



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

In the matter of:

M/S Pawan Sons Enterprises, Plot No. 6, Industrial Area, Parwanoo, District Solan, HP-173220  
- Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
  2. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Parwanoo, District Solan, HP-173220
  3. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Parwanoo, District Solan, HP-173220
- Respondents

Complaint No. 15/2022 (Registered on 04/08/2022)  
(Orders passed on 25/11/2022, Passed on 26/12/2022)

Counsel for:

The Complainant: Ms Divya Rana Advocate, Sh. Tek Chand Advocate  
The Respondents: Sh. Anil Kumar God Advocate Sh. Kamlesh Saklani Law Officer

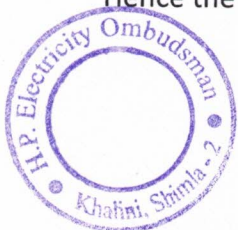
CORAM

Er. K.L.Gupta  
HP Electricity Ombudsman

**Order**

The case was received and registered on 04/08/2022. The Respondents were to file their reply by 20/08/2022 and the Complainant was to file his rejoinder by 26/08/2022. The case was listed for admission hearing on 27/08/2022. The Respondents failed to submit their reply by 20/08/2022 and were to file their reply by revised date 16/09/2022. The Complainant was to file his rejoinder by 23/09/2022. The case was listed for hearing on 24/09/2022.

The Respondents filed their reply on 22/09/2022 and the Complainant was to file his rejoinder by 15/10/2022. The case was listed for arguments on 29/10/2022. The Complainant sought time for rejoinder and the revised date was 05/11/2022. The case was listed for arguments on 25/11/2022. The Complainant filed his rejoinder on 24/11/2022. The Complainant also filed written arguments on 25/11/2022. The arguments were concluded and the orders were reserved. Hence the delay.



*Er. K.L.Gupta*  
*26/12/2022*

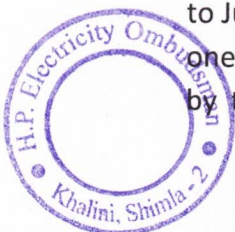


**A – Brief facts of the case:**

1. M/S Pawan Sons Enterprises, Plot No. 6, Industrial Area, Parwanoo, District Solan, HP-173220 have filed an application registered on 04/08/2022 through its Counsel (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 28/06/2022 in Complaint No. 1421/1/22/08, dated 02/03/2022. The Complainant had also filed a Complaint earlier orders on which were passed by the Consumer Grievance Redressal Forum at Kasumpti on 25/03/2021 in Complaint No. 14231/4/20/042, dated 17/11/2020. The Complainant have prayed to quash and set aside the orders passed on 28/06/2022 and also demand dated 02/02/2022 and 16/07/2022.

**B – The Complainant's submissions:**

1. The Complainant submits that the brief facts leading to the present representation under Regulations 28(1)(b) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 are as under:
2. The Complainant submits that he has filed Complaint under Regulations 16 and 17 of extent Regulations 2013 challenging the demand notice issued by the Respondents to him for clearing the outstanding dues of the previous occupier of the premises for release of the electricity connection to the premises in question. Further, that he has purchased the instant premises as an auction purchaser under the process of the liquidation of the corporate debtor under the Insolvency and Bankruptcy Code, 2016 vide sale certificate dated 26<sup>th</sup> November, 2018. Further, that the sale of the asset was made without any incumbrances and liability.
3. The Complainant submits that the earlier occupier of the premises i.e. M/S Samtal Pvt Ltd was released an electricity connection and on 01/01/2012, the temporary disconnection order was affected on account of the failure to pay the outstanding electricity dues. Further, that the premise was permanently disconnected on 08/02/2012 as per provision of the Regulation 7 of the HP Electricity Supply Code, 2009. Further, that the said PDCO was issued on 01/02/2012 and effected on 08/02/2012. He further submits that as per the provision of the supply Code, the final electricity bill to the tune of Rs 89,702/- was issued by the Respondents after adjustment of the security deposits amounting to Rs. 7,44,125/-.
4. The Complainant submits that an audit of RAO was conducted for the period of April 2007 to July 2012, wherein it was pointed out that as many as 14 No. Industries, (Complainant is one of them at Sr. No. 5), pursuance thereof, vide letter dated 22/01/2013, he was informed by the Assistant Engineer, Electrical Sub-Division HPSEBL Parwanoo, qua the demand



*Accepted*  
*26/12/2022*





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charges to the tune of Rs 5,63,333/-. Relevant extract of the letter/notice dated 22/01/2013 is reproduced as under:

"recovery of PLEC (Peak Load Exemption Charges) for the light load of your unit.

The levy of PLEC demand charges as well as energy charges for the light load for use during peak hours was to be charged w.e.f April 2006 onward as per tariff provisions. In this regard the clarification also issued by CE (Comm.) vide his office No. 7625-7930 dated 17/07/2012.

Accordingly, RAO audit during the audit of Electrical Sub-division HPSEBL Parwanoo in 08/2012 has worked out the arrears of PLE demand charges to the tune of Rs. 5,63,333/- as per detailed given below:

1. Period 04/2006 to 6/2012 (75 months)
2. Light load                      ...kW (149.03 kVA)
3. Demand Charges
  - i)        Upto 03/2012 @ 50 /PM   Rs. 5,36,508/
  - ii)       04/2012 to 06/2012 @ 60 PM = 26,825/-

**Total                      Rs. 5,63,333/-**

5. The Complainant submits that the Respondents after issuance of the final bill against the earlier premises, filed a civil suit for recovery of Rs. 6,53,035/- (six lakh fifty three thousand and thirty five) as principal amount and Rs 1,36,622 as interest calculated on the amount of Rs 6,53,035/- @ 12 % per annum from 01/02/2012 till October 2013 along with future interest @ 18% per annum from 01/11/2013 till realization, before the Court of Civil Judge Kasauli. However, said suit was dismissed as withdrawn by the Respondents/ HPSEBL and further, in the wake of the proceedings initiated under the Insolvency and Bankruptcy Code, 2016, filed claim under the Code, before the CIRP as provided under the Code on 14/01/2020.
6. The Complainant further submits that in the said claim, filed by the Respondents, the relevant part is as under:

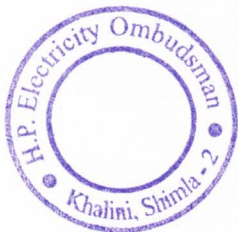
" .....

.....

Affidavit

I, Er. Rahul Verma, Sr. Executive Engineer, Electrical Division Sector 1 HPSEBL Parwanoo do hereby solemnly affirm and state as under:

The above named corporate debtor was at liquidation commencement date, that is, the 4<sup>th</sup> day of July, 2018, and still is justly and truly indebted to me (or to me and (insert name of



*upto*  
*26/12/2022*



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co-partners) my co-partners in trade, or as the case may be) in the sum of Rs 13,38,206/ (Rs. Thirteen lakh thirty eight thousand two hundred six) only for nonpayment of electricity bills with interest. In respect of my claim of the said sum or part thereof, I have relied on and the documents specified below:

Electricity bills

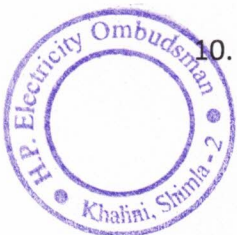
Copy of original A&A

Load sanction order

Copy of SCO/SJO

Copy of PDCO"

