Even the generating stations, and other EHV lines of 132 kV and above are essential for the distribution to function. But that cannot be called to be part of the distribution system. There has to segregation on the basis of some ideology or definitions provided in the Electricity Act, 2003 and other relevant regulations, to arrive at a conclusion whether a line is part of the distribution system or the transmission system. The Respondents are also missing the point that the line which was a service line earlier has now become a transmission line after it was connected to Baglehar substation.

7. The Complainant submits that the Respondents are wrongly concluding that the present case shall not be covered under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. Further, that the contention of the Respondent is incorrect. The judgement quoted by him is very much applicable as it touches the basic principles of cost sharing, whichever regulations there might be.

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8. The Complainant thus in view of submissions made herein above prayed that the representation filed by him be allowed after appreciating the provisions judiciously in the interest of justice.

E – CGRF Order: (Numbering changed and co-related)

1. We have heard the parties and examined the record / documents adduced during the course of hearing. We have gone through the provisions of Act, Rules and Regulations on the matter.

2. In the matter the following issues have emerged for determination by this Forum:-

   (a) Which Recovery of Expenditure Regulations are applicable - the HPERC (Recovery of Expenditure) Regulations, 2005 which came into existence on 01.04.2005 OR the HPERC (Recovery of Expenditure) Regulations, 2012 which came into existence on 18.05.2012;

   (b) Is the '66kV Nalagarh (Uperla-Nagal) to consumer complainant premises' dedicated feeder line a 'Service Line' OR a 'common feeder' / 'Works other than a Service line'.

   (c) Was it illegal of the Respondent in connecting the Baglehar substation on 19.06.2021 to 66kV Nalagarh (Uperla-Nagal) to consumer complainant premises being a dedicated feeder line;

   (d) Is the complainant entitled to be compensated by way of Infrastructure Development Charges (IDC) recovered as expenditure by the Respondent from other consumers / applicants on Baglehar Substation;

   (e) Is the 66kV dedicated feeder a Transmission line and therefore to become a part of the Transmission assets if taken over by the Respondent and thereafter be pass-through in Tariff;

   (f) Is the ownership of the works which may have been paid for by the prospective consumer complainant herein, property of the distribution licensee;

   (g) Is it within the legal jurisdiction of this Forum to decide on contravention of sub regulation (6) of regulation 44 of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010, with regard to action of the Respondent to directly tap the 66kV dedicated feeder supplying electricity to the complainant, as alleged by the Complainant;

   (h) Is the Hon'ble HP Electricity Regulatory Commission Order dated 22.08.2014 in Petition No 138/2012 in the matter of Gujarat Ambuja Cements Limited Vs HP State Electricity Board Ltd and ors, applicable in the present matter.

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The Forum now proceeds to discuss and determine each issue, though not in the same order as mentioned above –

3. The issue raised by the Complainant and emerging in para 2 (e) of this Order for determining by this Forum with regard to the 66kV feeder becoming a Transmission Line and its consequent pass-through in Tariffs, can be settled by way of the Electricity Act, 2003. The Act ibid expressly defines the "distribution licensee" in sub-sections 2(17), the "distribution system" in sub-section 2(19), the "transmission lines" in sub-section 2(72) and the "transmission licensee" in sub-section 2(73). The ibid provisions do not distinguish between the distribution system and the transmission system based on voltage levels and clearly establish the distribution system being that authorised with the Distribution Licensee. Further, the Transmission lines together with transformers, switch gear etc, are defined as those that are authorised with the Transmission Licensee. The ibid sub-sections of section 2 of the Act are reproduced as follows for the sake of clarity:-

   Quote 2. Definitions.-- In this Act, unless the context otherwise requires,-- ..... (17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply; ..... (19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines..... and the point of connection to the installation of the consumers"; ..... (72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station..... And other works. (73) "transmission licensee" means a licensee authorised to establish or operate transmission lines; Un-Quote

4. The submissions of the Complainant are far-fetched and based on conjectures on the 66kV feeder supplying to the complainant as becoming part of the Transmission System in future, if taken over by the Distribution Licensee and further its consequent inclusion for Tariff determination in the future. The contentions of the complainant in this regard are farfetched, un-tenable as being not based on law/Regulations etc. This Forum is not inclined to decide the issue ibid as emerging which is based on conjectures created by the Complainant and accordingly this Forum does not find merit in the submission and arguments of the complainant on this issue. The issue is decided against the complainant accordingly.

