



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 East Bourne Hotels Private Ltd & M/S Oaks Construction & Properties, Near Bishop Cotton School, Khalini, Shimla-171002
- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
- 2. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Chotta Shimla, District Shimla, HP-171002**

- Respondents

Complaint No. 20/2022 (Received on 01/11/2022, registered on 02/11/2022)
(Orders reserved on 13/04/2023, Passed on 18/04/2023)

Counsel for:

The Complainant: Sh. Nitin Thakur, 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 on 01/11/2022 and registered on 02/11/2022. The case was first listed for 25/11/2022. The Respondents were to file their reply by 21/11/2022 and the Complainant was to file his rejoinder by 24/11/2022. The Respondents didn't file their reply by 21/11/2022 and the case was listed for 23/12/2022. They were to file their reply by 09/12/2022 and the Complainant was to file his rejoinder by 16/12/2022.

The Respondents filed their reply on 09/12/2022 but the Complainant sought time to file rejoinder since he had received the copy of reply on 22/12/2022. The Complainant was to file his rejoinder by 13/01/2023 and the case was listed for hearing on 21/01/2023. The Complainant didn't file his rejoinder by 13/01/2023 and since the Respondents were asked to file additional information, the case was listed for hearing on 25/02/2023.

Since the additional information was not filed by the Respondents, they were asked to file the same by 04/03/2023. The Complainant was to file his rejoinder by 17/03/2023 and the case was listed for arguments on 25/03/2023. The Respondents filed additional



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submissions on 17/03/2023 and the Complainant was to file his rejoinder by 31/03/2023 and the case was listed for arguments on 01/04/2023. The Complainant however failed to file his rejoinder and the case was listed for arguments on 13/04/2023. The arguments were closed on 13/04/2023 and orders were reserved. Hence the delay.

A - Brief facts of the case:

1. M/S East Bourne Hotels Private Ltd & M/S Oaks Construction & Properties, Near Bishop Cotton School, Khalini, Shimla-171002 have filed an appeal through its MD Mr Sanjay Madan (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 17/10/2022 in Complaint No. 1233/4/21/031 dated 01/12/2021. He has prayed to set aside the orders passed by the Forum below.

B - The Complainant' submissions:

1. The Complainant submits that he is the Managing Director of East Bourne Hotels Private Limited & Oak Constructions & Properties Private Limited which is situated, near Bishop Cotton School Khalini Shimla, Himachal Pradesh -171002. The property in question is a renowned Hotel in Shimla. However due to Covid-19 Pandemic which started in March 2020, the entire Tourism Industries in the State of Himachal Pradesh so shut. Further, that he who is taking care of 125 families i.e Hotel staff etc were totally dependent upon him without there being any business for in the year 2020. The Hotel has been put to sale due to the huge financial loss which he has suffered and now he has been put to sheer harassment by issuing notice dated 14/07/2020, stating that there is short recovery of energy charges from 11/04/2019 to 07/01/2020 and as such short recovery is the tune of Rs. 20,58,858/- with respect to Consumer ID 100009002828. On the same very day another notice regarding one connection in one premises resulted short levy and demand of Rs.4,31,669/- the said demand was with respect to the year 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20.
2. The Complainant submits that he who was already in losses tried arranging some substantial amount and as such wrote to the Assistant Engineer Electrical Sub Division Chotta Shimla on 26/03/2021., w.r.t letter dated 14/07/2020, demanding Rs.20,58,858/- . Further, that subject to his rights, he was willing to deposit 25% of Rs.20,58,858/- and requested that the remaining balance amount shall be deposited by him in 12 equal instalments alongwith with current bill which is approximately Rs.18,00,000/-. As such he deposited Rs.5,14,715/- on 17/04/2021.



Sanjay Madan
18/04/2023



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3. The Complainant submits that the Respondents even acknowledged the same vide its letter dated 22/04/2021. The State of Himachal Pradesh was again under Lockdown in May 2021. The business which was just opening up was again shut due to Covid-19 Pandemic. He, who was already without business for over a year now again faced huge financial crunch courtesy Covid-19 Pandemic.
4. The Complainant further submits that the Respondents in the month of August 2021 raised demand of Rs. 52,56,658/- with respect to connection bearing number 100009002788. The Respondents further disconnected the commercial connections and added the commercial charges in his domestic connection. The Complainant wrote specifically in this regard on 07/09/2021 and requested not to add commercial charges in domestic. He further apprised that the domestic charges are being paid regularly by him. The Complainant submits that he further requested time and apprised that the hotel in question is not operational for public since there is no electricity and connection bearing number 100001170770 is domestic.
5. The Complainant submits that despite repeated requests Respondents clubbed commercial charges in domestic and his disconnected electricity. The demand of the Respondents beyond the period of two years was completely illegal. The Respondents deprived him of essential service with respect to domestic usage by illegal clubbing of the commercial charges with domestic. Further, that he was duly paying the domestic charges to the Respondents. He, as such filed a Complaint bearing number 1233/4/21/031 before the Consumer Grievances Redressal Forum At Kasumpti Shimla.
6. The Complainant submits that the Learned Forum below after hearing the counsel on 01/12/2021, for him passed interim order directing him to deposit 1/3rd of the total outstanding and the licensee-Respondent was directed to restore all his connections.
7. Further, that the Respondents herein restored only one connection on 3rd December and willfully disobeyed the order passed by the Learned Forum below. Further, that an application for modification was moved by the Respondents and Respondent No 2 was present on 16/12/2021, when the Learned Forum below passed detailed order again directing Respondents to take immediate steps to restore remaining connections interims of order dated 01/12/2021., subject to fulfilling of required formalities. The operative part of the order is reproduced herein for the kind perusal of this Hon'ble Forum,

"After hearing the parties on their applications preferred before this Forum subsequent to the interim order/directions referred above; the Forum directs the Respondent Board take immediate steps to restore the remaining connections of the Complainant in compliance of the interim orders dated 01.12.2021 subject to fulfilling of required formalities like filing of application, test reports, and fresh agreement etc., as required



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under rules and procedure on the matter and thereafter, the Respondent Board shall take steps to restore the remaining electricity connections of the Complainant in terms of interim directions dated 01.12.2021 of this Forum. In case the security deposits of these connections are already adjusted by Respondent Board against pending bills, then the security deposits required for restoration of remaining connections may be adjusted out of the 1/3 rd amount of Rs.18,64000/- deposited by the Complainant. These directions are subject to the final outcome of the Complaint pending adjudication before this Forum.