7. The Complainant submits that as per the above claim being the operation creditor, Respondents claimed Rs 13,38,206/- (Rs. Thirteen lakh thirty eight thousand two hundred six). Further, that he has purchased the asset in the year of 2018 as discussed in the initial para of the Complaint free from any encumbrances and liabilities.
8. The Complainant submits that after purchasing the said asset, applied for the electricity connection, and the Respondents had released a temporary Metered Power Supply Connection vide SCO No. 2000142547 dated 18/12/2018. Further, in the year of 2019, the amount of the outstanding of the previous occupier of the premises related to M/S Samtel Electronic Devises Pvt Ltd to the tune of Rs 6,53,035/- was debited through the running bill of account ID 200007002241 through sundry item in the bill for months of April, 2019. Further, that his electricity supply was disconnected by the Respondents on 27/06/2019 owing to non-payment of the energy bills, however, he made the payment of entire amount of energy bill of Rs 6,86,381/- under protest on 02/07/2019 vide cheque No. 329432 dated 29/06/2019 along with restoration charges applicable under the regulations. Further, that electricity supply was restored by the Respondents.
9. The Complainant submits that since the payment was made by him in protest, Respondents were requested to refund the amount to him but to no avail. He then, approached the Id Consumer Grievances Redressal Forum (hereinafter referred to Forum) by filing a Complaint bearing No. 1421/4/20/042 titled as M/S Pawan Sons Enterprises versus The Executive Director (Pers.) HPSEBL and others. The said Complaint was allowed by the Id Forum vide order dated 25/03/2021 wherein the Respondents were directed to refund the amount of Rs 6,86,381/- deposited under protest by him, on account of the outstanding arrears of previous occupier/Consumer i.e. M/S Samtal Electron Devises Ltd along with simple interest @ 15 % per annum for the period the amount refundable to the Consumer is held by the licensee. Further, that the Respondent implemented the order ibid dated 25/03/2021 passed by the Id Forum and thus refunded the amount to him.
10. The Complainant submits that he applied for the new commercial connection vide application No. 1001175034 dated 07/07/2021 and the Respondents raised number of



*Accepted*  
*26/11/2022*





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queries/observations in the application. He again applied for the fresh commercial connection for SIP category vide online application No 1001387194 dated 28/01/2022 in respect of which demand notice dated 02/02/2022 for the payment of Rs. 6,53,035/ (six lakh fifty three thousand and thirty five hundred) as outstanding amount of M/S Samtal Electronics Devises Private Ltd was issued by the Respondents to him.

11. The Complainant submits that he feeling aggrieved and dis-satisfied, approached the Forum challenging the demand notice dated 02/02/2022 i.e. pre-condition for the clearing outstanding of the earlier occupier, by way of filing a Complaint which was registered as Complaint No. 1421/1/22/08 titled as M/S Pawan Sons Enterprises and The Executive Director HPSEBL and ors. The Id Forum vide final order dated 28/06/2022 dismissed the Complaint filed by him. The operative part of same is reproduced as under:

*"29. this forum is also of the view that case law/ judgments cited by the Complainant in support of the Complaint do not have any bearing on the present matter. It is settled principle that each and every case has to be decided on its own facts & circumstances unless squarely covered by settled law on the matter. In the present case, since status being the amended regulation of sub-para 5.2.13 A of the HP Electricity Supply Code, 2009, provides for the recovery of the outstanding amount against the previous Consumer from the next occupier, thus the decision referred by the Complainant, cannot be made squarely applicable to the present case, where regulations allows such recovery. However, a detailed reading of these judgments does not reveal that the ratio is inherent there in that where prevailing statute does provide for recovery of amount of nature ibid, the recovery could be made. It is therefore, understandable that at the time of temporary connection applied in the year 2018 by the Complainant, the prevailing statue did not provide for such recovery and in the instant case where in permanent connection has been applied for, statute has been amended and now it does provide for such recovery."*

12. The Complainant submits that the Respondents have issued another demand notice dated 16/07/2022 to deposit the outstanding dues of the previous occupier Rs 6,53,035/- (principal amount) along with Rs 2,38,763/- (interest amount) within a stipulated period of 15 days failing which the same will be debited in the current energy bill following with disconnection order in case of non-compliance of the order of Id CGRF.
13. The Complainant submits that feeling aggrieved and dis-satisfied from the final order dated 28/06/2022 passed by the Id Forum, the Complainant prefers the instant representation under Regulation 28 (1) (b) of the HPERC (CGRF & ombudsman) Regulations, 2013 on the following amongst other grounds:



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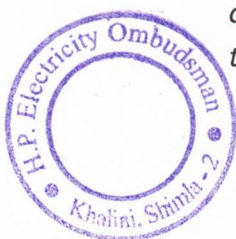




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- a) That the Id Forum has not appreciated the material on record as well the position of law on the subject and passed the impugned order dated 28/06/22 in a conjecture and surmises as such the same is liable to be quashed and set aside.
- b) That the Id Forum has ignored the settled position of law that the premises in question stands purchased by him by way of e-auction under the liquidation proceedings under the Insolvency and Bankruptcy Code, 2016 which has an overriding effect on the Electricity Act, 2003 and regulations framed under the Electricity Act by the appropriate Regulatory Commission. The Id Forum has misinterpreted this vital aspect of the matter and passed the impugned order in a very casual fashion which is liable to quashed and set aside.
- c) That the one important aspect of the matter which Id Forum has not appreciated is that the Insolvency and Bankruptcy Code, 2016 (IBC) provides for detailed procedure and provisions for dealing with the claims of the creditors which are against the corporate debtor facing insolvency/ liquidation. Under section 35 of Code, the Liquidator is obliged to verify the claims of all the creditors. Since the Respondents herein has preferred claim by way of filing Form –C under the IBC, in view of the settled position of law, that the IBC overrides the Electricity Act, 2003, Respondents cannot claim outstanding of the previous occupier from the auction purchaser under the code. The law on the point is not *res integra* as the Hon'ble National Company Law Appellate Tribunal (NCLAT) principal Bench, New Delhi, in Company Appeal (AT) (insolvency) No 961 of 2021 in the matter of Eastern Power Distribution Company of Andhra Pradesh Limited versus Maintan Alloys Limited and others decided on 26/05/2022 held in para No 17 of the judgment as under:

*"17. it is noted that the Hon'ble Supreme Court in the above case was considering the Action Sale under SARFAESI Act, 2002. No provision of IBS were under consideration of Hon'ble Supreme Court. In the IBC proceedings, the electricity supplier is also an Operational Creditor who files claims for its operational debt as well as the charges during the CIRP period. IBC deals with the claims and require for payment of the claim of the electricity services provider under section 53 of the Code in a liquidation proceeding. Regulations formed under Electricity Act, 2003 fastening liability on the successfully auction purchaser in the liquidation proceedings will be in conflict with the provision of the IBC. IBC having been given overriding effect under section 238, any contrary provision in any other statute under Electricity Act, 2003 shall be overridden. Therefore, it shall not open for the Appellant to contend that appellant shall recover the entire pre-CIRP and post CIRP dues from the successful auction purchaser in pursuance of regulation 8.4, as noticed above. The appellant is entitled to recover its dues under the IBC proceedings"*



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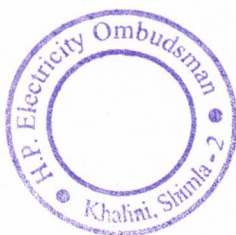
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The Complainant submits that the ratio of the above decision is squarely applicable on the present case, where under the HP Electricity Supply Code, 2009, under regulation 5.2.13A (as inserted in 2020 amendment) contemplates the recovery of the outstanding dues from the next occupier. Hence, being overriding effect of the IBC under section 238 of the Code, any other law/ statute/ regulation in contravention to the IBC shall be overridden. As the impugned demand notice dated 02/02/2022 requiring payment of the outstanding of the corporate debtor and the final order dated 28/06/2022 passed by the Forum are liable to be quashed and set aside.

d) That without prejudice to above, the impugned order dated 28/06/2022 passed by the Id Forum does not sustain in the eyes of law reason being that the once the Id Forum has in its own decision in the Complaint No 14/4/20/042 has quashed and set aside the demand of the Respondent qua the dues of the outstanding of the previous occupier vide its final order dated 25/03/2021 and the same stands complied with by the Respondents wherein the refund was made to him, now at this time of release of the SIP connection, the same demand was raised by the Respondents, which is not tenable in the eyes of law, justice and equity. Moreover, he is the successful purchaser of the premises under the e-auction made in the liquidation proceedings under the IBC in the year of 2018 and since the temporary electricity connection was released on 2018 itself, the amended provisions of the Electricity Supply Code, (4<sup>th</sup> Amendment) Regulations, 2020 are not attracted as such the impugned order is liable to be quashed and set aside.

14. Further, that he has not filed any other suit/case/petition before any court of law/tribunal for the Redressal of the grievances, except the present one.

