



In the matter of:

**Complaint No. 08/2023**

M/S ATC Telecom Infrastructure Private Limited, Timbi 1313, Tatiyana, Shillai, District  
Sirmour HP-173029

**Complainant**

**Vs**

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
2. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Paonta Saahib, District Sirmour, HP-173025
3. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Shillai, District Sirmour, HP-173027

**- Respondents**

4. Complaint No. 08/2023 (Registered on 03/04/2023)
5. (Orders reserved on 02/09/2023, Issued on 11/09/2023)

**Counsel for:**

**The Complainant:** Sh. Ravinder Singh Jaswal Advocate

**The Respondents:** Sh. Rajesh Kashyap Advocate

Sh. Ravi Shankar Chauhan, A.E S/Division Shillai

Sh. Sachin, JOA (IT)

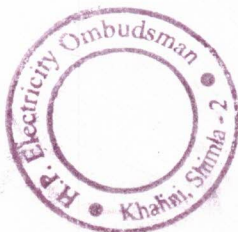
**CORAM**

**Er. Deepak Uppal**

**HP Electricity Ombudsman**

**Order**

The case was received & registered on 03/04/2023. Vide interim order dt.03.04.2023, the Complainant was directed to submit proof of having deposited 50% of the disputed amount with the Respondents by 06/04/2023 positively. It was further added that the case shall be listed only after submission of proof of the such amount. The Complainant now submitted proof in respect of having deposited Rs 2,19,939/-, balance 20% of disputed amount making a total of 50% of the Disputed amount as required under provisions of Regulation 33 (1) (g) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. There after vide interim order dt.12.04.2023, the Respondents were directed to file their reply duly supported by attested affidavit on or before 27/04/2023 positively and Complainant to file rejoinder by



*Deepak Uppal*





**HIMACHAL PRADESH ELECTRICITY OMBUDSMAN**  
**SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002**

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

04/05/2023. The case was listed for admission hearing on 06/05/2023. The law officer for the Respondent Board submitted that they had not received copy of the representation although the copies were sent by the complainant through registered post on 05.04.2023. However, again a copy was supplied to Respondent Board in the court. Respondents were directed to file their reply on or before 20.05.2023 and complainant to file a rejoinder by 25.05.2023. The case was listed for hearing on 27.05.2023. The Respondents even failed to submit their reply by 20/05/2023. Despite opportunities given to the Respondents to file their reply vide Interim Orders dated 03/04/2023, 12/04/2023 and 06/05/2023, they have not filed their reply. The Respondents prayed for some more time to file their reply. Prayer granted with condition that they will file their reply, as last opportunity to them, by 02/06/2023 positively duly supported by the attested affidavit failing which the case shall be decided on merits of the case based on the documents available on record. The case was listed for hearing on 03/06/2023. The Respondents filed a short reply on maintainability of the case. The Complainant was directed to file rejoinder on this issue within two weeks with further directions regarding issuance of separate Interim Order for fixing the next hearing date. The matter was again listed on 04.07.2023 vide order dt.28.06.2023. No body appeared from the complainant side. As an opportunity, the complainant was advised and directed to show his presence in the court on the next date of hearing or otherwise, the case shall be decided ex parte on merit, based upon the record available. The complainant submitted the rejoinder by 17.07.2023. The case was listed for hearing on 27/07/2023. The main issues of the case were highlighted by both the parties. The case was listed for arguments on 03.08. 2023. However, the matter could not be argued due to non-availability of Counsel for complainant due to over occupation and further listed for arguments on 22/08/2023 whereby both the parties advanced their arguments, but could not arrive at consensus and sought some more time. On the prayer made, the matter was further fixed for arguments on 29/08/2023, again due to absence of concerned counsel for Complainant due to some unavoidable circumstances as expressed by the Jr. Counsel representing in his place who had to argue the matter, the arguments could not be conducted and matter was listed for final arguments on dt.02.09.2023 and after both the parties advanced their arguments, the arguments were closed on 02.09.2023 and orders were reserved. Hence, delay.

**A-BRIEF FACTS OF THE CASE:**

1. M/S ATC Telecom Infrastructure Private Limited, Timbi 1313, Tatiyana, Shillai, District Sirmour HP-173029 have filed an application under provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the final Orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti on dated 15/02/2023 in Complaint No. 1522/2/22/12, dated 18/04/2022
2. The Complainant have also filed an application under the provisions of Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. He has prayed for granting order for



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restraining the Respondents from recovering and realizing the balance amount of Rs 12,83,629/- fearing disconnection of electricity connection by the Respondents by taking coercive method for recovery of same. Prayer granted. By the powers conferred under the provisions of Regulation 36 read with Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the recovery and realization of balance amount of Rs 12,83,629/- were hereby stayed during the pendency of the present Complaint with this Appellate Forum and the Respondents were further directed not to take any coercive action to recover the same such as disconnection of electricity connection of the Complainant's premises.