In the aforesaid terms, the applications filed by the parties before this Forum stand disposed of. The addendum dated 13.02.2021 shall also stand withdrawn. Respondent Board is directed to file the reply of the main Complaint within three week's time with advance copy to the Complainant. Compliance of these orders may be intimated to the Forum before next date of hearing.

List for reply/rejoinder on 22.01.2022 at 11.30AM."

8. The Complainant further submits that the Respondents herein especially Respondent No. 2 flatly refused to accept the application, test reports as detailed in order dated 16/12/2021. He requested the Respondent herein that already due to Covid-19 pandemic he has suffered immense loss and by not complying with orders of the Learned Forum below of restoration of commercial meters and further not accepting application, test reports etc his entire business is being put to jeopardy. Further, he categorically explained that he has spent 2 -3 lakhs on generators, diesel etc. However, for two days Respondent No. 2 flatly refused to accept the applications and thereafter asked him to upload the same on the site of the licensee which was the duty of Respondent No. 2. The server of licensee was down and as such he was unable to upload the documents which was the job/ duty of Respondent No. 2. Further, that only on 23/12/2021 the hard copies of the applications were accepted by the Respondent No. 2. Despite completion of all cordal formalities on his part, the Respondents did not restore the remaining his connections.
9. The Complainant submits that he suffered immense loss due to non-restoration of electricity as Tourist season was at its peak however he was running Hotel without electricity and on generators by investing huge money. The tourists/ clients were unhappy who had booked hotel rooms with him. His prestigious Hotel which is known for its service had to face the unsatisfied customers who bargained at the end of the day which caused further loss due to non-availability of electricity, nonfunctional lift, heaters, heating units etc especially in the month of December January. Further, that he has spent above Ten Lakhs and further immense loss has been caused to him courtesy the Respondents herein for willfully disobeying the orders of the Learned Forum below dated 01/12/2021 and 16/12/2021. Further, that Respondent No. 2 and its other offers demanded more money



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as security deposit despite specific orders of the Learned Forum below for adjustment of money from Rs.18,64,000/- already deposited by him in terms of order dated 01/12/2021. However, on acceding to the request to despite more money subject to his rights, the Respondents still did not restore the electricity connection till 10/01/2022.

10. The Complainant submits that he even moved this Hon'ble Forum under Section 142 of the Electricity Act however the Hon'ble Forum did not entertain the application as the same was without jurisdiction.
11. The Complainant submits that the Respondents herein despite orders of the Learned Forum below dated 01/12/2021 which was further modified on 16/12/2021, restored all connections only after 10/02/2022, that is almost after two months after passing of the first interim order and as such he suffered huge loss in peak tourist season which opened after almost 2 years. He as such moved application seeking compensation however it is only after three dates that reply to the said application was filed. However, the Learned Forum below asked the counsel to withdraw the said application as the same was not under the jurisdiction of the Forum below as such was not entertained.
12. The Complainant submits that the Forum below heard the counsel for him and decided his Complaint on 17/10/2022. Further, that the Learned Forum below partly allowed the his Complaint, however his main grievance has not been redressed by the Forum below as such the present appeal. That being aggrieved by the order passed by the Consumer Grievance Redressal Forum, Kasumpti, Shimla in Complaint No. 1233/4/21/031 dated 17/10/2022 in case titled M/s East Bourne Hotels Private Limited & Oaks Construction & Properties Private Ltd. Vs. Executive Director (Pers.) HPSEBL & another, he is filing the present appeal inter-alia on the following grounds:
 - a) That the bare perusal of the order passed by the learned Forum below would demonstrate that the interim orders of the Forum below were never complied by the Respondents however the Forum has side-lined the fact and passed the impugned order by partly allowing the Complaint as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.
 - b) That the ground raised by him in his Complaint and as argued by the counsel for him were that the Respondents could not have clubbed the demand raised in one meter and added in another and as such disconnected his each and every meter i.e. four commercial and one domestic as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.
 - c) That the Learned Forum has completely side lined the fact that the entire country was under lockdown and he was still taking care of 150 families of his staff members



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despite there being any help from the State Government as such the illegal demand of the Respondents should have been quashed and set aside as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.

- d) That the learned Forum below further failed to appreciate that the demand was otherwise also bad in law and liable to set aside for the reason that no opportunity of hearing was ever given to him before issuance of the demand which aspect of the matter was argued by the same has not been taken into consideration.
- e) That the illegal disconnection and the time period to restore the connections despite there being interim orders of the Learned Forum below and substantial amount of Rs.18,50,000/- being deposited by him was completely sidelined by the Learned Forum below as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.
- f) That the Learned Forum below has failed to appreciate that the Learned Forums are constituted for protecting the interest of the Consumers who have been unnecessarily harassed by the Respondents however the fact that the officials have acted high headedly and had no respect to the orders of the Learned Forum below has completely ignored by the Learned below as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.
- g) That the issues as framed and answered by the Learned Forum below have not taken into account that the situation was extra ordinary when the entire Country was under Lockdown and State like Himachal and his unit who run on the Tourist in flow were completely out of business as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.
- h) That the Learned Forum below has not taken into account that has jumbled the facts and partly allowed the appeal instead of allowing the in full as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.
- i) That the Learned Forum has presumed that he has not laid challenge to the legal vires of the two demand notices which is bad in law as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.
- j) That the Learned Forum has not even answered the act of the Respondent of raising a demand of Rs. 52,48,167/- by clubbing the energy bill on one meter into another and disconnecting all four commercial meters and one domestic as such on this



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ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.