5. The issue raised by the Complainant as emerging in para 2 (g) of this Order for determination by this Forum with regard to solid or direct tapping of the 66kV feeder as contravention of Central Electricity Authority (CEA) Regulations supra. It is observed that the issue if viewed in light of section 142 of the Electricity Act, 2003, wherein provisions for contravention of Regulations are covered and which squarely fall within the jurisdiction of the Hon'ble HP Electricity Regulatory Commission, as also contended by

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the Respondent Board in its contentions. Thus Complainant is at liberty to approach the Hon'ble Commission on the issue for redressal. This Forum does not find it appropriate to return any findings on the issue raised by Complainant on jurisdictional grounds.

6. The other issues mentioned at para 2 (a) to (d), (f) and (h) emerging for determination by this Forum are examined as per record, pleadings or regulations etc. adduced by the parties. Firstly determining whether the 66kV dedicated feeder from Nalagarh Uperla-Nangal to complainant consumer premises, is a service line or a common feeder? Secondly, by determining which of the HPERC (Recovery of Expenditure) Regulations—i.e the 2005 or the 2012 Regulations are applicable in the instant matter. Thirdly, by determining which provisions of the applicable Regulations are relevant in the instant complaint.

7. The Dedicated 66kV feeder was completed by self-erection by the Complainant in the year 2018 and the 66/11 kV Baglehar Substation was connected to this feeder on 19th June, 2021. The Electricity Act, 2003 in sub-section (61) of section 2, defines service line as –

   Quote "(61) "service line" means any electric supply-line through which electricity is, or is intended to be supplied— (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or (b) from a distributing main to a group of consumers on the same premises or on contiguous premises ....." UnQuote

8. The examination of the record, pleadings and extant Regulations on the issue, it clearly becomes apparent that 66 KV feeder is not a 'service' line as claimed by complainant. Before June 19, 2021 the 66 kV dedicated feeder was a 'Service Line' and beyond the date of connection of Baglehar Substation to this dedicated 66kV feeder on 19.06.2021, the dedicated 66kV feeder ceases to be a 'Service Line' and becomes a common feeder' or 'works other than service line'. It is safely concluded that from June 19, 2021 onwards, the 66kV feeder is not a Service Line and the issue ibid mentioned in para 2 (b) of this Order is decided accordingly.

9. The issue of applicability of Regulations is examined vis-à-vis pleadings and facts placed on record by the parties. It is evident that HPERC (Recovery of Expenditure) Regulations, 2005 came into existence on 01.04.2005 and the HPERC (Recovery of Expenditure) Regulations, 2012 came into existence on 18.05.2012. The PAC, Load Sanction letter, the Demand Notice issued and self-erection of 66kV dedicated feeder undertaken in financial year 2011-12 were all done under the 2005 Regulations, while the erection of 66kV dedicated feeder was completed in the financial year 2018-19 and the connection released to consumer on 11.04.2018 were all done during the HPERC (Recovery of Expenditure) Regulations, 2012. Thus, the 2012 Regulations are found to be applicable in the present case in the facts and circumstances of the complaints.

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10. The primary grievance of the complainant as can be perceived from complainant is with regard to connecting Baglehar Substation to the dedicated feeder on 19.06.2021, for which payment of Rs 107.13 lacs out of total estimate of Rs 717.75 lacs was made by the Complainant to the Respondent. Thereafter, construction of line was undertaken on selfexecution basis, while no cost sharing was done with the complainant nor any cost-sharing mechanism by way of Infrastructure Development Charges (IDC) to be recovered from the applicants / consumers on Baglehar Substation, was evolved with the Complainant.

11. On examination of the issue of cost sharing vis-à-vis Regulations, pleadings and facts on record, it is observed that cost sharing is an event incidental to future consumers i.e. cost to be recovered from those consumers who come up later in time and subsequently to be shared with the person(s) originally having paid the cost and Infrastructure Development Charges (IDC). Thus, it is a feature of the HPERC (Recovery of Expenditure) Regulations, 2012 and not of the HPERC (Recovery of Expenditure) Regulations, 2005. For this simple reason that the Baglehar Substation was connected to the dedicated feeder on 19.06.2021 the future applicants / consumers for the purpose of cost sharing would obviously be those, who come up after 19.06.2021. Accordingly, this Forum is of the firm view that the HPERC (Recovery of Expenditure) Regulations, 2012 are applicable in the present matter of the complaint and provisions within these Regulations relevant to 'common feeders'/ 'works other than service line' and not for 'service line' shall automatically become applicable. Further, Infrastructure Developmental Charges (IDC) being a feature of the HPERC (Recovery of Expenditure) Regulations, 2012, the issue of cost sharing by way of recovery of IDC from applicants/ consumers for sharing with original consumer can only be settled by way of resorting to application of these Regulations. In view of observation recorded above on the issue, this Forum is of the considered opinion that in the present matter, the HPERC (Recovery of Expenditure) Regulations, 2012 shall be applicable. The issue with regard to applicability of Recovery of Expenditure Regulations is decided accordingly.