15. **PRAYER:** The Complainant thus keeping in view the facts and circumstances narrated herein above, seeks the kind indulgence of this Hon'ble Ombudsman for Redressal of his grievances and following relief may kindly be granted; **a)** to quash and set aside the demand Notices dated 02/02/2022 and 16/07/2022; **b)** to quash and set aside the final order dated 28/06/2022 passed by the Id Forum in Complaint No. 1421/1/22/08 and to further direct the Respondents to release the electricity connection to him at the earliest; **c)** to direct the Respondents to pay the cost of the representation to tune of 1 Lakh; **d)** to direct the Respondents to produce the entire record of the case; **e)** any other or further order which this Hon'ble Ombudsman deems fit and proper may also be passed in favour of the Complainant and against the Respondents.



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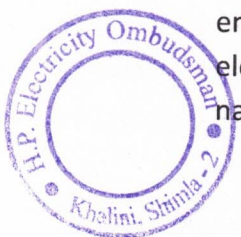
**C – The Respondents’ submissions:**

**Preliminary submissions:**

1. The Respondents submit that save as otherwise expressly admitted, the contents of this representation are wrong and incorrect hence denied and that Complainant has no cause of action and locus standi to file the present Complaint and same deserves dismissal.
2. The Respondents submit that the impugned order dated 28/06/2022 passed by the Id. CGRF does not suffer from any infirmity or illegality, hence, the present representation deserves only dismissal.
3. The Respondents submits that the Complainant has not preferred the instant Complaint in accordance with regulation 33(1)(f) of HPERC (CGRF & Ombudsman) Regulations 2013, wherein Complainant has filed the representation before the Ombudsman within 30 days from the date of receipt of the decision of the forum, as such the Complaint of the Complainant is not maintainable and same is liable to be dismissed.
4. The Respondents submit that that the Complainant has not approached this Hon’ble Ombudsman with the clean hands and suppressed and concealed the material facts from this Hon’ble Ombudsman as such representation is liable to be dismissed and further, that the Complainant is estopped to file the present Complaint on account of its own acts, conduct, deeds and acquiescence.

**On Merits:**

5. The Respondents submit that the action of Respondents/ HPSEBL is within the provisions of Electricity Act, 2003 and Regulations framed thereunder by the Hon’ble Himachal Pradesh Electricity Regulatory Commission in exercise of powers vested under it.
6. The Respondents submit that the Respondents being the ‘Distribution Licensee’ defined under section 2 (17) of the Electricity Act, 2003 empowered to recover the outstanding dues of the previous occupier of the premises as per clause 5.2.13 A of the HP Electricity Supply Code, 2009 from the next occupier of the premises. Further, that Respondents being the operational creditor of the M/S Samtel Electronic Devices Pvt Ltd, has filed claim under Schedule II Form C. But that mere filing claim aforesaid does not preclude the Respondents to effect recovery of the outstanding as per the provisions of the Supply Code, 2009.
7. The Respondents denied that the asset purchased by the Complainant was free from all encumbrances. Complainant be put to the strict proof to that extent. Further, that electricity dues cannot partake only contractual character but same being statutory in nature, Respondents being performing statutory functions, the action of raising demand



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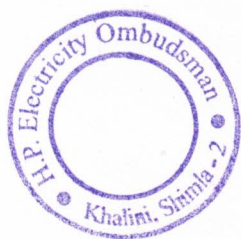




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qua the deposit of the outstanding of the previous occupier is perfectly valid in law as such Complainant cannot wriggle out from this statutory liability. Further, that impugned order passed by the Id Forum does not suffer from any material illegality and as such no such interference is called for from this Hon'ble Electricity Ombudsman under Regulation 28 (1)(b) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

8. The Respondents submit that earlier connection of the Complainant was of temporary in nature which was governed by the different set of conditions. Since, the instant electricity connection, applied by the Complainant is of SIP category, the terms and conditions of the Electricity Supply Code, 2009 are totally binding upon the Complainant, wherein, it is provided that in a premise, where outstanding of previous occupier exists, the next occupier is liable to pay those outstanding so as enable itself to get the electricity connection for the that premises. As per amended clause 5.2.13 A of the Electricity Supply Code, 2009, the Complainant cannot wriggle out from the liability to pay atleast two electricity bills taking in to account average 12 bills of the previous occupier.
9. The Respondents submit that the impugned order passed by the Id Forum is well reasoned and speaking one based on the proper appreciation of the material available on record and having due consideration to the provisions of the Electricity Act, 2003 read with regulations framed thereunder by the Electricity Regulatory Commission under exercise of the statutory powers vested under it. Further, they specifically denied that the impugned order has been passed in conjecture and surmises by the Id Forum.
10. The Respondents specifically denied that the Insolvency and Bankruptcy Code, 2016 overrides the Electricity Act, 2003. However, that the since the Electricity Act, 2003 is complete statute in itself, the applicability of the IBC, 2016 cannot be invoked just to evade the payment of the statutory dues of the Respondents by the Complainant.
11. The Respondents submit that the law relied upon by the Complainant does not apply to the facts and circumstance of the present case. It is settled law that each case has to be decided in its peculiar facts and circumstances. Further, that Id Forum has taken in to consideration all these aspects and thereafter, passed a very reasoned order which warrants no interference by this Hon'ble Ombudsman.
12. The Respondents submit that since the earlier connection released by the Respondents to the Complainant was of temporary in nature, hence the refund was made to the Complainant. Further, that Complainant after receiving the refund from the Respondents has applied for the Small Industrial Power supply connection, for which it is the pre-condition that he has to pay two electricity bills of the previous occupier in terms with the Himachal Pradesh Electricity Supply Code (4<sup>th</sup> Amendment) Regulations, 2020. The demand



*Accepted*  
*26/12/2021*





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raised by the Respondents is perfectly legal and the Complainant has to honour the same, without any protest. Further, that detailed reply has already been submitted before the Id Forum, same may be read as part and parcel to the reply to this representation. Further, that as per judgment of the Hon'ble Supreme Court in Telangana State Southern Power Distribution Company Ltd versus M/S Srigdhaa Beverages, Civil Appeal No 1815 of 2020 decided on 01/06/2020, the electricity dues, where they are statutory in character under the Electricity Act, 2003 and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically section 56 of the Electricity Act, 2003 (in *pari materia* with section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

13. The Respondents thus submit that keeping in view the facts and circumstances narrated herein above prayed that the Complaint as preferred by the Complainant being devoid of merit may very kindly be dismissed with heavy cost.

**D – The Complainant's additional submissions through Rejoinder:**

1. The Complainant submit that without prejudice to the submissions made in the Complaint he denies all the averments which are against the facts and law save as to expressly admitted.

**Reply to the preliminary submissions:**

2. The Complainant submits that the contents of para 1 to 6 of the preliminary submissions are wrong and incorrect hence denied emphatically. Further, that the order passed by the Id Forum is perverse, vague and against the settled principles of the law laid down by the Hon'ble Apex Court and also the contrary to the provisions of the statutes governing the field as such the impugned order dated 28/06/2022 is liable to be quashed and set aside. Further, that it is wrong and incorrect to state on behalf of the Respondent that the instant representation is beyond the period of limitation as provided under regulation 33 of the HPERC (CGRF and Ombudsman) Regulations, 2013. However, the impugned order was passed by the Id Forum on 28/06/2022 and same was received by him on 06/07/2022 further as per provision of regulation 33 (f), time period of 30 days reckoned from the date of the receipt of the order of the Forum and as such the instant representation was filed by the Complainant on 04/08/2022, which is evident from the interim order dated 0508/2022, so the representation is well within the time prescribed under the regulations.