- k) That the Learned Forum has not even appreciated the fact that he deposited Rs.18,50,000/- in view of the interim orders and had to pay fresh security deposit and other charges despite interim orders. The Learned Forum further ignored that he was paying current energy charges as such on this ground the impugned order needs to be quashed and the Complaint in toto needs to be allowed.

13. That the appeal is within the period of limitation.

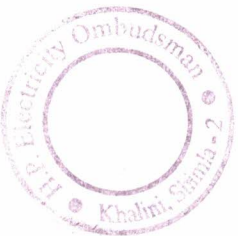
14. The Complainant thus prayed that in view of the averments made hereinabove the record of the Learned Forum below may kindly be called, appeal may kindly be allowed and the judgment passed by the learned Consumer Grievance Redressal Forum Kasumpti, Shimla in Complaint No. 1233/4/21/031 titled as M/s East Bourne Hotels Private Limited & Oaks Construction & Properties Private Ltd. Vs. Executive Director (Pers.) HPSEBL & another may be set aside and the Complaint be allowed in full.

15. The Complainant thus prayed for any other relief which this Hon'ble Forum may deem fit in the peculiar facts and circumstances of the case and cost of the Complaint may also be awarded in his favour.

C - The Respondents' submissions:

Preliminary submissions:-

1. The Respondents submit that the representation as preferred by the Applicant/ Complainant is not maintainable in the eyes of law hence liable to be dismissed. As the present representation is on assumption, which are far off from the reality as such the same is liable to be dismissed.
2. Further, that the present representation is an afterthought and just to get the undue advantage the present representation is being filed on the basis of the false and concocted grounds as such the representation is liable to be dismissed.
3. Further, that the reliefs as prayed by the Complainant in totality are not sustainable in the eyes of law, because the Ld. Forum has passed the order after gone through the record, hence the Complaint is liable to be dismissed.



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Reply on merits

4. The Respondents submit that the contents of this para admitted to the extent that the notices were issued to the Applicant/Complainant for short recovery of energy charges. Rest of the contents are denied for want of knowledge.
5. The Respondents submit that the instalments as stated to be offered by the Complainant to the extent of the 25% of the outstanding dues cannot be accepted by the Respondents keeping in view the provisions of the HP Electricity Supply Code, 2009.
6. The Respondents submit that keeping in view the provisions of the HP Electricity Supply Code, 2009 and sales Manual, if any Consumer failed to pay the monthly energy charges and further the demand raised by the Board despite the notices, the regulation provides the replying Respondent to disconnect electricity connection of the Consumer. In this case also the four Commercial connections of the Applicant/ Complainant got permanently disconnection on account of the not clearing the outstanding electricity dues and as per the procedure provided under regulation, the amount of the aforesaid connections to the tunes of Rs 52,48,167/- stands transferred to the Connection bearing account No-100009002788 and further disconnect the same and added the electricity dues in domestic connection.
7. The Respondents submit that the issues as to whether the past electricity dues can be recovered after the detection of the bonafide mistake by the distribution licensee is not res integra and the Hon'ble Supreme Court has set this controversy at rest in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitram Nigam limited and Anr versus Rahamutullah Khan alias Rahamjula in Civil Appeal No. 1672/2020 decided on 18/02/2020 and M/S Prem Cottex versus Uttar Haryana Vijli Vitran Nigam Ltf Civil Appeal No. 7235 of 2009 decided on October 5, 2021. Further the section 56(2) of the Electricity Act, 2003 does not put any limitation for raising the past dues or arrears, if not discovered earlier due to any mistake and liability to pay arises on consumption of electricity charges would become first due. As per law also when the bill/demand is raised the sum become first due and from that date the period of limitation of 2 years as provided in section 56(2) of the electricity Act shall start and it is from this date the sum has to be continuously shown as recoverable as arrear.
8. The Respondents submit that without complying with the mandatory provisions of the clause 7.2 of the electricity supply code, 2009 wherein the payment of the outstanding amount is pre-requisite read with clause No. 7.2 of the Conditions of supply code, 2009 with reads as under:



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Restoration of Supply of electricity:-

7.2.1. The licensee shall resume supply of electricity within twenty-four hours from the time the Consumer-

- a) Makes good the default and/ or pays outstanding payment,*
- b) Pays the prescribed amount as per the Tariff Order, for reconnecting the supply of electricity,*
- c) pays the Consumer service charges/ fixed charged for the period of disconnection and the additional charges for the delayed payment:*

Provided that in case of temporary disconnection, if the electricity line or plant supplying electricity to the Consumer is/ are removed by the licensee then the licensee will restore supply after undertaking the works(s) for providing the electric line or plant within the time specified in the case of a new connection and the Consumer will deposit charges as if a new connection is being released:

Provided, further that in case of temporary disconnection, if the electric line or plant supplying electricity to the Consumer is/are removed by the licensee then the licensee will restore supply after undertaking the work(s) for providing the electric line or plant within the time specified in the case of a new connection.

7.2.2 Supply to the Consumer will be immediately reconnected, if the licensee reasonably believes that the circumstances leading to the disconnection were actually an omission on the part of the licensee. In such an event, no charges on any account will be recoverable from the Consumer.

9. The Respondents submit that hence, keeping in view the position of the law as stated above, Applicant/ Complainant was bound to make payment of the all outstanding amount of the previous connections, but the replying Respondent in compliance of the directions passed by this Ld. Forum has restored the electricity supply of all four connections of the Complainant.

10. The Respondents submit that replying Respondent never denied to accept the application, test report as alleged by the Applicant/ Complainant. The application & test report the Applicant/ Complainant were not in order as per the regulations and when the Applicant/ Complainant fulfilled all codal formalities thereafter his application was accepted.