12. Since the present matter has been found to be covered under the HPERC (Recovery of Expenditure)Regulations, 2012 and as a sequel to it the claim of complainant to the applicability of Regulations, 2005 as per order of Hon'ble HPERC passed in its order dated 22.08.2014 in petition No. 138/2012 is untenable on this simple reason that the said order of the HPERC is based upon HPERC (Recovery of Expenditure) Regulations,2005 and not applicable in present case which is squarely covered under Regulations, 2012 as concluded above in paras supra.

13. The Forum examined the issue of ownership, maintenance etc. vis-à-vis record, Regulations and pleadings of parties. It is observed that the '66kV Uperla-Nangal feeder to consumer premises' as stated by the Complainant is a works paid for by the

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complainant with an amount of Rs 107.13 lacs, requisitioned but later self-executed by the complainant by incurring cost of approx Rs 9.4 crores and this fact has not been disputed by the Respondent. The works were connected with the electricity supply system of the Respondent HPSEBL and are maintained / being maintained by the Respondent HPSEBL and this fact is not disputed by the Complainant. In absence of any Special Agreement between parties to this complaint, determining therein necessary terms and conditions inter-alia that of interface point, conditions of ownership, maintenance etc, per regulation 11 of the RoE, 2012 Regulations, all works become the property of the licensee and the licensee has the right to supply electricity to other prospective applicants / consumers from these works.

Quote 11. Maintenance of works.-(1)Notwithstanding anything contained in any other law for the time being in force, all the works erected for providing supply in pursuance of requisition by the applicant, or any portion thereof, which may have been paid for by the applicant making requisition, shall be maintained by the licensee and the licensee shall also have the right to supply electricity to any other prospective applicants or the consumers, through the said works and the said works shall become the property of the licensee. (2) The interface point of commencement of supply, as determined under the provisions of the Supply Code and the relevant agreements, shall constitute the liability between the licensee and the consumer/applicant. Unquote

14. The issue mentioned in para 2 (f) regarding ownership of 66kV dedicated feeder is decided by this Forum strictly in accordance with regulation 11 of the RoE 2012 Regulations in favour of the Respondents.

15. The issue of cost sharing by way of Infrastructure Development Charges (IDC) recovered from other consumers / applicants on Baglehar Substation or for that matter any other consumers / applicants that may come up on the 66 kV earlier being a service line / dedicated feeder and later attaining the status of 'common feeder' or 'other works not being a service line' is examined on the basis of facts on record, pleadings and extant Regulation on the matter. The Respondents have contended that regulation 4 in respect of Service Line is applicable to the Complainant wherein provision for cost sharing does not exist. The Forum is not in agreement with this contention of the Respondents. As determined in foregoing paras that the 66kv Feeder is not a 'Service Line beyond 19.06.2021 and on attaining the status of a common feeder as 'other works not being a service line', thus, sub regulation (6) of regulation (5) of the RoE, 2012 Regulations becomes applicable in the present case. Therefore in our considered opinion, complainant is entitled to cost sharing by way of Infrastructure Development Charges (IDC), strictly in accordance with sub regulation (6) of regulation 5 of HPERC (Recovery of Expenditure) Regulations, 2012 and the conditions specified there-in, recovered / to be recovered from other consumers / applicants that may come up on the 66kV feeder from 'Uperla Nangal to consumer premises' including those on Baglehar Sub Station after

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19.06.2021 i.e., when Baglehar substation was connected to the 66kV feeder being a Service Line at that time. The relevant extract of sub-regulation 5(6) is reproduced below for clarity:-

Quote .... 5. Expenses for the distribution system other than service line. – ....(6).... If subsequent application(s) are received within 5 years after the date of commissioning of works executed under sub-regulation (3), for permanent supply of power at a voltage level similar to that of the original applicant(s) under sub regulation (3) and supply of power to such applicant(s) essentially involves usage of such works, on regular basis, the infrastructure development charges, if any, actually recovered from such subsequent applicants for usage of spare capacity as quantified in accordance with subregulation (8) shall be refunded, on pro-rata basis..... .... Un-Quote

16. After examination of the facts on record and provisions of Regulations above, it is safely concluded that the Complainant is entitled to cost sharing upto the limit of spare capacity available on the 66kV feeder ibid. This cost sharing shall be on a total estimated cost by the Respondent HPSEBL placed on record as Annexure C-3 and Annexure R-4 which is to the tune of Rs 717.75 lacs by way of cost sharing of Infrastructure Development Charges (IDC) and strictly in accordance with sub regulation (6) of regulation 5 of HPERC (Recovery of Expenditure) Regulations, 2012 and strictly for the available spare capacity after 19.06.2022. Accordingly the issue as mentioned in para 2 (d) is decided in favour of the Complainant.