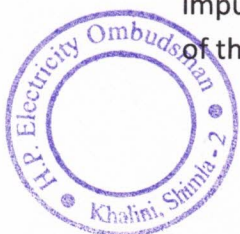
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**Rejoinder to the reply on merits:**

3. The Complainant submits that the averments made in the corresponding paras of the Complaint are reiterated and reaffirmed.
4. The Complainant submit that the submissions made in the corresponding paras of the Complaint are reiterated and reaffirmed for the sake of brevity. Further, that the Respondents are not entitled to recover the outstanding of the previous occupier of the premises from the next occupier on the reason that the premises in question was purchased under the Insolvency and Bankruptcy Code, 2016 and the said code being the special statute is having overriding effect on the Electricity Act, 2003. Further, that though the Electricity Act, 2003 is also a special statute however, it is settled position of law that when there are two special statutes, the later will override the former in case of any conflict hence the impugned order dated 28/06/2022 being against the law is liable to be quashed and set aside.
5. The Complainant submits that the content of para 6 to 9 of the reply to the representation in so far are contradicting the averments of the Complainant are concerned, same are wrong, incorrect and baseless hence denied. The corresponding averments made by the Complainant in the Complaint are reiterated and reaffirmed.
6. The Complainant submits that the contents of para 10 of the reply to the Complaint are wrong and incorrect hence denied and the corresponding paras of the Complaint are reiterated and reaffirmed. Further, that the Id Forum has completely fell in error by holding that he is liable to pay the outstanding of the previous occupier of the premises, in terms of the clause 5.2.13 A of the HP Electricity Supply Code, 2009. However, as submitted in the foregoing paras and also in the Complaint, clause 5.2.13 A of the Supply Code does not attract in the peculiar facts and circumstance of the case. The law/ judgment relied upon by the Respondents is not applicable to the facts of the instant matter as it is settled principle of the law that each and every case has to be decided on its peculiar facts and circumstance of the matter and such the reliance of the Respondents is totally misplaced. Further, that law laid down by the Hon'ble NCLAT in matter Eastern Power Distribution Company of Andhra Pradesh Limited versus Miantan Alloys Limited and other Company Appeal (AT) (Insolvency) No. 961 of 2021 decided on 26/05/2022 is squarely applies to the facts of the present matter as such the representation filed by him is liable to be allowed. Further, that since the premise in question has been purchased by him in the liquidation proceedings held under the Insolvency and Bankruptcy Code, 2016, and which has an overriding effect on the Electricity Act, 2003 by virtue of section 238 of the Code, the impugned order passed by the Id Forum is un-sustainable in the eyes of law. Section 238 of the Insolvency and Bankruptcy Code, 2016 reads as under:



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26/12/2022





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*"238. provisions of this code to override other laws.- the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

7. The Complainant submits that hence, the section 238 of the Code has its overriding effect on the Electricity Act, 2003, the impugned order is liable to be quashed and set aside. Further, that when two special statutes contain the clause of overriding effect, then in that eventuality the later one shall prevail. Further, that no doubt under section 174 of the Electricity Act, 2003, the Electricity Act has also overriding effect but Insolvency and Bankruptcy Code, 2016 being the later special statute shall have the overriding effect on the former. He craves to place reliance on the judgment of the Hon'ble Supreme Court in *Soldiare India Ltd versus Fiargrowth Financial Services Ltd and others* (2001) 3 SCC 71 wherein the Hon'ble Supreme Court held as under:

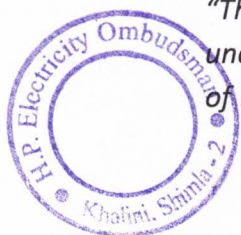
*"9. It is clear that both these Acts are special Acts. This court has laid down in no uncertain terms that in such an event it is the later Act which must prevail."*

8. He further submits that hence, the IBC, 2016 being the later statute, the provision of the later shall prevail over the former one i.e. the Electricity Act, 2003.
9. The Complainant thus prayed that the impugned order dated 28/06/2022 passed by the Id Forum may very kindly be quashed and set aside and the Complaint filed by him may be allowed in the interest of justice and fair play.

**E – The Complainant's additional submissions through written arguments:**

1. The Complainant submits that he is aggrieved and dissatisfied by the impugned order dated 28/06/2022 passed by the Id Forum. He filed Complaint under Regulations 16 and 17 of extent Regulations 2013 challenging the demand notice issued by the Respondents to him for clearing the outstanding dues of the previous occupier of the premises for release of the electricity connection to the premises in question. Further, that he has purchased the instant premises as an auction purchaser under the process of the liquidation of the corporate debtor under the Insolvency and Bankruptcy Code, 2016 vide sale certificate dated 26<sup>th</sup> November, 2018. Further, that the sale of the asset was made without any incumbrances and liability.
2. The Complainant submits that earlier the Id Forum has decided the Complaint on merits in Complaint No 1421/4/20/042 vide order dated 25/03/2021 wherein it was held as under:

*"The above stated case laws on the matter and the express provisions of Supply Code, 2009 under Para 5.2.13 clearly hold that Complainant was not liable to pay these sundry charges of Rs.6,86,381/- on account of outstanding arrears of previous occupier/Consumer i.e., M/S*



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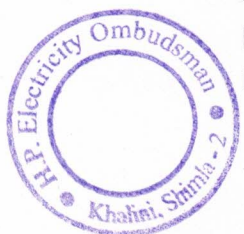


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*Samtel Electron Devices Limited. Further Respondents have legally & legitimately filed the claim of the dues of previous Consumer before the Liquidator appointed by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, under Insolvency & Bankruptcy Code, 2016. The Respondents no.2 & 3 have rightly sought approval from Superior/Competent Authority of Respondent No.1 vide Annexure C-12 &13, to refund the amount deposited by the Complainant under protest, to avoid further litigation on the matter. It is strange to observe that the required approval to refund the amount is yet to be accorded to settle the issue for good. The Forum is constrained to record that due to failure of the Competent Authority to accord timely approval to settle the issue, has now resulted in the present avoidable litigation. The HPSEBL, is burdened to bear the avoidable interest also on the amount of refund on account of sheer laxity to deal and settle such claims at the level of competent authority. It needs serious thought at the level of higher authorities of the HPSEBL, to fix a time line with accountability, to settle such claims to avoid unnecessary litigations and burden on the exchequer of the HPSEBL.*

*In view of the observations made here-in-above, the present Complaint is allowed in the light of the settled position of law & provisions of Supply Code, 2009 referred in paras supra. The Respondent Board is directed to refund the amount of Rs. 6,86,381/- deposited under protest by Complainant, on account of outstanding arrears of previous occupier/Consumer i.e., M/S Samtel Electron Devices Limited; along with simple interest @ 15% p.a. for the period the amount refundable to the Consumer is held by the licensee; in terms of clause 26(2)(a) of HPERC (CGRF & Ombudsman) Regulations, 2013, within a period of 21 days from the communication of this order under intimation to the Forum."*

3. The Complainant submits that the order of the Id forum have been implemented by the Respondents but, Respondent to his utter surprise have again raised the demand of the previous occupier from him which led to the present controversy. Further, that this act of the Respondent is completely against the settled law of principle of res judicata.
4. The Complainant submits that the Forum has failed to appreciate this vital aspect of the matter and passed the impugned order totally in contravention of the law governing the field.
5. The Complainant submits that it is relevant to bring the kind attention of the Hon'ble Ombudsman to the law on the subject matter. Further, that it is not in dispute that the premises in question has been purchased by him through e-auction conducted under the IBC, 2016. Section 238 of the IBC has overriding effect on the other law. Latest law on the subject matter has already been mentioned in his pleading. (judgment of National Company Law Appellate Tribunal, Principal Bench New Delhi in the Company Appeal No. 961 of 2021 decided on 26-05-2022). Further, that his case is squarely covered by the above judgment. He further relied upon the judgment of the Hon'ble Supreme court in the case Solidaire India Ltd versus Fairgrowth Financial Services Ltd (2001) 3 SCC 71 wherein, it has been held



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26/12/2022*





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that the when two special statute provides the overriding clause then the later one shall prevail over the former. Hence, since the IBC, 2016 being the later special statute, the overriding clause of the same shall have effect on the Electricity Act, 2003.

6. The Complainant submits that since the Respondents have filed claim for amount Rs 6,53,035/- before the Ld. Insolvency Resolution Professional Namely Sh. Sanjay Gupta, New Delhi, on 14-01-2020, the subsequent recovery from the Complainant is totally wrong and illegal.
7. The Complainant thus prayed that the above written argument being precise in nature may kindly be read in part and parcel to the representation and rejoinder filed by the Complainant and justice may kindly be done.