**B – The Complainant's submission:**

**BRIEF FACTS OF THE CASE:**

1. Complainant submits that the facts of the case are that the appellant is filing the said appellant through its Cluster Engineer Sh. Ashok Kumar Sharma, S/o Sada Ram R/o Vill Matoli, P.O Smaila, Teh Baldwara, District Mandi, H.P., who has been authorized to sign, institute, verify swear affidavit and proceedings to protect the interest of appellant company and to engage counsel/advocate.
2. Complainant submits that the appellant company i.e. ATC Telecom Infrastructure Private Limited is a company incorporated under companies Act and is having its Registered Office: B-320, 3<sup>rd</sup> Floor, Tower B, Bestech Business, Sector-66, Mohali, (Punjab)-160062.
3. Complainant submits that appellant company had entered into an agreement with M/s Telecom XCEL Vide agreement dated 12.06.2019 and taken over all its business including the business at 25 KVA, Timbi 1313, Tatiyana-173001, Distt. Sirmaur, Himachal Pradesh i.e. the Unit in dispute in the present matter. As such, the appellant company is a consumer under the Electricity Act, 2003 and the respondent Board are distribution licensee, further the appellant is also a consumer under section 3(d) of the HPERC, Regulation, 2013.
4. Complainant submits that as per record the above said unit came in function in the year 2010 and when the unit was established the previous company had applied for 3 phase Meter for electricity to run the unit smoothly. The Meter was accordingly installed by the respondent Board and were generating the electricity bill as per the actual consumption which was being paid without any default by the previous company i.e. M/s EXCEL.
5. Complainant submits that even when the previous company i.e. M/s EXCEL was taken over by the present appellant company and continued with the function of the unit, bill which was generated by the respondent Board had accordingly been paid and never defaulted the same. But to the utter surprise of the present appellant company, the officials of the respondent Board paid their visit to the Unit of the present appellant company and without prior notice/intimation in the month of August, 2020 and got removed the old electricity meter with new one for no reason. Neither there was any complaint regarding the old meter had ever been made by the present appellant/company nor any reason was



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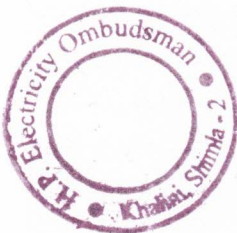




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Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

assigned by the officials of the respondent Board at the time when the meter got replaced with new one.

6. Complainant submits that even after the replacement of the old meter with new one, the appellant company was paying the electricity bill as per the bill raised by the respondent department. It needs mention here that even after the replacement of the old meter with new one there is no change in the figure of the bill amount so generated by the respondent Board which could suggest that there was hardly any need no replace the old meter with new one.
7. Complainant submits that after about one and half years of replacement of old meter with new one, the respondent Board all of sudden raised a bill amounting to Rs. 12,94,788/- for the month of November, 2021. Being surprised by the same the appellant company requested the reason and sought details of the same from the respondent Board. The respondent Board duly replied the same vide correspondence No. SHES/Audit/2021-22-dated Nil along with Audit Report for the Account Period from 04/2018 to 03/2020.
8. Complainant submits that it is beyond understanding that on the one side the respondent Board has supplied the Audit Report for the Account Period between 04/2018 to 03/2020 and on the other side also supplying the table said to be Short Assessment of wrongly MF taken in computer under ESD Shillai wherein Old Reading has been shown to 1 unit and New Reading is 116525 and accordingly units charged as per MF-1 for 116525 whereas it had to be charges as per MF-3 which had to be 349572 units in totality. Hence, as per the said table the respondent Board had applied multiplier of 3 and raised demand to Rs. 12,83,629/- for the difference of Units i.e. 233048. It is nowhere made clear that how the old meter reading is shown as 1 unit for the Account Period between 04/2018 to 03/2020 whereas the meter was got applied by the previous company i.e. M/s EXCEL in the year 2010 and not in the year 2018.
9. Complainant submits that needs mention here that even the new meter is showing the same volume of consumption of units as was consumed under the old meter and under the new meter, the respondent Board was raising the same bill till date.
10. Complainant submits that it has also been submitted by the appellant company that the officials of the respondent board not only had periodically inspected the meter but also raised the bill after due verification of the same and not even a single point of time raised any objection qua the phase of the meter so installed in the premises of the appellant company which they now raised and claimed the alleged rent of Rs. 12,94,788/-. Even at the time when the old meter was replaced with the new one, no such objection has ever been made of intimated to the appellant company. Hence, coming with the plea that short assessment of wrongly MF was taken in the computer under ESD Shillai had resulted in loss of revenue is beyond imagination that was too after 11 years of installation of meter in the premises of the appellant company.



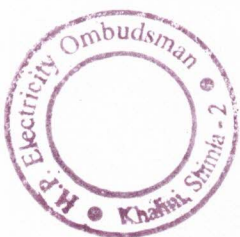




11. Complainant submits that the appellant company was/is regular in making the rent of electricity to the respondent Board till date but these endeavours on the part of respondent Board vividly reflect the volumes of malafide approach, unfair trade practice and deficiency in service towards the appellant company. As such, the appellant company preferred complaint before the Ld. Consumer Grievance Redressal Forum, Shimla, HP against the arbitrary and illegal act and the demand so raised by the respondent board which complaint was registered vide No. 1522/2/22/12-868-71.
12. Complainant submits that the Ld. Forum below served notices upon the respondent Board, the respondent Board duly filed reply to the complaint filed by the appellant and the appellant company also filed rejoinder to the reply of the respondent Board.
13. Complainant submits that the Ld. Forum below after hearing the parties dismissed the complaint of the appellant company vide impugned order dated 15.02.2023.  
Feeling aggrieved and dissatisfied with the impugned order dated 15.02.2023 passed by the Ld. Forum in complaint No. 1522/2/22/12-868-71, the appellant company assails the same inter-alia on the following grounds:

**GROUND OF REPRESENTATION:**

14. Complainant submits that the impugned order dated 15.02.2023 passed in complaint No. 1522/2/22/12-868-71 dt. 18.04.2022 by the Ld. C.G.R.F. Shimla is perverse, unjust, illegal, unsustainable, unreasonable and arbitrary.
15. Complainant submits that the Ld. Forum below has failed to appreciate that the respondent Board's demand for Sundry amount of Rs. 12,94,788/- vide impugned electricity bill dated 17<sup>th</sup> November, 2021 is absolutely wrong, unjust, arbitrary and against the mandatory provision of H.P. Electricity supply code 2009 as amended time to time and other enabling regulation. More specially, when no notice prior removal/changing of the old electricity meter with new one was issued. Being given no opportunity to be heard, the act and conduct on the part of the respondent board smell foul play upon the appellant company. As such, the impugned bill dated 17.11.2022 and also the impugned order is liable to be set aside and quashed.
16. Complainant submits that the Ld. Forum below has failed to appreciate this fact that the appellant company has taken over the previous company named M/s EXEL Telecom Private Limited Vide agreement dated 12.06.2019 and taken over all its business including the business at 25 KVA, Timbi 1313, Tatiyana-173001, Distt. Sirmaur, Himachal Pradesh i.e. the Unit in dispute in the present matter and stepped into the shoes of previous company. In support of this the appellant company also produced the correspondence of the Government of India, Ministry of Communication & IT Department of Telecommunications, New Delhi whereby the appellant company has been incorporated in place of M/s EXCEL Telecom Private Limited. As such, the appellant company is a consumer under the Electricity Act, 2003. Hence, coming to the conclusion that the