F - Analysis of the Complaint:

1. The case file at Consumer Grievance Redressal Forum Kasumpti bearing Complaint No. 1432/3/21/07, dated 24/07/2021 orders on which were passed on 04/06/2021 have been requisitioned and gone through.

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

3. The Complainant have filed the application 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 factory located in Nalagarh area and was connected through 66 kV dedicated feeder constructed by them at their own cost from Upperla Nangal to their premises. He has a Connected Load of 6000 kW with Contract Demand of 2500 kVA. PAC was issued to them on 11/03/2020 which was subject to construction of dedicated 66 kV

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Line. In the PAC, the load was committed from 220/66 kV sub-station at Nalagarh (Upperla Nangal) after its commissioning.

5. The said dedicated line was charged in April 2018 and the load was also released on 11/04/2018. For the purpose of recovery of expenditure, the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 were applicable as per Condition No. 6 of the PAC.

6. The Complainant's load was only 2.5 MVA but they were forced to construct a 66 kV dedicated line with capacity of 82 MVA on ASCR Panther Conductor (as intimated by the Respondents in their reply at the Forum below). The Complainant also paid Rs 107.13 lakh on 20/08/2011 which were part of the total scheme cost towards supervision and departmental charges inclusive of a sum of Rs 5.42 Lakh towards cost sharing of two towers of 132 kV DC line of M/S Ambuja Cement.

7. The actual expenditure incurred by the Complainant in Constructing the 66 kV dedicated transmission Line was Rs 9,39,83,175.76 (as certified by the CA on dated 17/12/2018 – part of documents at the Forum below).

8. Initially, a communication was received by the Complainant on 07/06/2018 from Respondent No. 4 regarding utilizing the dedicated line for supply to their Baglehar sub-station planned for augmentation near their premises by laying second circuit. The Complainant communicated back on 28/11/2018 that instead of laying second circuit, since the Single Circuit (S/C) line is having sufficient capacity and they will be utilizing only up to 6 MVA capacity, they should utilize the same S/C line. Further, the Complainant intimated that cost sharing mechanism is already there in the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 for dedicated and joint feeders.

9. The Chief Engineer (Transmission) to above response communicated back and sought certain information including the willingness of the Complainant to give ownership of the line to Distribution Licensee. The Complainant wrote back on 17/12/2018 that they have no issue regarding giving ownership to the Distribution Licensee subject to cost sharing mechanism as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 which was reaffirmed again on 12/02/2019 to ensure better utilization of the idle infrastructure and to save time and money of both parties.

10. The Chief Engineer (Transmission) reverted back 25/03/2019 that since the said line is service line of the Consumer, there is no cost sharing mechanism applicable as per Regulation 4 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and as per Regulation 11 of said

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Regulations, the said line is the property of the Distribution Licensee who have right to supply electricity from such line.

11. With reference to the visit of Respondent No. 4 on 19/05/2021, the Complainant informed on 21/05/2021 that after connecting Baglehar sub-station of the Distribution Licensee, the said line shall become common line for their common infrastructure and the cost for same has to be borne by the Distribution Licensee. Further, that they may require certain capacity up to 10 MVA for the expansion of their sister units and they were not aware what future capacity shall remain available to them. They further objected to the tapping of their line subject to proper settlement of cost sharing.

12. Instead of communication regarding cost sharing and the Complainant's objection, Respondent No. 4 communicated vide e-mail dated 15/06/2021 that they propose a shutdown on 19/06/2021 to connect to Baglehar sub-station and requested their consent. The Complainant denied consent for same until the cost sharing is settled.

13. The Respondent No. vide communication dated 14/06/2021 communicated that they will be utilizing only 2x10 MVA capacity at Baglehar sub-station i.e. around 32% of the total capacity of 82 MVA and regarding cost sharing they reiterated their stand communicated by the Chief Engineer (Transmission) on 25/03/2019. The Respondent No. 4 went ahead with their planned shutdown of the 66 kV dedicated feeder and connected the said line to their Baglehar sub-station on 19/06/2021.