**F – CGRF Order:**

**Case No. 1421/4/20/042:**

1. The parties today argued the matter and prayed to dispose of the complaint accordingly. We have heard both the Parties and examined the relevant record, Regulations and case laws etc., placed on record by the parties during course of hearing. The facts on record and pleadings of the parties clearly establish that the Respondent HPSEBL, has wrongly charged and received the sundry charges which were on account of outstanding arrears of previous occupier/consumer in the name of M/S Samtel Electron Devices Limited in violations of the express provisions of Supply Code, 2009 under Para 5.2.13 which provides that the Licensee will not be entitled to require the payments of such amount from the next occupier of the premises. In the present case the Complainant is an occupier of the premises namely Plot. No.6, Industrial Area, Sector-2, Parwanoo, purchased from the Liquidator appointed by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, under Insolvency & Bankruptcy Code, 2016. Further our attention was drawn to the case laws on the matter. The Hon'ble Supreme Court of India in a case titled Southern Power Distribution Company of Telengana Ltd through its CMD & Ors vs Gopal Aggerwal & Ors Civil Court Cases 48(SC) decided on 27.7.2017 held that an Auction Purchaser cannot be called upon to clear the past arrears. It was further held that a power connection to an Auction Purchaser cannot be withheld for the dues of the past owner. Again, in a case Ahmedabad Electricity Company Ltd vs Gujrat Inns Pvt.Ltd & Ors 2004(1) Apex Court Judgements 515 (SC) decided on 16.3.2004, the Hon'ble Court had held that in case of fresh connection though the premises are same, the Auction purchaser shall not be liable to clear the arrears incurred by the previous owner in respect of Power Supply to the premises, especially in the absence of their being a specific statutory provision in this regard.



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2. The above stated case laws on the matter and the express provisions of Supply Code, 2009 under Para 5.2.13 clearly hold that Complainant was not liable to pay these sundry charges of Rs.6,86,381/- on account of outstanding arrears of previous occupier/consumer i.e., M/S Samtel Electron Devices Limited. Further Respondents have legally & legitimately filed the claim of the dues of previous consumer before the Liquidator appointed by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, under Insolvency & Bankruptcy Code, 2016. The Respondents no.2 & 3 have rightly sought approval from Superior/ Competent Authority of Respondent No.1 vide Annexure C-12 &13, to refund the amount deposited by the Complainant under protest, to avoid further litigation on the matter. It is strange to observe that the required approval to refund the amount is yet to be accorded to settle the issue for good. The Forum is constrained to record that due to failure of the Competent Authority to accord timely approval to settle the issue, has now resulted in the present avoidable litigation. The HPSEBL, is burdened to bear the avoidable interest also on the amount of refund on account of sheer laxity to deal and settle such claims at the level of competent authority. It needs serious thought at the level of higher authorities of the HPSEBL, to fix a time line with accountability, to settle such claims to avoid unnecessary litigations and burden on the exchequer of the HPSEBL.
3. In view of the observations made here-in-above, the present complaint is allowed in the light of the settled position of law & provisions of Supply Code, 2009 referred in paras supra. The Respondent Board is directed to refund the amount of Rs. 6,86,381/- deposited under protest by Complainant, on account of outstanding arrears of previous occupier/consumer i.e., M/S Samtel Electron Devices Limited; along with simple interest @ 15% p.a. for the period the amount refundable to the consumer is held by the licensee; in terms of clause 26(2)(a) of HPERC (CGRF & Ombudsman) Regulations, 2013, within a period of 21 days from the communication of this order under intimation to the Forum.

**Case No. 1421/4/1/22/08:**

1. We have heard the parties at length and gone through the relevant provision of Supply Code, 2009 along with the latest amendment, record and case law etc. produced by the parties during the course of hearings. We have also examined the relevant provision of Electricity Act, 2003, Insolvency and Bankruptcy Code 2016 and the pleadings of the parties;
2. In this complaint, this Forum finds that the facts / issues raised by the Complainant with regard to his being a consumer in another electricity supply connection applied / availed in December 2018, is not a subject matter of dispute here and neither is this previous connection a reason for grievance of the Complainant and accordingly this Forum observes that the facts / issues with regard to this previous connection of the Complainant is of extraneous nature raised by the Complainant and therefore this Forum restricts its findings only to the new electricity supply connection applied in January 2022 but not granted by



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*26/12/2022*





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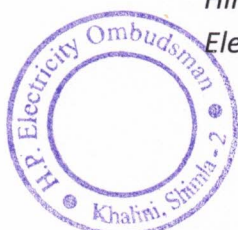
the Respondent and where the Respondent has raised Demand Notice dated 02.02.2022 (Annexure C-2), for payment of Rs 6,53,035/- and in respect of which only, the Complainant has sought relief;

3. In this complaint, this Forum also finds that the previous consumer / owner of the premises being M/s Samtel is not a party. M/s Samtel being a Corporate Debtor before the Liquidator, provisions of Insolvency and Bankruptcy Code 2016 are applicable only to him as a Corporate Debtor and not to the Complainant for the reason that the Complainant has merely purchased the Industrial unit through e-auction and has approached the Respondents for electricity supply connection in respect of which provisions of the Electricity Act, 2003 are specifically applicable. Issues / facts of previous consumer's electricity supply connection such as that of permanent disconnection, temporary disconnection, reconnection, reading, billing, Advance Consumption Deposit (ACD) or Security Deposit, payments, defaults, claims of Respondent before the Liquidator against Corporate Debtor M/s Samtel etc or for that reason any matter pertaining to the previous consumer, as have been raised by the Complainant including the issue of limitation contained provided in section 56(2) of the Electricity Act, 2003, are therefore observed by this Forum as also being of extraneous nature and case specific only to previous consumer and not to the Complainant and therefore this Forum declines to entertain any submissions or arguments on extraneous grounds;
4. The Complainant had purchased the Industrial unit through e-auction and had applied for electricity supply connection(s). For matters related with grant of new connection(s), the Electricity Act, 2003 and Regulations and Rules framed thereunder alone prevail and are accordingly addressed here;
5. The provisions of sub-para 5.2.13 of HP Electricity Supply Code, 2009 as relied upon by the Complainant stand amended by the HP Electricity Regulatory Commission on 3 rd July, 2020 by way of HP Electricity Supply Code (Fourth Amendment) Regulations, 2020 which reads as –

*Quote*

*4. Amendment of sub-para 5.2.13.- In sub-para 5.2.13 of the said Code – (i) the sentence „The licensee will not be entitled to require payments of such amount from the next occupier of the premises.” occurring at the end shall be omitted; and*

*(ii) the following new sub-para 5.2.13 A shall be inserted, namely:- “5.2.13 A The licensee will also be entitled to recover, in addition to the charges recoverable by it under the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and any other relevant regulations for providing connection*



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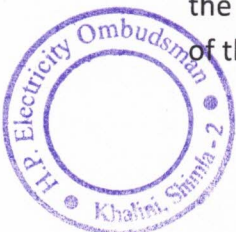
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*and supply, the outstanding amount against the previous consumer from the next owner/occupier of the premises subject to a maximum limit of the amount equal to the average billing for two months worked out on the average for past twelve months immediately prior to the temporary disconnection of the previous consumer:*

*Provided that in case the connection/supply is sought to be released in the name of the original consumer or owner or their legal heirs, the entire outstanding amount shall be recovered before release of new connection or release of supply for the premises: Provided further that the amount to be recovered on this account shall not exceed the total updated outstanding amount, including the interest after permanent disconnection, but after adjustment of the security deposit of the previous consumer: Provided further that the Licensee shall recover the balance outstanding amount, if any, after adjustment of the amount recovered from the new occupier, through any other means available to it: Provided further that in case the connection is released after recovery of earlier dues from the new applicant /consumer and the licensee, after resorting to appropriate remedies, recovers the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount so recovered shall be adjusted against the expenses incurred to recover such dues as well as the balance outstanding dues against the original consumer, not recovered from the new consumer, and the balance if any after such adjustment shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered: Provided further that in cases where the new consumer avails the relief in the infrastructure development charges payable by it as per the special provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 whereunder the payment of entire outstanding dues is a precondition, the provisions of this sub-para shall not be applicable and in such cases the relevant provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 shall have overriding effect."*

*Un-Quote*

6. The regulations which have been framed by the Electricity Regulatory Commission under the Electricity Act, 2003 are binding in nature and Respondents are bound to implement the same. Since the provisions of the amended regulations 'sub para 5.2.13-A' of the HP Electricity Supply Code, 2009 provide for recovery of the outstanding amounts against the previous consumer from the next owner/ occupier of the premises, this Forum finds that the Respondent is within its Rights to demand the outstanding dues of previous consumer however, strictly in accordance with the prevailing statute / Act/ Rules / Regulations from the applicant Complainant here-in being the next occupier/ owner of premises. Accordingly, the Complainant being the next occupier/ owner of premises is liable to make the payment of this demand;