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Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

appellant company has no locus standi is wrong, as such, the impugned order dated 15.02.2023 deserves to be quashed and set-aside.

17. Complainant submits that the Ld. Forum below has failed to appreciate that the respondent Board has indulged in unfair trade practices by wrongly, illegally and arbitrarily raising the demand of Rs. 12, 94,788/- in the monthly energy bill i.e. 17.11.2022 of the appellant company by way of levying the sundry charges thereupon.
18. Complainant submits that the Ld. Forum below further failed to appreciate that despite change of meter which was allegedly changed under the name of having been installed single phase meter by their officials way back in the year 2010 due to paucity of three phase meter but failed to produce any record with respect to the same. and also failed to show that why the same was not removed when they have stock of three phase meter and if the single-phase meter was installed why multiplier of three not implemented while raising bill upon the consumption of electricity for last long 10-11 years. The respondent board has nothing to say. And further, despite change of old meter with new one there was hardly any change in the consumption of electricity and in the figure of the bill amount so generated by the respondent Board which could suggest that there was actually any need to replace the old meter with new one. As such, the impugned order dated 15.02.2023 is liable to be quashed and set aside.
19. Complainant submits that the Ld. Forum below further failed to appreciate that prior replacing the old meter with new one, no notice either upon the appellant company or upon previous company was served. Though, the respondent board has annexed copy of notice dated 04.02.2021 alleged to be served upon the previous company M/s EXCEL Telecom Private Limited but the same is not supported with any postal receipt which could suggest that the same was actually served upon the M/s EXCEL. As such, the impugned order dated 15.02.2023 is liable to be set aside and quashed.
20. Complainant submits that the Ld. Forum below further failed to appreciate that the alleged demand of sundry charges after a gap of more than 11 years is beyond the period of limitation. Even the respondent board has relied upon annexure R which is Sales Manual Instruction wherein Instruction No. 39.2 says:

**Limitation:**

21. *Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity."*
22. Complainant submits that in the present matter, the respondent board has raised bill for the month of November, 2021 wherein the respondent board have claimed an amount of Rs. 12,94,788/- including sundry charges. It needs mention here that the appellant company duly requested the respondent board to supply the details on which







basis the same was claimed. The details were duly supplied to the appellant company and after gone through the same it transpired that the respondent board has claimed the sundry charges said to be due from last ten years. Hence, in view of the above Instructions, the amount so claimed under the bill for the month of November, 2021 is beyond the period limitation. As such, the impugned order is liable to be set aside and quashed.

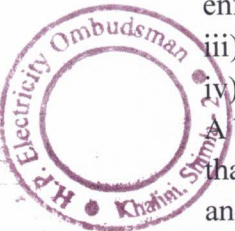
23. Complainant submits that there is no representation by the appellant company, in respect of the same grievances, pending in any proceedings before any Court or Tribunal or Arbitrator or any other authority.
24. Complainant submits that no representation was earlier made in respect of the same subject matter before this Hon'ble Authority.
25. Complainant submits that the present appellant is not satisfied with the redressal of grievances by the Ld. Forum below as the reliefs prayed for in the complaint were not granted in favour of the present appellant.

**C – The Respondent's submission:**

**REPLY BY THE RESPONDENT**

**Respondent submits Short reply on the issue of maintainability of the complaint:**

1. Respondent submits that the instant complaint /representation as filed by the complainant under Regulation 2 (i) (b) of HPERC (CGRF Ombudsman) Regulation 2013 against the impugned order dated 15.02.2023 passed in Complaint No. 1522/2/22/12-868-71 by the Ld. Consumer Grievance Redressal Forum is not maintainable in the eyes of law in as much as the present complainant does not have any locus standi to file and maintain the present representation in view of Regulation -3 of HPERC (CGRF Ombudsman) Regulation 2013. It is submitted that under Regulation 3 (i) (d) the word "complainant" has been defined as under: -  
The complainant means and includes: -
  - i). Any consumer or consumers includes their legal heirs or successors having a grievance /complaint against a licensee and lodging the same either directly or through their representative.
  - ii). Any voluntary consumers/associations, registered under the law for time being enforce and making the complaint in the larger interest of the consumer.
  - iii). Any person whose electricity connection is disconnected.
  - iv). An applicant for a new connection for the supply of electricity.A bare perusal of the definition of the complainant does not leave any manner of doubt that the instant representation does not fall under the definition of complainant to file and maintain the instant representation before the Ld. Ombudsman. As such the representation is liable to be dismissed on this score.
2. Respondent submits that the Ld. Forum vide order dated 15.02.2023 has rightly dismissed the complaint preferred by the complainant on this score i.e. the locus standi







to file and maintain the complaint in view of Regulation 3 of HPERC (CGRF Ombudsman) Regulations, 2013. The Ld. Forum has categorically returned its finding in its impugned order that the respondents have executed agreement to supply the electricity with M/s XCEL Telecom Private Limited and to this effect the service connection order was released/issued by the respondents on 25.8.2010. The present complaint is having no contractual relationship with respondents in terms of the application and the agreement form and thus does not have any locus standi to file and maintain the instant representation before the Ld. Ombudsman. The respondents herein pray liberty to file its detailed reply on merits after the decision of issue of maintainability.