14. The Complainant filed a representation at the Consumer Grievance Redressal Forum Kasumpti on 24/07/2021. The Forum below treated the date of release of connection on 11/04/2018 as becoming Consumer of the Distribution Licensee and said that the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applicable in this case.

15. Further, the Forum below observed that the said line can still be called a distribution line up to T-off point and refused to treat the same as the 'Transmission Line"' till the T-off point as pleaded by the Complainant and decided against him. The Forum below also decided that after 19/06/2021, date of connection to Baglehar sub-station, the 66 kV line cease to be service line and became common line.

16. The Forum below also decided that since the Consumer was connected on 11/04/2018, he became Consumer on 11/04/2018 onwards and provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applicable ignoring the pleadings of the Complainant that he became Consumer as and when the PAC was issued to him in the year 2010.

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17. The Forum below however agreed that since the said dedicated feeder was constructed by the Complainant, no cost sharing mechanism was evolved with him for IDC to be charged from the prospective Consumers/ applicants of Baglehar sub-station which is incidental to future Consumers and to be recovered as per provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.

18. The Forum below rejected the claim of the Complainant as per provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 being untenable since as per them the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applicable. The Forum below decided that regarding ownership of the line is although paid by the applicant, shall became the property of the Distribution Licensee as per provisions of Regulation 11 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.

19. Regarding cost sharing, the Forum below decided that as per provisions of Regulation 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012, the Complainant is entitled to same to be recovered from the future Consumers of the Baglehar sub-station that may come up to the limit of the available spare capacity after 19/06/2021.

20. Now let us examine the first and foremost issue of the applicability of the Regulations. The Complainant had applied for PAC in the year 2010 and PAC was issued to him on 11/03/2010. Although the connection was released to him after charging of the 66 kV dedicated transmission line constructed by him on self-execution basis on 11/04/2018 but he became a prospective Consumer as and when the PAC was issued to him in 2010 and was governed by the provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 in line with the condition No. 6 read with condition No. 2 of the PAC dated 11/03/2010.

21. The above contention is further supported by the load sanction letter issued by the Chief Engineer (Op) South of the Respondent Board dated 31/08/2010 that the Complainant became prospective Consumer at the time of sanction of PAC as well as on sanctioned of load in his favour.

22. Therefore, the decision of the Forum below that he is governed under provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 is wrong and not in line with the commitment of power made available to him on 11/03/2010 and on further sanction of load on 31/08/2010 when he became the prospective Consumer.

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23. Now let us examine the rights of the Complainant over the 66 kV dedicated feeder constructed by him through his own finance as per condition No. 7 of the PAC dated 11/03/2010.

24. As per provisions of Regulation 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, the Complainant have rights over the dedicated transmission line and the Respondent Board can maintain the same, release additional loads after maintaining the 30% redundancy and also compensate the original owner on prorate basis alongwith 8% interest compounded annually recovered from the subsequent users.

25. Now let us examine the provisions under Regulations 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 which are similar to provisions under Regulation 11 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012. The provisions states:

*"**10. Maintenance of works.-** (1) Notwithstanding anything contained in any other law for the time being in force, all the works erected for providing supply in pursuance of requisition by the applicant or any portion of which may have been paid for by the applicant making requisition shall be maintained by the licensee and the licensee shall also have the right to supply electricity to any other prospective applicant through the said works and the said works shall become the property of the distribution licensee.*

(2) The interface liability between the licensee and the consumer/applicant shall be metering equipment or the switchgear supporting the metering equipment."

26. The Respondent Board as well as the Forum below are interpreting the provisions of Regulation 10 on 2005 Regulations or Regulation 11 of 2012 Regulations as per their suitability and just ignoring the existing provisions under Regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (Which are akin to provisions under Regulation 7 of Himachal Pradesh Electricity Regulatory Commission [Recovery of Expenditure for Supply of Electricity) Regulations, 2012 with more clarity] which states:

*"**6. Recovery of cost.-** (1) Subject to the provisions of sub-regulation (2), the balance cost of electrical plant and or electric line after deducing the amount payable by the applicant under sub-regulation (1) of regulation 3, regulation 4 and regulation 5 shall be either invested by the licensee or paid for by the applicant and where licensee's investment approval does not permit this cost, the licensee shall recover the total balance cost from the applicant:*

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Provided that the balance cost shall be refunded to the applicant as and when new connections are installed or given from the electrical plant and/or electrical line on pro-rata basis with the interest rate of 8% compounded annually.