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11. The Respondents submit that if the Applicant/ Complainant suffered any loss due to non-restoration of electricity same is suffered due to his own act and conduct as the Applicant/ Complainant did not completed the cordial formalities which are required as per regulations. Further, as per the provisions of the regulations once the supply of Applicant/ Complainant is permanently disconnected, thereafter no relationship of Consumer & Consumer & licensee remained between the Consumer and replying Respondent. At the time of restoration of supply the Consumer has to pay security and also cleared all past dues as per regulations because the clause 7.2 of H.P. Electricity Supply Code, 2009 clearly provides for fulfilment of necessary formalities.
12. The Respondents submit that in view of the submission made in para supra the representation is not maintainable and deserve to the dismissal, because the order dated 17/10/2022 in Complaint No. 1233/4/21/031 passed by the Ld. Forum is reasoned order keeping in view of all the factual facts, the provisions of the supply code, regulations and on the basis of the record placed before the forum.
13. The Respondents thus submit that the present Complaint may kindly be dismissed with cost in the interest of Justice and equity.

D - Additional submissions by the Respondents:

1. The Respondents have made additional submissions on their stand on Sales Circular 5/2001 issued by the Chief Engineer (Commercial) justifying their stand again on clubbing of loads and also cited the instructions of the Sales Manual. In rest of the submissions they have again repeated the reply filed by them earlier.

E - The Complainant's additional submission through rejoinder:

1. The Complainant failed to file his rejoinder despite various opportunities and finally argued their case on last day of hearing.

F – CGRF order:

1. This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the HP Electricity Supply Code, 2009 (or the Supply Code or Code) and amendments thereto, the provisions of Respondent's HPSEBL Sales Manual and record as facts along with pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after



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considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

2. The issues that have come up for determination, are considered here-inafter by the Forum-

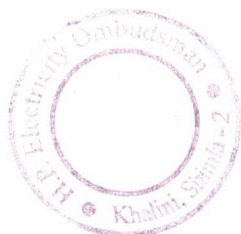
(a) The first (1st) issue emerging for determination of this Forum is, “whether the Respondent HPSEBL can or cannot raise amounts / arrears towards short recovery of Demand charges or other charges for the past periods being a bona-fide mistake / error of application of wrong multiplication factor (MF) of 1 instead of 10 to the Complainant’s consumption. Whether such Demand is hit by limitation of two (2) years under subsection 56(2) of the Electricity Act, 2003 and consequently therefore whether Complainant Consumer, is or is not liable to make payments raised vide ibid Demand Notice dated 14.07.2020 for Rs 20,58,858/=?”;

(b) The second (2nd) issue is “whether the Respondent HPSEBL is justified and correct in raising of additional demand on 14.07.2020 for Rs 4,31,669/= by way of clubbing of Tariffs / Billing data of separate Commercial Supply (CS) connections of the Complainant?” AND

(c) The third (3rd) issue is “whether Respondent HPSEBL was justified in disconnecting electricity supply connections of the Complainant on nonpayment of total Demand of outstanding of Rs 52,48,167/= raised by the Respondent HPSEBL arising out of the ibid two Demands of arrears dated 14.07.2020 (Annexure C1 Colly) and also arising out of arrears evolving out of accumulated running electricity bills against the four (4) Commercial Supply (CS) category connections in respect of which the Complainant had shown his inability to pay due to Covid-19 shutdown post March 2020 and which per Respondent HPSEBL, the Complainant failed to pay resulting in consequent disconnection of electricity connections?”.

Issue No. 1:

3. The issue is decided against the Complainant as per observations recorded below:-
4. After examining the record, facts and settled position of law coupled with provisions of the Electricity Act, 2003 on the matter, it is established that the issue of recovery of past dues of arrears by the DISCOM is no more resintegra, in view of the settled position of law laid by the Hon’ble Apex Court in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah Khan alias Rahamjula in Civil Appeal No 1672/2020 decided on 18.02.2020 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No 7235 of 2009 decided on October 5, 2021. In the instant matter, the issue of the monetary demand dated 14.07.2020 for Rs 20,58,858/= (Annexure C-1 Colly)



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when examined, it is found that the demand was raised at the behest of an Audit conducted by the Resident Audit Officer (RAO) in the year 2020 (Annexure-R1);

5. The attention of this Forum was also drawn to the law laid by the Hon'ble Supreme Court wherein, Electricity has been held to be 'goods' by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd referred to in the ibid Apex Court Judgment dated 18.02.2020. Further as also referred to in the Judgment ibid, under the Sale of Goods Act, 1930, a purchaser of goods is liable to pay for it at the time of purchase or consumption and that the quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute. It is therefore evident from settled law that while the Consumer uses electricity being a good, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity which are determined by the Ld HP Electricity Regulatory Commission (HPERC) vide its Tariff Orders passed in pursuance to Regulations framed under the Electricity Act, 2003. These tariffs / charges are applied to the consumption or goods and thereafter a Bill or monetary demand is raised to the Consumer. Thus, Forum is of the considered opinion that the Respondent HPSEBL being a distribution licensee cannot recover any tariff / charges in excess of that specified by the HPERC. At the same time, it is also relevant to mention that the Respondent HPSEBL being a distribution licensee, is bound to recover the cost / price of electricity consumed by a Consumer strictly, as per tariffs /charges that are determined and specified by the HPERC vide its Tariff Orders. Accordingly, the Consumer is bound to pay these tariffs / charges being of statutory nature. These Tariff Orders lay out statutory charges. Any lapse, mistake or bona-fide error by the distribution licensee with regard to under recovery of actual tariff / cost / price of electricity, if not recovered from the respective Consumer, who has availed the goods, may result either in permanent loss to the distribution licensee being a public utility or with the burdening of this utility's loss upon other Consumers. Both of these situations or eventualities are bad and against mandated provisions of Tariff Regulations on the matter;
6. It is not the case of the Complainant in the instant Complaint to lay challenge to the legal vires of the ibid two (2) Demand Notices dated 14.07.2020 (Annexure C1 Colly). The Complainant has also neither challenged specifically the actions of the Respondent HPSEBL, as being in contravention of the Electricity Act, 2003 and the HP Electricity Supply Code, 2009 and amendments thereto nor being in contravention to the Tariff Orders issued by the HP Electricity Regulatory Commission (or the HPERC) in pursuance to the Electricity Law or to the actions of the Respondent HPSEBL, as being in violation of any specific provisions of the law or to the correctness of the monetary demand. The Complainant by way of the instant Complaint has merely contested the demands raised by Respondent being erroneous, as these have not been calculated month-wise by the Respondent, that the monetary demands beyond 2 years is illegal, that meters be checked