**Prayer:**

3. Respondent submits that the instant representation may be dismissed on account of the issue of maintainability to file and institute the present representation before the Hon'ble Ombudsman and the order passed by the Ld. Forum is liable to be upheld along with such other or further orders which this Hon'ble Ombudsman deems fit and proper in the facts and circumstances of the case.

**D – The Complainant's Additional submission through Rejoinder:**

1. Complainant submits that the contents of para 1 of the reply need no rejoinder to the extent it relates to the matter of record. Rest para is denied being wrong and incorrect. The respondents be put to strict proof of the same. It is denied that the appellant/complainant does not have any locus standi to file and maintain the present representation as alleged. It needs mention here in view of sub-clause (i) of clause (d) of Regulation-3 of HPERC (CGRF Ombudsman) Regulation 2013 which has also been relied upon by the respondents, the term "complainant" has been defined but the term complainant has wrongly been interpreted by the respondents as per their sweat will whereas the sub-clause (i) of clause (d) of Regulation-3 makes it clear that not only the consumer by his name but also his legal heirs or successors being aggrieved can lodge their complaint or grievance directly or even through their agent. In the present case the present appellant/complainant has raised a genuine complaint whereby the respondent department has not acted as per law.
2. Complainant submits that the contents of para 2 of the reply are denied being wrong and incorrect. it is denied that the appellant is not having locus standi to file and maintain the present complaint. As submitted supra, the complainant has duly been defined under Regulation-3 of HPERC (CGRF Ombudsman) Regulations, 2013 which has wrongly been interpreted by the respondent department as per their wish and will. The law is otherwise. The Regulation-3 says that complainant means and includes any consumer or consumers includes their legal heirs or successors having a grievance/complaint against a licensee and lodging the same either directly or through their representative. Here in the present case, the appellant has taken over the establishment of the M/s EXCEL Telecom Private Limited and being successor of M/s EXCEL Telecom, the present complaint has been preferred against the impugned bill for the alleged Sundry Charges amounting Rs. 12,83,629/- i.e.







Annexure C-2 annexed with the original complaint which is neither illegal but also arbitrary on the facts and circumstances of the present case.

**Prayer**

4. Complainant submits that the present appeal be allowed and the relief so claimed be allowed in favour of appellant and against the respondent department, in the interest of justice.

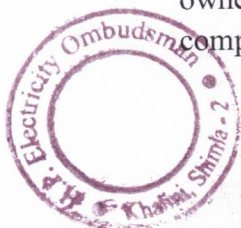
**E- Complainant written Submission during Final Arguments:**

The complainant also submitted his written submission during final arguments which is as under:

1. As this Hon'ble Court has appreciated the arguments of appellant company and also in view of the Act, the appellant company is legal heirs and successors of M/s XCEL and accordingly consumer. Being consumer, the complaint so filed by the appellant company has locus standi to file and maintain the complaint before the Ld. Consumer Grievance Redressal Forum at Kasumpti and hence, the complaint is maintainable.
2. In view of the observation of this Hon'ble Court and also in view of the Act, the matter be remanded back to the Ltd. Consumer Grievance Redressal Forum at Kasumpti on the ground of maintainability for the disposal of the matter in hand on its merits."

**F - Consumer Grievance Redressal Forum Order**

1. At the outset, this Forum observes that the complaint is opposed by the Respondent HPSEBL mainly on issue of its maintainability on grounds of M/s ATC locus-standi to raise grievance on behalf of M/s Xcel Telecom and file the instant complaint for the reason that as per consumer record, the meter connection is in the name of M/s Xcel Telecom and the Notice dated 04.02.2021 and impugned bill dated 17.11.2021 issued by the Respondent HPSEBL are also in the name of M/s Xcel Telecom;
2. Thus, as pointed out by Respondent HPSEBL, this Forum, before it can delve into the merits of the complaint, is constrained to verify the complaint and determine its admissibility and thus to first consider the issue of maintainability of the complaint on grounds of locus-standi of M/s ATC to raise a grievance and file and maintain the present complaint on behalf of M/s Xcel Telecom. Accordingly, the Forum hereinafter proceeds to examine the issue of maintainability of the instant complaint on grounds of locus standi of the Complainant to raise a grievance and file and maintain the instant complaint –
3. This Forum observes that M/s ATC has not placed on record any document of Agreement, stated to be dated 12.06.2019, between them and M/s Telecom Xcel. During the proceedings in the case, several opportunities were afforded to the Complainant M/s ATC to place on record the ibid Agreement with the previous owner of the premises ie M/s Xcel Telecom, which the Complainant failed to comply and continued to delay the matter on one pretext or the other;