Provided further that notwithstanding anything contained in any other law for the time being in force, balance cost due shall be recoverable from subsequent applicant(s) and the bills of the consumer who had paid the balance cost shall be invariably flagged continuously until paid fully."

27. The provisions under Regulation 10 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 or even the provisions under Regulation 11 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are meant for the following purpose only and that the ownership of licensee is restricted to the following extents:

a) *that the Consumer cannot remove the line at his will. In the case of closure, the Consumer is not allowed to dismantle the line as this would create disturbance to other Consumers who may also be using that line;*

b) that the licensee has exclusive rights to maintenance of such lines, which may not be possible had the lines not been handed over to them;

c) that the licensee can put to use the infrastructure once created for supply to other Consumers also, if the spare capacity is available in the system, which otherwise would have resulted in wastage of resources.

d) that the original owners do not restrict the right of way to the licensee and the prospective Applicants for use of such line;

e) that the cost/ value of such line is booked as an asset in the account books of the Applicant, who claims it depreciation on it or claims it as an expense. In no way, such assets can form part of the assets at the original cost as these lines comes to the licensee as free of cost.

28. Now let us discuss the orders of the Hon'ble Commission in case No. 138/2012 titled M/S Ambuja Cements Ltd Vs HPSEB Ltd & others including M/S Jaypee Himachal Cement Project passed on 22/08/2014. The Hon'ble Commission in para 23 of the order have made very much clear about the cost sharing which is very much relevant to this case also. The Hon'ble Commission have decided that ***"The said Regulations authorize the Board to Charge, in case of subsequent users of the system, from a person requiring supply of electricity, in pursuance of Section 43, any expenses reasonably incurred on providing electric line or plant used for the purpose of supplying electricity, and also refund on prorate basis with interest @8% compounded annually. The Board is enjoined***

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with the obligation to act with fairness and in doing so it is to act within the limit to which an honest man competent to the discharge of his office ought to confine itself."

29. The said orders read with the existing provisions under Regulation 10 and further read with Regulation 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 are very much relevant to the present case which deals with the cost sharing in respect of dedicated line/ Line constructed with the expense of original Consumer.

30. Further scrutiny of the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and the intention of the Hon'ble Commission behind such provisions in the Regulations if we read the said provisions of Regulation 10 with the provisions under Regulation 6 it is crystal clear that the said provisions does not give absolute ownership to the Respondent Board. Thus, the Respondent Board has to compensate the rightful owner of the line i.e. Complainant in this case if future prospective applicants are given connections from the said dedicated line.

31. From above discussions/ provisions, it is very much clear that the Distribution Licensee is not absolute owner of the dedicated transmission line even if the same is handed over to the Distribution Licensee by the Consumer who constructed them. It remains absolute property of the Consumer only and he is also very much entitled to claim the depreciation over such fixed assets in the tax filings.

32. Thus, the decisions of the Forum below that provisions of the Regulation 11 are applicable regarding property of the Distribution Licensee are just wrong and are not in line with the provisions of Regulation 10 read with Regulation 6 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 applicable in this case. Even the Provisions of Regulation 11 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are also required to be read with provisions of Regulation 7 of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 which the Forum below have failed to interpret or chose to ignore.

33. Further, scrutiny of the said provisions and the intention of the Hon'ble Commission in the said Regulations, the Complainant is entitled to the cost compensation with 8% interest compounded annually, in case of any subsequent prospective applicants are given connection from the said electrical line. Although the provisions are applicable only if the Licensee's investment approval does not permit this cost and since the line has been funded by the applicant(s) and in this case the line was constructed by the Complainant through his own finances, the Complainant, who is the rightful owner of the said line is

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entitled to the compensation in case of subsequent applicants are given connections from the same.

34. Now let us examine the aspect of 'Transmission Line'. The definition of the same is in sub-section 72 of Section 2 of Electricity Act, 2003 which read as under:

" 'transmission lines' means all high pressure cables and overhead lines (not being as essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together from any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or over head lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works."

35. Plain reading of the definition confirms that the transmission line is the line between two stations supplying power to Distribution Licensee's own sub-station. Now in the present case, the Complainant was being fed from 220/ 66 kV sub-station at Nalagarh (Upperla Nangal) before 19/06/2021 through dedicated feeder constructed by the Complainant through his own finances. After 19/06/2021, the Respondent Board connected its own Baglehar sub-station, despite objections from the Complainant to settle the cost sharing, from the last structure to its own 2x10 MVA Baglehar sub-station under ES wing. The line connecting between two sub-station become the part of interconnecting transmission line of the Distribution Licensee. Only the part connecting the Consumer from T-off point to his premises became the service line feeding the present Complainant.