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7. This Forum is also of the view that case law/ judgements cited by the complainant in support of the complaint do not have any bearing on the present matter. It is settled principle that each and every case has to be decided on its own facts & circumstances unless squarely covered by settled law on the matter. In the present case, since statute being the amended regulation of sub-para 5.2.13A of the HP Electricity Supply Code, 2009, provides for the recovery of the outstanding amount against the previous consumer from the next occupier, thus, the decisions referred by the Complainant, cannot be made squarely applicable to the present case, where regulations allows such recovery. However, a detailed reading of these judgements does reveal that the ratio is inherent there-in that where prevailing statute does provide for recovery of amounts of the nature ibid, the recovery could be made. It is therefore understandable that at the time of the Temporary connection applied in the year 2018 by the Complainant, the prevailing statute did not provide for such Recovery and in the instant case where-in permanent connection has been applied for, statute has been amended and now it does provide for such recovery;
8. In view of foregoing, the present Complaint is found devoid of substance and merits. The Complaint is decided on merits and is disallowed and dismissed on aforesaid terms;
9. At the same time, this Forum directs the Respondent(s) that on receipt of amount of outstanding dues of the previous owner from Complainant, to be demanded strictly in accordance with the prevailing Regulations / the HP Electricity Supply Code, 2009 and amendments thereto, the Respondent Board shall release new service connection to the applicant for electricity supply connection / complainant here-in, in accordance with extant Regulations, Supply Code, 2009 as amended from time to time. This Forum also directs that the demanded amount of outstanding against previous consumer as may be paid by the complainant in excess of that provided in Regulations / the HP Electricity Supply Code, 2009, shall be refunded to the Complainant, as and when the claim filed by the Respondents is matured / received from the Liquidator as also stated by Respondent in its Reply and as also undertaken in the demand letter 'Annexure C-2';

**G – Analysis of the Complaint:**

1. The case files at Consumer Grievance Redressal Forum at Kasumpti bearing Complaint No. 1421/4/20/042 dated 17/11/2020 orders on which were passed on 25/03/2021 and Complaint No. 1421/1/22/08, dated 02/03/2022 orders on which were passed on 28/06/2022 have also been requisitioned and gone through.
2. The documents on record like reply/ rejoinder and written arguments have also been gone through.



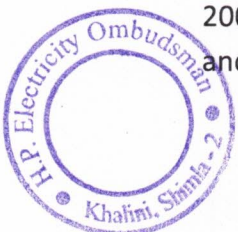
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3. The case has been filed under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and the Complainant have prayed for quashing and setting aside the orders passed by the Forum below on 28/06/2022 alongwith demand dated 02/02/2022 and 16/07/2022 and to release the electricity connection to him.
4. The case pertains to the outstanding of the previous occupier M/S Samtel Pvt Ltd. The Respondents disconnected the premises on 01/01/2012 temporarily on account of outstanding dues and further disconnected the premises permanently on 08/02/2012 vide PDCO dated 01/02/2012.
5. Final electricity bill was also issued for Rs 89,702/- after adjusting the Security Deposit of Rs 7,44,125/-. Further the RAO Audit for the period April 2007 to July 2012 assessed an amount of Rs 4,76,896/- as short recovery of PLEC. The Respondent No. 3 raised demand for Rs 5,63,333/- on dated 22/01/2013 on M/S Samtel.
6. A recovery suit was also filed by the Respondent Board for Rs 6,53,035/- as principal payment and Rs 1,36,622/- as interest w.e. from 01/02/2012 till October 2013 @ 12% per annum and future interest till actually recovered. The recovery suit was withdrawn by the Respondent Board after initiation of proceedings under Insolvency and Bankruptcy Code 2016 and filing its claim with the Liquidator appointed by the NCLT on 14/01/2020.
7. The Respondent Board then filed claim on 14/01/2020 before the operational creditor appointed by the NCLT for Rs 13,38,206/- including interest part. The Complainant purchased the said assets of M/S Samtel in the year 2018 which were free from any encumbrances and liabilities as per the Complainant.
8. The Complainant was released temporary connection on 18/12/2018 by the Respondent Board. The Respondents further raised Rs 6,53,035/- through Sundry in the energy bill in April 2019 and further disconnected the electricity supply on 27/06/2019 due to non-payment. The connection was restored after the Complainant paid the entire amount of energy bill for Rs 6,86,381/- under protest on 02/07/2019.
9. The firm requested for refund but the Respondents didn't responded and then the Complainant filed a representation bearing Complaint No. 1421/4/20/042 which was disposed off by the Forum below on 25/03/2021 wherein they ordered the refund of entire amount of Rs 6,86,381/- with simple interest of 15% per annum in view of the then operative provisions under Clause 5.2.13 of the Himachal Pradesh Electricity Supply Code 2009 that the outstanding of the previous occupier can't be claimed from the next occupier and citing that the Complainant had purchased the assets from the Liquidator appointed by



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26/12/2022





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the NCL under Insolvency and Bankruptcy Code, 2016. The Respondent Board complied with the orders of the Forum below and refunded the entire amount.

10. The Complainant again applied for regular commercial connection on 07/07/2021 which was revised after objections from the Respondent Board to SIPs category on 28/01/2022 in online mode. The Respondents raised a demand for Rs 6,53,035/- again on account of outstanding of previous occupier of the premises i.e. M/S Samtel on 02/02/2022.
11. The Complainant again approached the Consumer Grievance Redressal Forum at Kasumpti vide Complaint No. 1421/1/22/08 dated 02/03/2022 challenging the demand notice dated 02/02/2022. The Forum below passed final orders on 28/06/2022 and applied the amended provisions of Clause 5.2.13 of Himachal Pradesh Electricity Supply Code 2009 that the outstanding of previous occupier can be claimed up to an average of two months only calculated on the last 12 months.
12. Another demand was raised by the Respondents on 16/07/2022 for the recovery of Rs 6,53,035/- on account of outstanding of previous occupier. The Complainant then approached this Appellate Forum for redressal of his grievance under provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
13. The Complainant has contended that he has purchased the said property under e-auction through Liquidator appointed by the National Company Law Tribunal (NCLT) under the liquidation proceedings under Insolvency and Bankruptcy Code, 2016 (IBC, 2016) and the said property has been handed over to them without any encumbrances and liabilities as contained in the Certificate of Sale dated 26/11/2018.
14. They have further contended that the said Code have overriding effect over the Electricity Act, 2003 and under the provisions of Section 35 of the Code, the Liquidator is obliged to verify all claims from creditors. The Respondent Board had filed claim through Form-'C' and they can't claim outstanding of the previous occupier from the auction purchaser since IBC, 2016 overrides the Electricity Act, 2003.
15. Further, they have cited a judgement of National Company Law Appellate Tribunal (Insolvency) (NCLAT) No. 961/2021 in the matter of Eastern Power Distribution Company of AP Vs Maintan Alloys Ltd & others decided on 26/05/2022 and specifically mentioned para 17 of the said order wherein the NCLAT have stated that IBC have overriding effect under Section 238 of IBC, 2016 and any other statute under Electricity Act, 2003 shall be overridden.