4. This Forum also observes that Complainant M/s ATC has also not placed on record any Application to the Respondent HPSEBL or any Agreement between it and the Respondent HPSEBL in terms of Application and Agreement for new connection or for change in name / title. In the several opportunities afforded to the Complainant M/s ATC, the Complainant also failed to show to the Forum any such application or agreement which may exist with the Respondent HPSEBL;
5. However, the Complainant M/s ATC has relied upon a letter dated 12.11.2009 by the Department of Telecommunication New Delhi addressed to the Complainant. This letter was placed on record by the Complainant during the proceeding's stages. This Forum finds and holds that this letter does not support the case of the Complainant, such pertaining to the year 2009 and written by the Department of Telecommunication to M/s ATC and not to the Respondent HPSEBL, whereas the Complainant has submitted in its complaint that it has taken over the business of M/s Xcel Telecom in Sirmaur district of Himachal Pradesh in the year 2019. The Forum therefore rejects the relevance of this letter in terms of the instant complaint preferred against the Respondent HPSEBL;
6. The Complainant M/s ATC has also relied upon an un-numbered, un-dated, unsigned letter (Annexure C2) to show that the Respondent HPSEBL was in knowledge of the M/s ATC. This Forum also rejects this contention of the Complainant as being baseless;
7. On examination of complaint, it is evident that the electricity connection, the Notice dated 04.02.2021 and the impugned electricity Bill dated 17.11.2021 containing the disputed sundry amount are all in the name of M/s Xcel Telecom and not in the name of M/s ATC;
8. This Forum is convinced that no Agreement for a new connection or for change of name / title, exists between M/s ATC and the Respondent HPSEBL. Apparently, since the year 2019, M/s ATC has not applied for new connection or change of name / title, while it may have been receiving electricity supply or may have also been paying for it as stated in the complaint. It is only after the impugned bill raised to M/s Xcel Telecom, that M/s ATC has awakened to file a complaint. The Forum is of the considered opinion that payment of bills raised by the Respondent is no proof to establish locus standi and further, that knowledge on the part of other party cannot be assumed. It is evident that M/s ATC is not recognized in the records of the Respondent;
9. On the other hand, the Respondent HPSEBL vide its Application dated 28.11.2022, has placed on record, the Application and Agreement (Annexure A Colly) with M/s Xcel Telecom, which depicts that a three (3) phase connection was applied by the applicant M/s Xcel Telecom which was approved by the Assistant Engineer and electricity connection released to M/s Xcel Telecom;
10. This Forum in unambiguous terms agrees with the Respondent HPSEBL that the complaint is not maintainable on grounds of locus standi of the Complainant M/s ATC to raise grievance and file and maintain the instant complaint on behalf





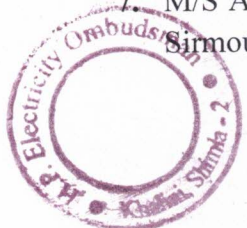


of M/s Xcel Telecom and against the Respondent HPSEBL which has been filed in pursuance to impugned Bill dated 17.11.2021 (Annexure C-1) raised by the Respondent HPSEBL to M/s Telecom Xcel. Moreover, the electricity connection is also in the name of the M/s Xcel Telecom (Annexure R Colly), and the Notice dated 04.02.2021 (Annexure R Colly) is also in the name of M/s Xcel Telecom;

11. On foregoing terms, this Forum holds and concludes that the Complainant M/s ATC has failed to establish its locus standi to raise grievance and file and maintain the present complaint on behalf of M/s Xcel Telecom. The Complainant has only woken up to prevent any adverse outcomes against a business;
12. In view of foregoing, without going into the merits of the case or other issues which may have been raised by the Complainant, the complaint is decided against the Complainant on its maintainability on grounds of locus standi of Complainant to raise grievance on behalf of M/s Xcel Telecom and file and maintain the present complaint against the Respondent HPSEBL;
13. In view of the locus standi not vested with the Complainant to file and maintain the present complaint, the Ad-Interim ex-parte Relief granted to the Complainant on 18.04.2022 stands vacated with immediate effect.
14. On aforesaid terms, the instant complaint filed by M/s ATC is Rejected. The complaint is decided on merits, in favour of the Respondents HPSEBL and against the Complainant.
15. Parties are left to bear their own costs. Order reserved on 31.01.2023 is released today on 15.02.2023 in open Forum at Shimla, before the parties present. Certified copies of this Order be supplied to the parties. The original case file be consigned to record room along with this Order, for safe custody.

**G- Analysis of the Complaint:**

1. The case file bearing Complaint No. 1522/2/22/12 dated 18/04/22, orders on which were passed on 15/02/2023 by the Consumer Grievance Redressal Forum at Kasumpti have also been requisitioned and gone through.
2. The documents on record and arguments made by both the parties have also been gone through.
3. The submissions made by both the parties have also been incorporated in this order in order to have composite view of the entire case.
4. Thorough references of prevalent Act, Supply Code, relevant Instructions under Sales Manual Part-1 and Conditions of Supply have been made.
5. The issue on maintainability has been dealt in details while analyzing and resorting to findings on the issues.
6. The issues on merit also have been taken up in view of the contentions as mentioned in the submissions made in the representation by the complainant.
7. M/S ATC Telecom Infrastructure Private Limited, Timbi 1313, Tatiyana, Shillai, District Sirmour HP-173029 have filed an application under provisions of Regulation 28 (1) (b) of



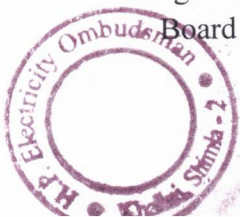




**HIMACHAL PRADESH ELECTRICITY OMBUDSMAN**  
**SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002**  
Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the final Orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti on dated 15/02/2023 in Complaint No. 1522/2/22/12, dated 18/04/2022