36. The definition of the Distribution system clearly spells out that it is the system of wires and associated facilities between the delivery points on the transmission lines connecting to the installation of the Consumers. The interconnecting line between 220/66 kV sub-station at Nalagarh (Nangal Upperla) and 2x10 MVA 66 kV sub-station at Baglehar can in no stretch of imagination can be treated as Distribution system. Only the point at T-off to Consumer premises of the said line can be treated as part of the Distribution system. Thus, the interpretation of the Forum below regarding interpretation of the said line as Distribution line is wrong and not in line with the provisions of the Act.

37. Further, since the Respondent Board has started to use Complainant's dedicated line as a common line up to T-off point and have full rights on the usage of the line, the same can be done by compensating the Complainant for the total cost of the line alongwith compounded interest @8% per annum as has been specified in the Regulations. Further, the scrutiny of the provisions under Para 2.1.6.1 (B) of the Himachal Pradesh Electricity Supply Code 2009 and specifically the Explanation given under fourth proviso is very much relevant which states:

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Explanation.- For the purposes of this sub-para,-

(a) "dedicated feeder" means the electric supply line emanating from the sub-station of the licensee through which electricity is, or is intended to be, supplied to a single consumer; and

(b) "joint dedicated feeder" means the electric supply line emanating from the sub-station of the licensee through which electricity is, or is intended to be, supplied to two consumers.

38. Since the said line is now being used to feed the Complainant after T-off point and bunch of Consumers from Baglehar sub-station, the same qualifies for the definition of Common line.

39. The Respondents have connected another sub-station using the dedicated line of the Complainant with 2x10 MVA capacity at present and may augment the same in future also depending on the need up to the available capacity of 82 MVA and increase in demand from other prospective Consumers. The load of the Complainant is only up to 6 MVA and they had sought another 10 MVA for their sister concerns. The Distribution Licensee have encroached upon the line of the Complainant without providing any compensation or even evolving any compensation mechanism. The Respondents have in fact denied the legitimate rights of the Complainant as is evident from the letter written by the Chief Engineer (Transmission) and supported by the Respondent No. 4.

40. Therefore, in line with the provisions contained in Clause 2.1.6.1 (B) of the Himachal Pradesh Electricity Supply Code 2009, after connecting the sub-station at Baglehar, the 66 kV S/C line from 220/66 kV Sub-station at Nalagarh to 66 kV sub-station at Baglehar, have become common line for feeding Consumers of the Distribution Licensee from the said Baglehar sub-station. Therefore, the Complainant needs to be compensated in line with the provisions of the Himachal Pradesh Electricity Supply Code 2009 for the entire cost alongwith 8% interest compounded annually up to 19/06/2021. The line between T-off point to the premises of the Complainant have now become the service line to the Consumer and the Respondents are entitled to recover any charges as per provisions of the prevalent Regulations.

41. Thus, the observation/ decision of the Forum below that the Complainant is entitled to the Compensation from the future Consumers of the Baglehar sub-station up to the spare capacity only is not in line with the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 read with the Himachal Pradesh Electricity Supply Code 2009.

42. The decision of the Forum below that the orders in Case No. 138/2012 of the Himachal Pradesh Electricity Regulatory Commission is not applicable in the present case is also not in line with the provisions of the Himachal Pradesh Electricity Regulatory Commission

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(Recovery of Expenditure for Supply of Electricity) Regulations, 2005 since the orders of the Commission are under the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

43. The Complainant is entitled to compensation in respect of entire cost of the 66 kV line constructed by his own resources. The Complainant have quoted Rs 9,39,83,175.76 as the final cost of the said line certified by the CA. However, since the original cost of the said line was Rs 717.75 lakh, the Complainant is entitled to only the cost up to a maximum escalation of 3% in line with the provisions under Regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. Further, Rs 107.13 lakh paid by him to the Respondents towards Supervision and departmental charges are also part of the original scheme cost since now the said line will become absolute property of the Distribution Licensee and any cost recovered towards supervision/ departmental charges are required to be refunded back to the Complainant.

44. The Complainant is also entitled to interest on the payment due after 19/06/2021 in line with provisions under Clause 5.7.3 of the Himachal Pradesh Electricity Supply Code 2009.

45. Further, after compensation and becoming a common line, the Respondents are also required to keep atleast 10 MVA spare capacity for the usage of the Complainant or his sister concerns.