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*26/12/2022*





16. Their further contention is that since Section 238 of IBC, 2016 overrides the provisions of Regulations framed under Electricity Act, 2003 and further since they have auction purchased the said property without any encumbrances and liability as per Certificate of Sale dated 26/11/2018, they are not liable to pay the outstanding dues of the previous occupier i.e. M/S Samtel.
17. Now let us examine the provisions under Section 238 of the IBC, 2016:

**238. Provisions of this Code to override other laws. –**

*The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.*

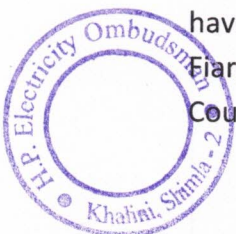
**1[238A. Limitation. –**

*The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.]*

18. Now let us examine the decision of the NCLAT in Case No. 961/2022:

*“17. it is noted that the Hon’ble Supreme Court in the above case was considering the Action Sale under SARFAESI Act, 2002. No provision of IBS were under consideration of Hon’ble Supreme Court. In the IBC proceedings, the electricity supplier is also an Operational Creditor who files claims for its operational debt as well as the charges during the CIRP period. IBC deals with the claims and require for payment of the claim of the electricity services provider under section 53 of the Code in a liquidation proceeding. **Regulations formed under Electricity Act, 2003 fastening liability on the successfully auction purchaser in the liquidation proceedings will be in conflict with the provision of the IBC. IBC having been given overriding effect under section 238, any contrary provision in any other statute under Electricity Act, 2003 shall be overridden.** Therefore, it shall not open for the Appellant to contend that appellant shall recover the entire pre-CIRP and post CIRP dues from the successful auction purchaser in pursuance of regulation 8.4, as noticed above. The appellant is entitled to recover its dues under the IBC proceedings”*

19. From the above it is quite clear that the IBC, 2016 have an overriding effect on the Electricity Act, 2003 being published later and the Regulations framed thereunder. The Complainant have also quoted judgment of the Hon’ble Supreme Court in *Soldiare India Ltd versus Fargrwoth Financial Services Ltd and others* (2001) 3 SCC 71 wherein the Hon’ble Supreme Court held as under:



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*"9. It is clear that both these Acts are special Acts. This court has laid down in no uncertain terms that in such an event it is the later Act which must prevail."*

20. From the above judgement it is again clear that the IBC, 2016 have overriding effect on the provisions of Regulations made under Electricity Act, 2003.

21. Now let us examine the Section 35 of the IBC, 2016:

**35. Powers and duties of liquidator. –**

*(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -*

*(a) to verify claims of all the creditors;*

*(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;*

*(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;*

*(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;*

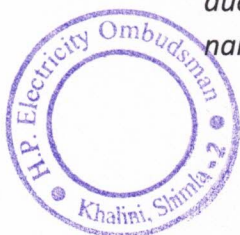
*(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;*

*(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:*

*1[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.]*

*(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;*

*(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for*



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*the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;*

*(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;*

***(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;***

*(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;*

*(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;*

*(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;*

*(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and*

*(o) to perform such other functions as may be specified by the Board.*

***(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:***

***Provided that any such consultation shall not be binding on the liquidator:***

*Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.*

22. From above it is clear that the Liquidator appointed by the NCLT have powers to verify claims of all the creditors, invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code and also consult any stakeholder. The Respondent Board had filed its final claim before the Liquidator appointed by the NCLT vide communication dated 14/01/2020 and withdrew the recovery suit filed before the Civil Judge Solan.

23. Now let us examine Section 53 of the IBC, 2016:

**53. Distribution of assets. –**

***(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale***



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*of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -*

- (a) *the insolvency resolution process costs and the liquidation costs paid in full;*
- (b) *the following debts which shall rank equally between and among the following:*
  - (i) *workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and*
  - (ii) **debts owed to a secured creditor** *in the event such secured creditor has relinquished security in the manner set out in section 52;*
- (c) *wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
- (d) *financial debts owed to unsecured creditors;*
- (e) *the following dues shall rank equally between and among the following: -*
  - (i) **any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;**
  - (ii) *debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
  - (f) **any remaining debts and dues;**
  - (g) *preference shareholders, if any; and*
  - (h) *equity shareholders or partners, as the case may be.*

(2) *Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*

(3) *The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.*

*Explanation. – For the purpose of this section-*

- (i) *it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and*
- (ii) *the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).*



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24. From the above it is clear that priority wise the claim of the Respondent Board falls quite below as compared to other creditors. As is evident from the records available, the Respondent Board didn't get any claim from the sale proceeds of the auction by the Liquidator and accordingly is trying to recover its dues from the next occupier of the premises.
25. Now let us examine the relevant clause of the Himachal Pradesh Electricity Supply Code 2009 wherein the amendment dated 03/07/2020 have been made. This clause has been referred to by the Forum below in its order dated 28/06/2022 in Complaint No. 1421/1/22/08, dated 02/03/2022 and the decision is based on same. Relevant clause 5.2.13 of Himachal Pradesh Electricity Supply Code 2009 as amended now on 03/07/2020 published in Official Gazette on 4<sup>th</sup> July 2020 states:

***"Amendment of sub-para 5.2.13.- In sub-para 5.2.13 of the said Code –***

*(i) the sentence „The licensee will not be entitled to require payments of such amount from the next occupier of the premises.” occurring at the end shall be omitted; and*

*(ii) the following new sub-para 5.2.13 A shall be inserted, namely:-*

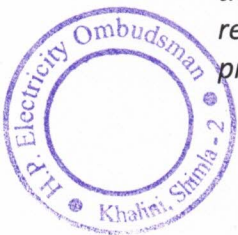
*“5.2.13 A The licensee will also be entitled to recover, in addition to the charges recoverable by it under the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and any other relevant regulations for providing connection and supply, the outstanding amount against the previous consumer from the next owner/occupier of the premises subject to a maximum limit of the amount equal to the average billing for two months worked out on the average for past twelve months immediately prior to the temporary disconnection of the previous consumer:*

*Provided that in case the connection/supply is sought to be released in the name of the original consumer or owner or their legal heirs, the entire outstanding amount shall be recovered before release of new connection or release of supply for the premises:*

*Provided further that the amount to be recovered on this account shall not exceed the total updated outstanding amount, including the interest after permanent disconnection, but after adjustment of the security deposit of the previous consumer:*

*Provided further that the Licensee shall recover the balance outstanding amount, if any, after adjustment of the amount recovered from the new occupier, through any other means available to it:*

*Provided further that in case the connection is released after recovery of earlier dues from the new applicant /consumer and the licensee, after resorting to appropriate remedies, recovers the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount so recovered shall be adjusted against the expenses incurred to recover*



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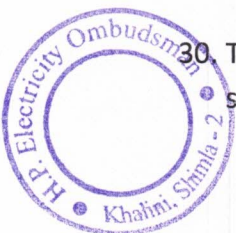


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*such dues as well as the balance outstanding dues against the original consumer, not recovered from the new consumer, and the balance if any after such adjustment shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered:*

*Provided further that in cases where the new consumer avails the relief in the infrastructure development charges payable by it as per the special provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 whereunder the payment of entire outstanding dues is a precondition, the provisions of this sub-para shall not be applicable and in such cases the relevant provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 shall have overriding effect."*

26. The original clause wherein the previous occupier was exempted from paying any outstanding dues of the previous occupier of the premises was amended and was applicable w.e.from 4<sup>th</sup> July 2020 and replaced with the new provisions for payment of outstanding dues of the previous occupier of the premises by the next occupier subject to a maximum limit of the amount equal to the average billing for two months worked out on the average for past twelve months immediately prior to the temporary disconnection of the previous Consumer.
27. The Complainant was issued a demand for Rs 6,53,035/- towards outstanding of the previous occupier through Sundry in energy bill for April 2019 after release of connection under temporary category on 18/12/2018. He also faced disconnection due to non-payment for same and which was restored after he made the payment under protest.
28. The Complainant filed a representation on non-refund of unjust demand of the Respondents at the Consumer Grievance Redressal Forum at Kasumpti vide Complaint No. 1421/4/20/042 dated 17/11/2020 which was disposed off in his favour on 25/03/2021 stating that the outstanding dues of the previous occupier of the premises is not recoverable from him and the Respondent Board was ordered to refund the amount deposited by the Complainant under protest alongwith interest. The orders were also complied with by the Respondent Board.
29. After the Complainant applied for connection under commercial category and then revised to Small Industrial Power Supply (SIPS) on 28/01/2022, the Respondents again demanded the same outstanding amount from him on dated 02/02/2022 being the outstanding dues of the previous occupier as a precondition to release the connection. The Complainant approached the Consumer Grievance Redressal Forum at Kasumpti again vide Complaint No. 1421/1/22/08, dated 02/03/2022.
30. The said Complaint was disposed off on 28/06/2022 in favour of the Respondents by the same Consumer Grievance Redressal Forum at Kasumpti by taking a 'U' turn in its approach



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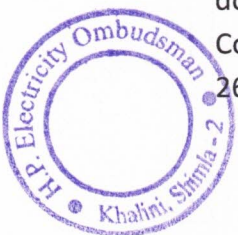


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from its earlier stand vide orders dated 25/03/2021. They cited that the Himachal Pradesh Electricity Supply Code 2009 have been amended and revised clauses are applicable and ordered that the demand raised by the Respondent Board is strictly in accordance with the amended Himachal Pradesh Electricity Supply Code 2009 with additional rider to refund the amount if the claim of the Board is received from the Liquidator.