8. The Complainant have also filed an application under the provisions of Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and prayed for granting order for restraining the Respondents from recovering and realizing the balance amount of Rs 12,83,629/- fearing disconnection of electricity connection by the Respondents by taking coercive method for recovery of same. Prayer granted in terms of the powers conferred under the provisions of Regulation 36 read with Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
9. The Complainant submits that the Ld. Forum below has failed to appreciate this fact that the appellant company has taken over the previous company named M/s EXEL Telecom Private Limited Vide agreement dated 12.06.2019 and taken over all its business including the business at 25 KVA, Timbi 1313, Tatiyana-173001, Distt. Sirmaur, Himachal Pradesh i.e. the Unit in dispute in the present matter and stepped into the shoes of previous company. In support of this the appellant company also produced the correspondence of the Government of India, Ministry of Communication & IT Department of Telecommunications, New Delhi whereby the appellant company has been incorporated in place of M/s EXCEL Telecom Private Limited. As such, the appellant company is a consumer under the Electricity Act, 2003. Hence, coming to the conclusion that the appellant company has no locus standi is wrong, as such, the impugned order dated 15.02.2023 deserves to be quashed and set-aside.
10. On the analysis of the above contention, this Appellate Forum asserts that the Complainant M/S ATC has not attached the agreement dt.12.06.2019 with the representation. Also, on scrutiny of record of CGRF in the said matter, gave a clear view that during adjudication process many opportunities were given to the complainant for production of Agreement dt.12.06.2019 but the complainant failed to submit the same on record.
11. Also, the complainant in his submissions to this Appellate Forum has made the reference of the communication with Government of India, Ministry of Communication & IT Department of Telecommunications, New Delhi but has not mentioned the date of communication with the said department. On scrutiny, it was found that the said communication pertained to year 2009. On further analysis revealed that this was the letter dt. 12.11.2009 and after going through the record, this Appellate Forum was convinced that letter pertaining to 2009 and Agreement executed in year 2019 (not on record) has no relevance and also the complainant did not give cognizance to instruction No. 31&21. of the Sales Manual Part-1 under "Conditions of Supply", which were also one of the mandatory requirements after taking over the business from Ms XCEL.
12. On further examination of the complaint and after going through the submissions and record, this Appellate Forum is of the clear view that even after so called execution of agreement dt. 12.06.2019(not on record) with M/S Xcel neither informed to Respondent Board regarding the new ownership of taking over business as M/S ATC nor furnished







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Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

codal formalities towards "Change in Name/ Title" in terms of section-3 of 20.8 under Instruction No. 20 of Sales manual part-1 as such the name of M/S XCEL still stands as consumer in the account books of respondent board and analysis further reveals that so called M/S ATC have not even bothered to exercise the provisions of instruction No. 31&21. of the Sales Manual Part-1 under "Conditions of Supply", which were also mandatory after taking over the business from Ms XCEL.

13. Complainant submits that it is beyond understanding that on one side the respondent Board has supplied the Audit Report for the Account Period between 04/2018 to 03/2020 and on the other side also supplying the table said to be Short Assessment of wrongly MF taken in computer under ESD Shillai wherein Old Reading has been shown to 1 unit and New Reading is 116525 and accordingly units charged as per MF-1 for 116525 whereas it had to be charges as per MF-3 which had to be 349572 units in totality. Hence, as per the said table the respondent Board had applied multiplier of 3 and raised demand to Rs. 12,83,629/- for the difference of Units i.e. 233048. It is nowhere made clear that how the old meter reading is shown as 1 unit for the Account Period between 04/2018 to 03/2020 whereas the meter was got applied by the previous company i.e. M/s EXCEL in the year 2010 and not in the year 2018.

14. Complainant further submits that needs mention here that even the new meter is showing the same volume of consumption of units as was consumed under the old meter and under the new meter, the respondent Board was raising the same bill till date.

15. This Appellate Forum after examine could find that the issue of multiplication factor came into picture after the audit for the period 04/18 to 03/20 and thereafter its authenticity by supplying the table of Short Assessment of wrongly MF taken in computer under ESD Shillai and Notice No. SHES/CS-1/NOTICE/2020-21-1048-49 dt.04/02/21 for short assessment to M/s EXCEL.

16. Further analysis reveals that the complainant right from the inception of business whether predecessor or otherwise, are enjoying the services of the respondent board on 3 phase supply system where single-phase meter is installed and MF3 was required to be applied in place of MF-1 for the said period which was rightly pointed out by the RAO audit and the differential bill was raised by the Respondent Board is in right spirit. This exercise further established an important fact that the Complainant had consumed the energy for which the differential bill was raised.

17. Complainant submits that the Ld. Forum below further failed to appreciate that the alleged demand of sundry charges after a gap of more than 11 years is beyond the period of limitation. Even the respondent board has relied upon annexure R which is Sales Manual Instruction No. 39.2. However, the analysis reveals that there is misconception in interpretation of the relevant clause 39.2 of limitation and the complainant has misconstrued the essence of the provisions of the said Instructions.

18. Respondent submits that the instant representation may be dismissed on account of the issue of maintainability to file and institute the present representation before the







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

Hon'ble Ombudsman and the order passed by the Ld. Forum is liable to be upheld along with such other or further orders which this Hon'ble Ombudsman deems fit and proper in the facts and circumstances of the case. The analysis on this issue is quite apparent which reveals that neither the Complainant has submitted any copy of agreement dt. 12.06.2019 which is not even confirmatory to the spirit of letter dt. 12.11.2009 nor has resorted to "Change in Name/ Title" in terms of section-3 of 20.8 under Instruction No. 20 of Sales manual part-1 and the name of M/S XCEL still stands as consumer in the account books of Respondent Board and hence devoid of maintainability status.

**H-Issues in Hand:**

**Issue No.1:**

Whether the submission of complainant M/S ATC that they had executed the Agreement dt. 12.06.2019 with M/S XCEL for taking over their business is just and fine and also the letter 12.11.2009 from the department of Telecommunication is of relevance.

**Issue No.2:**

Whether the complainant M/S ATC is treated as consumer irrespective of the fact that the connection lies in the name of M/S XCEL who still stands as consumer in the books of respondent board for all intends and purposes i.e. for issuance of notice extra?

**Issue No.3:**

Whether the Complainant had given any intimation to the respondent board immediately after execution of Agreement dt. 12.06.2019 (not on record) with M/S XCEL?

**Issue No.4:**

Whether the "Change in Name/ Title" provisions were exercised by the complainant M/S ATC in consonance with Instruction No.20 of Sales Manual Part-1 even after execution of Agreement dt. 12.06.2019(not on record) with M/S XCEL for taking over all business?