G – Issues at hand:

1. **Issue No. 1:** Whether, the decisions of the Forum below that the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 are applicable is in order?

2. **Issue No. 2:** Whether the Respondents have absolute ownership of the 66 kV dedicated transmission line constructed by the Complainant?

3. **Issue No. 3:** Whether the 66 kV line between 220 kV 220/66 kV sub-station at Nalagarh (Upperla Nangal) and 66 kV Baglehar sub-station is common line after 19/06/2021? If yes, whether the Complainant is entitled to compensation of the entire cost of the said line alongwith 8% interest compounded annually?

4. **Issue No. 4:** Whether the orders passed on 04/06/2022 by the Forum below in Complaint No. 1432/3/21/07, dated 24/07/2021 are in line with the provisions of the applicable Regulations/ codes?

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H – Findings on the issues:

Issue No. 1:

1. As is evident from the analysis done above and documents on record and arguments made by both the parties, the provisions under Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 are applicable in the present case since the Complainant became prospective Consumer on the day when PAC was issued on 11/03/2010 or even after sanction of load on 31/08/2010.

2. The Forum below have wrongly interpreted that the Complainant is covered under the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012.

3. The conditions No. 6 of PAC dated 11/03/2010 followed by Conditions No. 23 of the load sanction dated 31/08/2010 also supports the same outcome.

Issue No. 2:

1. As is evident from the analysis done above, the Respondent Board have shall have absolute ownership of the 66 kV Line from 220/66 kV sub-station at Nalagarh (Upperla Nangal) to 66 kV sub-station at Baglehar after 19/06/2021 only and after compensating the Complainant as per provisions of the Regulations discussed above.

2. The decision of the Forum below giving full rights of ownership to the Respondent Board before and after 19/06/2021 are not in line with the provisions of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

Issue No. 3:

1. As is evident from the analysis done above and in line with provisions under Para 2.1.6.1 (B) of the Himachal Pradesh Electricity Supply Code 2009, the 66 kV line between 22/66 kV sub-station at Upperla Nangal Nalaagrh and 66 kV sub-station at Baglehar have now become common line of the Respondent Board after 19/06/2021.

2. Further, after 19/06/2021, since the said line is now common line of the Respondent Board, the Complainant is entitled to refund of entire cost of the said line restricted to original scheme cost of 717.75 Lakh with 3% escalation in line with provisions under Regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

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3. The Complainant is also entitled to refund of Rs 107.13 lakh which is inclusive in the original scheme cost of Rs 717.75 Lakh paid by him towards the supervision and departmental charges recovered from him by the Respondent Board after the 66 kV line have become the common line of the Distribution Licensee with absolute ownership after 19/06/2021.

Issue No. 4:

1. As is evident from the analysis done above and documents on record, the orders passed on 04/06/2022 by the Forum below in Complaint No. 1432/3/21/07, dated 24/07/2021 are not in line with the provisions of the applicable Regulations/ codes.

2. The Forum below have ordered the compensation after 19/06/2021 only from the prospective Consumers of the Baglehar sub-station up to the available spare capacity which is not in line with the provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 read with Himachal Pradesh Electricity Supply Code 2009 since after 19/06/2021, the said line have become common line after connection to bunch of Consumers from Baglehar sub-station and interconnection between two sub-stations of the Distribution Licensee.

I – Order:

1. **The orders passed on 04/06/2022 by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1432/3/21/07, dated 24/07/2021 are not in line with the provisions of the applicable Regulations/ codes and are hereby quashed and set aside.**

2. **The Respondents are directed to compensate the Complainant for the entire cost of the 66 kV line constructed by him through his own resources limited to original scheme cost of 717.75 Lakh plus 3% escalation alongwith 8% interest compounded up to 19/06/2021 inclusive of cost recovered from the Complainant towards supervision and departmental charges amounting to Rs 107.13 Lakh through adjustment in future energy bills of the Complainant and within a period of 30 days from the date of issue of this order.**

3. **The Complainant shall be entitled to a simple interest on the delayed payment w.e. from 19/06/2021 afterwards in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 till actually paid/ adjusted in future energy bills.**

4. **The Respondents are further directed to keep sufficient spare capacity available for the Complainant and his sister concerns as has already been intimated by them to the Distribution Licensee.**

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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 07/01/2023 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 M/S Sunoxx International, VPO Panjhera, Swarghat Road, Tehsil Nalagarh, District Solan HP-174101 is hereby disposed off.**

7. **No cost to litigation.**

Given under my hand and seal of this office.

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