31. The Himachal Pradesh Electricity Supply Code 2009 was amended on 03/07/2020 effective from 04/07/2020 and first as well as second decisions of the Forum below was made during the applicability of the amended clause No. 5.2.13 of Himachal Pradesh Electricity Supply Code 2009. The decision made on 25/03/2021 was in favour of the Complainant and was also complied with by the Respondents wherein the decision made on 28/06/2022 was in favour of the Respondents which is quite contrary to its own earlier stand.
32. If we analyses the decision of the Forum below on 25/03/2021, the same was also in line with the provisions under the IBC, 2016 Section 238 which overrides the provisions of the Regulations made under Electricity Act, 2003 and also in line with the applicable provisions of the Himachal Pradesh Electricity Supply Code 2009 at the time of original connection released by the Respondent Board in 2018 under Temporary Category since at that time the provisions under Clause 5.2.13 of Himachal Pradesh Electricity Supply Code 2009 was not to demand outstanding dues of the previous occupier from the next occupier.
33. The category of connection does not hamper the applicability of the Clause 5.2.13 before amendment. The connection of the Complainant was disconnected on non-payment of the dues of the previous occupier on 27/06/2019 which was wrong at first instance as was also upheld by the Forum below in its order dated 25/03/2021 and the there was no fault of the Complainant. When he again applied for regular connection in SIPS category on 28/01/2022, there was no change in his status as well as of the provisions under Clause 5.2.13 of Himachal Pradesh Electricity Supply Code 2009 and he was not liable to pay the outstanding dues of the previous occupier even at that time also since he was just regularizing his electricity connection.
34. The demand made by the Respondents was also not in line with the applicable provisions of unamended clause 5.2.13 of the Himachal Pradesh Electricity Supply Code 2009 at that particular time. Further, the demand was also not in line with the over ridding effect of IBC, 2016 wherein the certificate of Sale issued on 26/11/2018 by the Liquidator appointed by the NCLT had sold the assets to the Complainant without any encumbrances and liabilities.
35. The Respondent Board had only option to file its claim with the Liquidator which they had done on 14/01/2020 and they can't claim outstanding of the previous occupier from the Complainant in view of the over riding effect of IBC, 2016 and Certificate of Sale dated 26/11/2018.



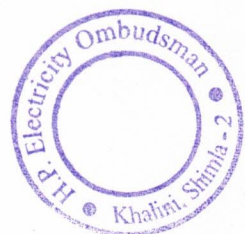
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36. If we now analyses the decision of the Forum below on 28/06/2022, the same is not in line with its own earlier decision in the same matter on dated 25/03/2021 wherein they have also taken in to affect the overriding effect of IBC, 2016 on the provisions of Regulations framed under Electricity Act, 2003. In fact, the Forum below had no jurisdiction to decide on the same matter again when they had already decided the same on 25/03/2021 and there was no change in applicability of the provisions of the Himachal Pradesh Electricity Supply Code 2009 also.
37. The Forum below can't function on its own whims and fancies and have to work strictly within the framework of the Regulations made by the Himachal Pradesh Electricity Regulatory Commission under Electricity Act, 2003. Further, they have to keep in view the overriding effect of the later Central Acts/ Codes with specific over riding provisions which they have totally failed to take cognizance of. They have also completely ignored the pleadings made by the Complainant to this effect and even have not touch the issue of provisions under IBC, 2016 vis-à-vis provisions of Regulations made under Electricity Act, 2003.
38. On the other hand, the Respondents have defended the later decision of the Forum below dated 28/06/2022 wherein they had complied with the earlier decision of the Forum below on dated 25/03/2021 which is quite surprising and contrary to their earlier stand. They have also not touched the issue of overriding effect of IBC, 2016 on the provisions of the Regulations made under earlier Electricity Act, 2003 in their reply both at Forum below as well as at this Appellate Forum. They have justified the later decision of the Forum below stating that the same has been made under the provisions of Himachal Pradesh Electricity Supply Code 2009.
39. The demand note issued by the Respondents on dated 02/02/2022 and subsequently on dated 16/07/2022 are not in line with the fact that the asset purchased by the Complainant was free from any encumbrances and liability as per Certificate of Sale dated 26/11/2018 issued by the Liquidator appointed by NCLT which was very much applicable having over riding effect of IBC, 2016 on provisions of Regulations made under Electricity Act, 2003.
40. The Respondents have also contended that the Complainant have submitted his appeal after 30 days of orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 28/06/2022 on 04/08/2022. The Orders were issued by the Forum on 01/07/2022 and received by the Complainant on 06/07/2022 and the appeal was filed by him on 04/08/2022 which in the opinion of this Appellate Forum is within the time frame of 30 days. Moreover, even if the same is delayed, this Appellate Forum have decided to entertain the same under the power conferred vide Regulations 33 (2) of Himachal Pradesh Electricity Regulatory



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Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and have accordingly issued the Interim Order dated 05/08/2022.

**H – Issues at hand:**

1. **Issue No. 1:** Whether the Consumer Grievance Redressal Forum at Kasumpti have decided the issues in Complaint No. 1421/1/22/08, dated 02/03/2022 within his jurisdiction?
2. **Issue No. 2:** Whether the orders passed on 28/06/2022 by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1421/1/22/08, dated 02/03/2022 is in line with the applicable provisions?

**I – Findings on the Issues:**

**Issue No. 1:**

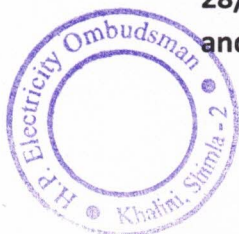
1. As is evident from the analysis done above and the facts/ documents on record, the Consumer Grievance Redressal Forum at Kasumpti have exceeded its jurisdiction while deciding the same matter which has already been decided on 25/03/2021 by its earlier decision in Complaint No. 1421/4/20/042, dated 17/11/2020.
2. The earlier decisions made by the Consumer Grievance Redressal Forum at Kasumpti on 25/03/2021 was in line with the applicable provisions keeping in view the overriding effect of the IBC, 2016 over provisions of Regulations made under Electricity Act, 2003.

**Issue No. 2:**

1. As is evident from the analysis done above and the facts/ documents on record, the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on dated 28/06/2022 in Complaint No. 1421/1/22/08, dated 02/03/2022 are not in line with the applicable provisions.
2. Further, the decisions of the Forum below was not in line with the applicable provisions keeping in view the overriding effect of the IBC, 2016 on the provisions of Regulations made under Electricity Act, 2003

**J – Order:**

1. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on dated 28/06/2022 in Complaint No. 1421/1/22/08, dated 02/03/2022 are without jurisdiction and are hereby quashed and set aside.



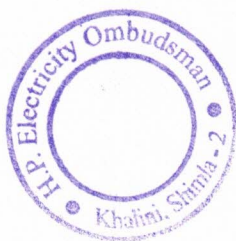
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2. The demand note issued by the Respondent No. 3 on dated 02/02/2022 and subsequently on 16/07/2022 are hereby quashed and set aside.
3. The Respondents are not entitled to recover outstanding dues of the previous occupier i.e. M/S Samtel from the Complainant since he has auction purchased the said assets without any encumbrances and liabilities as per Certificate of Sale dated 26/11/2018 under the provisions of Insolvency and Bankruptcy Code, 2016 which have overriding effect on the provisions of Regulations made by the Hon'ble Commission under Electricity Act, 2003.
4. The Respondents are further directed to release the electricity connection to the Complainant within a period of one week from the date of issue of this order under the relevant category or latest by 02/01/2023 positively.
5. The Respondent Board is further directed to report compliance of the directions as stated above within a period of 30 days from the date of issue of this order or latest by 26/01/2023 positively failing which the matter shall be reported to the Hon'ble Commission for violation of directions under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Electricity Act, 2003.
6. The Complaint filed by M/S Pawan Sons Enterprises, Plot No. 6, Industrial Area, Parwanoo, District Solan, HP-173220 is hereby disposed off.
7. No cost to litigation.



Given under my hand and seal of this office.

*Leapt*  
26/12/2022  
Electricity Ombudsman