**Issue No.5:**

Whether MF3(multiplication factor) applied by the respondent Board against MF-1 for the period 04/2018 to 03/2020 and further the demand raised of Rs 12,83,629/- through demand note dt.17.11.2021 is legitimate one?



*Signature*





**Issue No.6:**

Whether the alleged demand of sundry charges after a gap of more than 11 years is beyond the period of limitation?

**Issue No. 7:**

Whether viability of maintainability exist in the instant case?

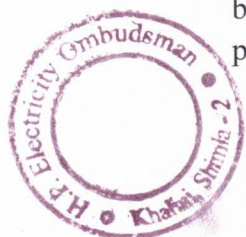
**I- Findings on the Issues:**

**Issue No.1 &2:**

1. After going through the relevant record, submissions made by both the parties and the order dt.15.02.2023 of CGRF in the complaint No. 1522/2/22/12, the arguments during the course of hearings as well as on the date of final hearing, this Appellate Forum infers that the complainant M/S ATC has submitted in their submissions that they had executed an Agreement with M/S EXCEL on dt. 12.06.2019 for taking over the business. But before issuance of final order, after scrutiny of submissions and documents, this Appellate Forum has not come across any such document of agreement dt. 12.06.2019 on record which might give right to M/S ATC to be as a consumer in terms of Regulation 3 (d) (i) of HPERC (CGRF Ombudsman) Regulation 2013.
2. The same contention was thereafter cross checked with the proceedings took place in CGRF and found that it had categorically mentioned that enough opportunities were given to the complainant to bring on record the Agreement dt. 12.06.2019 with the previous owner M/s EXCEL Telecom, but the complainant failed to produce the same.
3. Complainant M/S ATC has also mentioned about the letter dt. 12.11.2009 by the Department of Telecommunication New Delhi addressed to the Complainant not to the respondent. But after going through the submissions, this Appellate Forum is of the considered view that letter pertaining to 2009 and Agreement executed in year 2019 (not on record) has no relevance when the agreement dt.12.11.2019 was not attached / placed on record. However, on asking, different documents not conforming to the submissions were being shown during proceedings.
4. After above detailed findings and arguments advanced on different appearances, this Appellate Forum held that there is no concrete evidence to consider M/S ATC as consumer under the Regulation 3 (d) (i) in the instant case.

**Issue No.3 &4:**

1. After going through the submissions and record, this Appellate Forum is of the clear view that even after so called execution of agreement dt. 12.06.2019(not on record) with M/S Xcel neither informed to Respondent Board regarding the new ownership of taking over business as M/S ATC nor furnished codal formalities towards "Change in Name/ Title" in terms of section-3 of 20.8 under Instruction No. 20 of Sales manual part-1 as such the name of M/S XCEL still stands as consumer in the account books of respondent board.
2. This Appellate Forum is of the considered view that for the purpose of settlements of billing disputes extra, it is must that one should exercise the very mandatory provisions of "Change of name/Title" in terms of Instruction No. 20 of Sales manual



*[Handwritten Signature]*





part 1 to make settlement /overhauling effective, which has not been taken care of by the complainant in the instant case.

3. The complainant also failed to adhere even to the Instruction No.31&21. of the Sales Manual Part-1 under “Conditions of Supply” which envisages as under:

**INSTRUCTION No.31**

**“ Assignment or Transfer of Agreement:** *The consumer shall not, without previous consent in writing of HPSEBL, assign, transfer or part with the benefit of his agreement with HPSEBL, nor shall the consumer in any manner part with or create partial or separate interest there under.”*

**INSTRUCTION No.21.**

*“Change of Consumer When any person occupies any premises previously occupied by a consumer and desires to be supplied with energy he shall, as in the case of an original applicant, enter into an agreement with HPSEBL and shall furnish security to HPSEBL as prescribed in these conditions of supply, and his installation shall be re-rated/ inspected by HPSEBL so that the said person may not be held responsible for any alterations in the connected load which may have been affected by the previous consumer without the authority of the HPSEBL. All codal formalities as of a new connection shall be done for release of connection to the consumer. However, such change of consumer and reclassification shall be in accordance with relevant tariff order”*

4. This Appellate Forum after referring to above Instruction No.31 of the Sales Manual Part-1 under “Conditions of Supply”, observed that the Complainant had not submitted any such document to Respondent Board as was required under the ambit of such instructions and hence, construed violations.
5. In consonance with the Instruction No. 21 of the Sales Manual Part-1 under “Conditions of Supply”, no record stands submitted by the Complainant to respondent Board. This Appellate Forum asserts that it was essential to adhere to this very Instruction of Sales Manual Part-1 under the circumstances such as in the instant case when M/S ATC took over the business from M/S XCEL as contended and in the absence of any intimation thereof, the respondent board could not be aware of, whether the state of connected load was same as that of predecessor one or had added some new load in the system after taking over the business. This very awareness was must to the licensee, as violation construes commercial issues in the public interest.
6. This Appellate Forum is of the considered view that till above formalities along with concrete agreement & affidavit is appended by the complainant, M/s XCEL shall be treated as consumer in the account books of Respondent Board and existence of so-called M/S ATC as consumer stands nowhere.

**Issue No.5:**

1. This court is of the clear view that the issue of multiplication factor came into picture after the audit for the period 04/18 to 03/20 and its authenticity thereof by







supplying the table of Short Assessment of wrongly MF taken in computer under ESD Shillai and Notice No. SHES/CS-1/NOTICE/2020-21-1048-49 dt.04/02/21 for short assessment to M/s EXCEL. The confusion stated by the complainant in his submission is baseless when once it is established that there is short assessment due to one reason or the other and the complainant consumed the energy.