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and details be furnished by the Respondent as hotel was completely shut post March 2020. Further, there is inability on the part of the Complainant to pay on account of financial crisis due to covid-19 lockdown;

7. It is pertinent to mention here that during the course of hearing, the Complainant had preferred an Application for Interim directions for restoring the five (5) disconnected electricity connections of the Complainant which was disposed of by the Forum vide Interim Order dated 16.12.2021. Further, the Complainant had also preferred an Application on 21.02.2022 for awarding compensation / damages against the Respondent HPSEBL. The said Application was also disposed of as withdrawn vide Forum's Interim Order dated 29.07.2022. Thereafter, the main Complaint was heard and decided as per Order made here-in-below:-
8. Having gone through the case and having heard the matter by way of arguments extended by the parties based on the observations and considered opinion rendered above, this Forum holds that in respect of Demand for Rs 20,58,858/= dated 14.07.2020 raised by the Respondent HPSEBL against connection4 of M/s Oak Construction, HPSEBL did make a bona-fide mistake / error in the past on account of inadvertent wrong application of Multiplication factor (MF) of 1 for the period from 11.04.2019 to 07.01.2020 instead of correct multiplication factor of 10 and by not raising these amounts in the original Bills which was later pointed out by the Audit. This fact has not been disputed by the Complainant. Wrong application of lower multiplication factor (MF) results in wrong and less determination of actual consumption and no one Consumer can be allowed a free ride at the cost to other Consumers and Complainant is liable to make good any such loss to the Respondent and make payments towards the wrongly assessed electricity consumption for the sole reason that electricity/energy to that extent has actually been consumed by the Consumer. No one is entitled to adversely use the deficiencies in a system to their advantage, such as to cause loss in any way to the system. Not allowing such loss to be recovered likely results in malpractices and connivances which are detrimental to the system;
9. The Respondent is certainly within its legal rights to raise past arrears or dues on this count, if not discovered earlier due to any mistake as has been held in ibid Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003;
10. Further, ibid Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672 of 2020 relying on earlier Judgments of Apex Court held that section 56(2) of the Electricity Act, 2003 does not put any limitation for raising the past dues or arrears, if not discovered earlier due to any mistake. Liability to pay arises on consumption of electricity and obligation to



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pay when bill is raised. Electricity charges would become first due only when bill is issued by the licensee to the Consumer quantifying therein the charges to be paid;

11. Accordingly, as per settled law, it is from the date the bill is raised that the sum becomes first due and it is from this date that the period of limitation of 2 years as provided in section 56(2) of the Electricity Act shall start and it is from this date that the sum has to be continuously shown as recoverable as arrears. Consequently, in addition to the date electricity is consumed, the liability to pay electricity charges is also created when meter reading is recorded or when meter is found defective or theft of electricity is detected and Obligation to pay when Bill or Demand is raised;
12. In the face of aforesaid settled position of law on the matter, this Forum holds that the action of Respondent HPSEBL in raising impugned Demand Notice dated 14.07.2020 for Rs 20,58,858/= cannot be held to be an illegal or wrong on grounds of these not having been raised earlier and are past arrears beyond the period of 2 years limitation under section 56(2) of the Electricity Act, 2003. Thus, settled law and facts on record establish that the Demand dated 14.07.2020 for Rs 20,58,858/= cannot be held to be hit by limitation of 2 years having been raised on 14.07.2020. Accordingly on these counts Demand Notice dated 14.07.2020 for Rs 20,58,858/= is held to be valid and legal. This Forum finds no occasion to interfere with the Demand Notice dated 14.07.2020 for Rs 20,58,858/= on this count. The Complainant is directed to pay this Demand of Rs 20,58,858/= within a period of 20 days from the date of this Order along with late payment surcharge, if any. However, late payment surcharge shall not be payable for the period the Complaint was under litigation before this Forum and shall be payable after the ibid specified period of 20 days. The Respondent HPSEBL is directed to intimate to the Complainant the amount payable on this account within a period of 5 days from this Order. Issue No 1 is decided accordingly in favour of the Respondent HPSEBL.

Issue No. 2:

13. The issue is decided in favour of the Complainant as per observations recorded below:-
14. The 2nd issue of raising of demand by the Respondent HPSEBL by way of clubbing of Tariffs/ Billing data of the different Commercial Supply (CS) category connections of the Complainant is examined vis-à-vis record, facts and provisions of law / Regulations etc. This Forum observes that the Respondent HPSEBL has relied upon Instruction No 4.3.2 of the Conditions of Supply of the Sales Manual in its reply. The Sales Manual is a document of Instructions framed by the HPSEBL and is intended to be followed in the hierarchy of administrative structure down below, so as to establish a uniform code of procedure and to give systematic effect to the provisions of the HP Electricity Supply Code, 2009 framed by the HPERC. Ibid Instruction 4.3.2 provides for one connection in one premises although



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with underlying conditions. The event of having more than one connection in one premises by a Consumer, is akin to breaking-up of the load, which may result in short recovery of HPERC determined Tariffs for the reason that the Consumer, who is liable to fall in a particular higher slab or sub-category will, as a consequence fall in a lower slab or sub-category having an overall lower tariff recovery. The breaking-up of the load therefore results in gaming to derive undue advantage out of discrepancies in law or the laid process or the laid procedure This undue advantage may not only be in terms of tariffs but also in terms of availing a lower voltage for smaller divided load with lower system cost to the Consumer vis-à-vis a higher voltage for a higher load entailing a higher system cost for the Consumer towards creation of the high voltage system;