2. This Appellate Forum after referring to the submissions of the complainant and the record of CGRF, deduced that the complainant right from the inception of business whether predecessor or otherwise, are enjoying the services of the respondent board on 3 phase supply system and by virtue of only single-phase meter installed, erroneously MF-1 was being applied in place of MF-3 and the complainant was enjoying 3times amenities by just paying 1/3<sup>rd</sup> of the amount on the same connected load. Hence, the differential bill raised by respondent board after making correctness of the MF is correct in terms of Instruction No.39.1 of sales Manual Part-1 and legitimate settlement is warranted on the complainant's end.
3. After listening to both the parties during the course of hearings, this Appellate Forum asserts that the energy was consumed during this period of dispute and even with change of meter, the consumption pattern was not changed as submitted by the complainant in his submissions. Thus, this Appellate Forum is convinced that it is an established fact that the services of the Respondent Board were utilised to the brim by the complainant on the three-phase system which were rightly pointed out/raised by the Respondent as and when it came to their knowledge through RAO audit in line with provisions of Instruction No.39.1 of sales Manual Part-1.

**Issue No 6 :**

1. This Appellate Forum understands that again there is a misconception on interpretation of said Instruction No. 39.2 of Sales Manual Part-1 read with clause 5.6.2 of the supply code by the Complainant on the issue of limitations, whereas this Appellate Forum clearly fetches the meaning on interpretation of the instruction under inverted commas as below ***"no sum due from any consumer, shall be recoverable after the period of two years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity:"***
2. The **first due** is the day when the issue was pointed out irrespective of how old the issue may be.
3. Let us elaborate more on the terms "due" and "first due". The word "due" has been used under Section 56(1) as well as under section 56(2) of the Act 2003. The term "due" refers to the amount for which the demand is raised by way of a bill. The term "first due" would therefore imply when the demand is raised for the first time. The bill raised by the licensee company (Respondent Board) would be the starting point for the exercise of power under sub-section (1) of Section 56 and the starting point of limitation would be from the date when the bill is raised by the licensee company (Respondent Board).



*Sharma*





**HIMACHAL PRADESH ELECTRICITY OMBUDSMAN**  
**SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002**

Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

4. The facts are further supported by Hon'ble Supreme Court of India Civil Appellate Jurisdiction in "**Civil Appeal No. 1672 of 2020**" wherein the licensee company raised an additional demand on 18.03.2014 for the period July,2009 to September,2011. The period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub- section (2) of Section 56 of the Act.
5. Akin to above judgement, and the averments made, this Appellate Forum is convinced that the interpretation in the instant case is also of similar nature wherein the Respondent Board raised an additional demand through bill on dt. 17.11.2021 on M/S XCEL for the period 04/2018 to 03/2020. The period of limitation in line with para-4 above would commence from the date, the bill was raised i.e. 17.11.2021. However, with above analogy, Respondent Board may further confirm from the record, the date of commencement of the limitation period with reference to the demand raised. The Respondent Board may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub- section (2) of Section 56 of the Act.
6. The liability to pay arises on the consumption of electricity. In the instant case it is an established fact that the energy was consumed by the Complainant/ M/S XCEL through 3 phase system, hence it is legitimate that the consumer has to pay for the differential energy which was pointed out during RAO Audit. The obligation to pay would arise when the bill is issued by the Respondent Board, quantifying the charges to be paid. Hence, the differential bill raised is correct in nature and qualifies the contention of complainant on limitation. However, the correctness of computation be ascertained both by the Complaint and Respondent Board after going through the record personally.

**Issue No 7 :**

1. Apparent to the record, the averments made during different proceedings, above findings and efficacy observed in the adjudication process of CGRF, even this Appellate Forum in the absence of requisite documents as mentioned herein the submissions made by the complainant could not assert the existence of M/S ATC as consumer. Also, the facts were further supported with the detailed Analysis/ findings on the above issues before arriving at the consensus.
2. This Appellate Forum concludes that the issue of maintainability as raised by the respondent board had been well dealt and all averments made by the complainant need not to be reconsidered for similar judgement once again. For the sake of brevity, this court upheld the decision of Consumer Grievances Redressal Forum order dt.15.02.2023 in the complaint No. 1522/2/22/12 on the issue of maintainability.







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

**J-Order:**

1. The order dt. 15.02.2023 passed by Consumer Grievances Redressal Forum in the complaint No. 1522/2/22/12 dt.18.04.2022 is upheld.
2. The demand raised by the Respondent Board amounting to Rs. 12,83,629/- is also sustained. However, both respondent and complainant ascertain the correctness of the computation of the said amount at their ends.
3. The complainant is directed to pay outstanding amount against above raised demand as per prevalent provisions within the stipulated period to avoid any action thereof.
4. Under the power drawn from the provisions of Regulation 37 (3)(d) (e) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the complainant is further directed to furnish requisite formalities in conformity to the clause 3d(i) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman )Regulation 2013 and initiate "Change in Name / Title" as per instruction No.20 of the sales manual Part-1 to avoid further violations to the Instructions 31&21 under "Conditions of Supply" of the sales manual part-1 and curb litigation of this kind in future thereof.
5. The Respondent Board while initiating any action for recovery of the outstanding amount must adhere to the instruction 39.2 of sales manual Part-1, read with Section 56 (i) & 56(2) of Indian Electricity Act 2003 in line with the findings of para -4 and para-5 under Issue No.-6 of this order in this specific case.
6. The Respondent Board is further directed to ascertain at their ends that this kind of mistake of correct MF implementation is not being continued in future or necessary corrections be made at their ends to avoid such litigations.
7. The Respondent Board is directed to replace single phase meter with 3 phase meter if not done to avoid any such kind of confusion in future.
8. The Complaint filed by M/S ATC Telecom Infrastructure Private Limited, Timbi 1313, Tatiyana, Shillai, District Sirmour HP-173029 is hereby disposed of.

Given under my hand and seal of this office.



*[Signature]*  
11/09/2023  
Electricity Ombudsman