15. In the instant Complaint, the respective office of the Respondent HPSEBL is not wrong to insist for the clubbing of the load, but to raise demand against the same shall have to pass the test of the statute. In the instant matter, once the electricity connections and the loads of any capacity have been released, neither the Electricity Act, 2003 nor the HP Electricity Supply Code, 2009 framed by the HPERC nor the Tariff Orders passed by the Ld HPERC, provide for clubbing of Tariffs / Billing data comprising tariff rates, Contract and Maximum Demands (kVA or MVA) etc of Consumers of separate Consumer IDs in the Commercial Supply (CS) category, for the purpose of single billing to a Consumer. Distinction exists here towards the two conditions which seemingly have been mistaken by the Respondents i.e when the electricity connections are applied for and when the electricity connections stand released or already exist with different Consumer IDs. Ibid Instruction 4.3.2 pertains to the first condition i.e when new connections are applied for and accordingly separate and distinct Consumer IDs are created at the behest of separate and distinct Agreements namely 'Application and Agreements (A&A)'. Tariff Orders by the Ld HPERC specify Tariff rates for a Consumer within a Consumer category and not for multiple Consumers. Having the effect of combined Tariff/ Billing data can therefore exist only after the Agreements against all Consumer IDs but one are annulled, permanently disconnected and subsequently merged or clubbed into that single remaining Agreement/ Entity;

16. Nothing has been placed on record by the Respondent HPSEBL to show that annulling of Agreements by way of permanent disconnections, the merging and clubbing of these Agreements into a single Consumer ID/entity on grounds of single metering at 11 kV in respect of the different Consumer IDs, had ever taken place before the Demand for Rs 4,31,669/= was raised on 14.07.2021. When electricity connections stand released against different Consumer IDs in the same premises with distinct Agreements, later creating a combined monetary demand at the behest of this Instruction 4.3.2 is deemed breach of Agreement between parties, even if at any point of time the Complainant may have consented to the clubbing of loads;



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17. As has been held in Hon'ble Supreme Court Judgment dated 15.03.2010 in Civil Appeal No 3902 of 2006, titled PTC India Ltd Vs Central Electricity Regulatory Commission, a regulation casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations. Before raising the clubbed demand of Rs 4,31,669/=-, the Respondent HPSEBL was always at liberty to voluntarily club the separate loads of the Consumer into a single Agreement and Consumer ID when the Consumer had himself consented for the same and by annulling the remaining Agreements by way of permanent disconnections;
18. On foregoing terms, Demand dated 14.07.2020 for Rs 4,31,669/=- raised by the Respondent HPSEBL at the behest of the RAO Audit cannot sustain and is quashed and set aside. The 2nd Issue is accordingly decided in favour of the Complainant. Issue No. 3 :
19. The issue is decided against the Complainant as per observations recorded here-in-below:-
20. Now this Forum proceeds to delve on the 3rd issue of non-payment of outstanding of Rs 52,48,167/=- against the four (4) Commercial Supply (CS) category connections and the subsequent disconnections. It is observed by this Forum that the Respondent HPSEBL has submitted a break-up of this outstanding amount in its reply. This amount comprises such sums that were also due, as outstanding on account of running energy bills. The Complainant has not challenged the outstanding against the running energy bills nor has the Complainant challenged the amount of Rs 52,48,167/=-. The Complainant at the same time has failed to pay outstanding on account of these running energy bills, which is unacceptable in law. While challenging the arrears of past periods raised by the Respondent HPSEBL through Demand Notices dated 14.07.2020, the Consumer Complainant could not have withheld the dues towards the running energy bills, on the grounds that he was facing financial crisis and that there was shut down due to Covid-19 pandemic. The amounts against these running bills continued to pile up and accounted for accumulated arrears. No Consumer is entitled to a free ride or bargain on the due amount of running bills without showing any lapse or defect in it. Such action on the part of the Consumer certainly evokes the provisions of section 56(1) of the Electricity Act, 2003 and the Consumer is liable for disconnection of electricity connection after following due process. The disconnections in the present case appears to be rightfully done by the Respondent HPSEBL on 31.08.2020 and 31.03.2021 after issuing Notices (Annexure R2 Colly) to Complainant to make payment of dues within 15 days which is per procedure laid down under section 56(1) of the Electricity Act, 2003. The 3rd issue is accordingly decided in favour of the Respondent HPSEBL;
21. In view of the discussions made here-in-above, the Complainant is directed to pay within a period of 15 days from this Order, the outstanding amount on account of running energy



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bills along with late payment surcharge from the time these amounts were first billed in respect of each Consumer ID. On this count no benefit of late payment surcharge is available to the Complainant for the period the matter was before this Forum. Further, the Respondent HPSEBL is directed to intimate to the Complainant Consumer(s) bearing Consumer IDs 100009002786, 100009002787, 100009002788, 100009002828, 100001170770, the amounts due against each, which shall be paid within a period of 15 days from this Order;

22. Needless to say that in the event of non-payment of accumulated dues towards running energy bills for energy consumed being goods, the Respondent HPSEBL shall be at liberty to take action in accordance with section 56(1) of the Electricity Act, 2003 for the disconnection of the respective electricity connection(s) of the Complainant which were restored vide Interim Orders of the Forum dated 01.12.2021 and 16.12.2021.

23. In aforesaid terms, the instant Complaint is partially allowed in favour of the Complainant and is accordingly disposed of.

G – Analysis of the Complaint:

1. The case file bearing Complaint No. 1233/4/21/031, dated 01/12/2021, orders on which were passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 have also been requisitioned and gone through.
2. The documents on record and arguments made by both the parties in the case have also been gone through.
3. The Consumer Grievance Redressal Forum at Kasumpti had listed three issues in their orders dated 17/10/2022. First issue was the initial demand for Rs 20,58,858/- on account of application of wrong Multiplier Factor (MF) of '1' instead of '10' detected by the Audit team in the year 2020 vide para 3 for period 11/04/2019 to 07/01/2020. Audit further assessed short recovery for same.
4. Second issue was again due to Audit para for clubbing of loads as per instruction No. 4.3 of Sales Manual, 'One connection in one premise' and assessed a short recovery for Rs 4,31,669/-.
5. Third issue was non-payment of demand for Rs 52,48,167/- on account of two demands of arrears and also arising out of accumulated running energy bills against four (4) CS category connections.

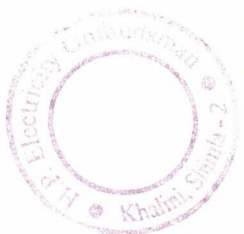


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6. Issue No. 2 was decided in favour of the Complainant by the Forum below wherein Issue No. 1 & 3 were decided against the Complainant. In issue No. 2, the Forum below had not sustained the claim of the Respondents citing that the Respondent Board had option to club the same when the Complainant consented but the Respondents failed to do so and now they can't forcibly enforce the clubbing of load.
7. This Appellate Forum is in sync with the decision of the Forum below for Issue No. 2 since instructions imparted by the Chief Engineer (Commercial) vide Sales Circular No. 05/2001 also states that the Respondent Board can't forcibly club the load in one premises without the consent of the Consumer. Thus, the decision of the Forum below in Issue No. 2 is in line with the prevailing instructions.
8. Further, as per Sales Circular 05/2001, additional connections of the same premises should not have been allowed at first instance by the Respondents and they can't force the Consumer to club the loads later on for which separate sanction have been granted by the Respondents themselves.
9. However, the TDCOs and PDCOs done by the Respondents in clubbing of load case against CS connection 100009002786 (05/10/2020 TDCO and 18/01/2021 PDCO) and subsequent arrear in CS connection 100009002787 (22/04/2021 TDCO and 06/05/2021 PDCO) were illegal.
10. Further, to transfer the outstanding finally to Domestic connection may be as per instructions of the Sales Manual but to disconnect the Domestic connection by the Respondents was not right in a sense that the families of the workers suffered on account of inhuman approach followed by the Respondents.
11. Further, despite directions by the Forum below to reconnect all the connections and adjust the security deposit from the 1/3rd amount, the approach of the Respondent No. 2 was not as per ethical practices and he took almost more than two months to reconnect all the connections.
12. Now let us examine Issue No. 1. The demand raised by the Respondents was on account of Audit para for wrong application of MF '1' instead of '10'. The first mistake was pointed out by the Audit somewhere in January 2020 during audit and subsequent demand was raised by the Respondents vide demand notice dated 14/07/2020. The demand was in respect of M/S Oak Construction against Consumer ID 100009002828 and the TDCO was also affected on 08/10/2020 further followed by PDCO on dated 18/01/2021 on account of non-payment of dues.



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13. In this particular case, the wrong application of MF comes under the category of bonafide mistake and there are various judgments of the Apex court latest in CA No. 1672/2020 decided on 18/02/2020 in matter titled as Assistant Engineer (DI) Ajmer Vidyut Vitran Nigam Ltd Vs Rahamatullah Khan alias Rahamjula. As per Apex Court Judgement, the Distribution Licensee is entitled to recover the short recovery on account of bonafide mistake as and when first detected and demand raised.
14. The decision of the Forum below in Issue No. 1 is thus in line with the settled position of the Law.
15. Now let us examine Issue No. 3 i.e. the demand for Rs 52,48,167/-. Scrutiny of reply filed by the Respondents in Forum below specifically at page 8 wherein the summary of Table in respect of outstanding have been given reveals that the clubbing of outstanding amount of Issue No. 1 and 2 also. Further scrutiny shows that the Respondents have clubbed the outstanding of one connection to others and have finally transferred the entire outstanding amount to Domestic connection of the Complainant.
16. The outstanding for Issue No. 2 with surcharge, which have been decided against the Respondent Board is also part of the total outstanding arrived at by them. The Forum below have considered the entire outstanding including that for Issue No. 2 while deciding the Issue No. 3 which is not in order since they themselves have rejected the claim of the Respondents for clubbing of Loads under Issue No. 2.
17. Total outstanding of Rs 52,48,167/- also includes the 7,35,900/- against Issue No. 2 and also paid for by the Complainant on 12/03/2021.
18. Thus, the decision of the Forum below in Issue No. 3 is not as per record and also includes the amount for Issue No. 2 which they had already rejected. The Respondent Board needs to overhaul the account excluding the amount and surcharge for Issue No. 2.
19. Now let us examine the reply of the Respondents at page 4 Table showing the TDCO and PDCO dates of various connections. Scrutiny shows that the outstanding of one connection was transferred to other accounts of the Complainant in the same premises which lead to disconnection of other connections one by one.
20. Now let us examine the action by the Respondents to club outstanding amount of one connection to others as raised by the Counsel for the Complainant. The Counsel for the Respondents quoted Instruction 38.2.4 of the Sales Manual. The instruction states that in case of outstanding, action to recovery of dues from some other connection held by the Consumer may be taken and even if the Consumer have left the station or does not have

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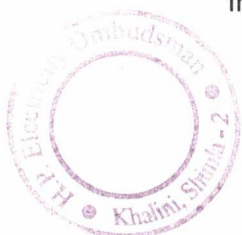
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connection at local station but is getting supply from the Distribution Licensee at some other station, the dues should be debited from the connection held by him.

21. There are no relevant conditions stated in the Himachal Pradesh Electricity Supply Code 2009 and as such there is no apparent conflict in Sales Manual and Himachal Pradesh Electricity Supply Code 2009 and in that case the instructions of Sales Manual shall prevail. The action of the Respondents to recover the dues from other connections of the Complainant in the instant case appears to be in order.
22. In the instant case, both properties i.e. M/S Oak Constructions and M/S East Bourne are being held by the same owner. Thus, in Issue No. 3, the Respondents are entitled to recover the legitimate outstanding from the other connections of the same owner and action of the Respondents seems to be in order.
23. The only issue involved in Issue No. 3 is including the outstanding of clubbing of Loads as decided under Issue No. 2 by the Forum below, in the overall outstanding towards the Complainant which was illegal. The Forum below have failed to segregate the outstanding amount on account of clubbing of loads, claim for which was rejected by them.
24. Forum below have also failed to recommend any action against Respondent No. 2 in their final orders dated 17/10/2022 which didn't restore the electricity connections of the Complainant for more than two months despite clear cut directions and also to adjust the security deposit from the 1/3rd amount deposited by the Complainant.

H - Issues at hand:

1. **Issue No. 1:** Whether the Issue No. 1 decided by the Consumer Grievance Redressal Forum at Kasumpti in their orders dated 17/10/2022 in respect of demand of the Respondent Board for wrong application of MF is in line with relevant Rules/ Regulations/ Codes/ Manual or not?
2. **Issue No. 2:** Whether the Issue No. 2 decided by the Consumer Grievance Redressal Forum at Kasumpti in their orders dated 17/10/2022 in respect of clubbing of loads is in line with relevant Rules/ Regulations/ Codes/ Manual or not?
3. **Issue No. 3:** Whether the Issue No. 3 decided by the Consumer Grievance Redressal Forum at Kasumpti in their orders dated 17/10/2022 in respect of outstanding of arrears is in line with relevant Rules/ Regulations/ Codes/ Manual or not?



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4. **Issue No. 4:** Whether the action of the Respondents in clubbing the outstanding amount in the other connection of the Complainant was in line with relevant Rules/ Regulations/ Codes/ Manual or not?

I - Findings on the issues:

Issue No. 1:

1. As per analysis done above and documents on record and arguments advanced by the parties, the decision under Issue No. 1 of the Consumer Grievance Redressal Forum at Kasumpti orders passed on 17/10/2021 in Complaint No. 1233/4/21/031, dated 01/12/2021 is in line with the settled position of the law and accordingly upheld.
2. The Respondents are entitled to recover the short recovery on account of wrong application of MF '1' instead of '10' which comes under bonafide mistake as and when detected.

Issue No. 2:

1. As per analysis done above and documents on record and arguments by parties, the Issue No. 2 decided by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2021 in Complaint No. 1233/4/21/031, dated 01/12/2021 is also in order and in line with the prevalent instructions issued by the Chief Engineer (Commercial) in Sales circular No. 05/2001.
2. The clubbing of loads in the same premises is not mandatory and is optional only if the Consumer opts for same. Moreover, the Respondents should not have sanctioned separate connections at first instance.

Issue No. 3:

1. As per analysis done above and documents on record and arguments by the parties, the issue No. 3 decided by the Consumer Grievance Redressal Forum at Kasumpti passed on 17/10/2022 in Complaint No. 1233/4/21/031, dated 01/12/2021 is not based on record and is in conflict with the decision made by them under Issue No. 2.
2. The clubbing of outstanding leading to TDCO and PDCOs done by the Respondents in clubbing of load case against CS connection 100009002786 (05/10/2020 TDCO and 18/01/2021 PDCO) and subsequent arrear in CS connection 100009002787 (22/04/2021 TDCO and 06/05/2021 PDCO) was illegal.



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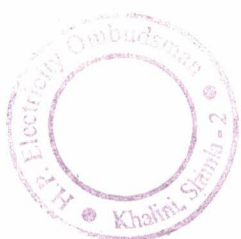
3. The Forum below's order in Issue No. 3 is in respect of outstanding of demand of two arrears (Wrong MF application and clubbing of loads) is in conflict to its own decision in Issue No. 2 since they had rejected the claim of the Respondents in respect of Issue No. 2 which is part of outstanding of wrong application of MF as well as outstanding of running energy bills.

Issue No. 4:

1. As per analysis done above and documents on record and arguments of parties, the action of the Respondents in clubbing the outstanding amount in the other connection of the Complainant was in line with Sale Manual Instruction No. 38.2.4 except for clubbing of outstanding in respect of Issue No. 2 which was also rejected by the Forum below.

J - Order:

1. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1233/4/21/031 dated 01/12/2021 in respect of Issue No. 1 & 2 are upheld.
2. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1233/4/21/031 dated 01/12/2021 in respect of Issue No. 3 are quashed and set aside.
3. The Respondents are entitled to recover the short recovery of demand due to wrong application of Multiplier Factor '1' instead of '10' as pointed out by the Audit and also the outstanding in respect of running energy bills only.
4. The TDCO and PDCOs done by the Respondents in clubbing of load case against CS connection 100009002786 leading to TDCO on 05/10/2020 and PDCO on 18/01/2021 and subsequent arrear in CS connection 100009002787 leading to TDCO on 22/04/2021 and PDCO on 06/05/2021 was illegal.
5. Accordingly, the Respondents are directed to overhaul the account of the Complainant after excluding the demand in respect of clubbing of loads including surcharge thereupon. The surcharge on other outstanding amount so calculated after overhauling shall be applicable however as per prevailing rates specified in the Tariff Orders issued by the Hon'ble Commission from time to time.
6. The Respondents are further directed to refund or adjust the Reconnection charges paid by the Complainant in respect of CS connection 100009002786 and CS connection 100009002787 alongwith applicable interest, if any.



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7. Forum below have also failed to recommend any action against Respondent No. 2 in their final orders dated 17/10/2022 which didn't restore the electricity connections of the Complainant for more than two months despite clear cut directions and also to adjust the security deposit from the 1/3rd amount deposited by the Complainant.
8. The Respondent Board is at liberty to take suitable action against Respondent No. 2 for not following the orders of the Consumer Grievance Redressal Forum at Kasumpti to release the electricity connection on one pretext or another for more than two months and also not to adjust the security deposit from the 1/3rd amount deposited by the Complainant as directed by the Forum below.
9. The Respondents are further directed to report compliance of the directions given above within a period of 30 days from the date of issue of this order but not later than 17/05/2023 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.
10. Stay granted or the directions passed by this Appellate Forum vide Interim Order dated 02/11/2022 in respect of restriction on taking any coercive action is hereby vacated.
11. The Compliant filed by M/S East Bourne Hotels Private Ltd & M/S Oaks Construction & Properties, Near Bishop Cotton School, Khalini, Shimla-171002 is hereby disposed off.
12. No litigation to cost.

Given under my hand and seal of this office.



[Signature]
Electricity Ombudsman