



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

In the matter of:

Complaint No. 14/2023

M/S Renny Steels, Village Kunjhal, PO Barotiwala, Tehsil Baddi, District Solan, HP-174103

- Complainant

Vs

1. **Executive Director (Personnel) HPSEB Ltd, Vidyut Bhawan Complex, Shimla, HP-171004**
2. **The Assistant Engineer, Electrical Sub-Division, HPSEB Ltd, Barotiwala, District Solan, HP-174103**
3. **Sr Executive Engineer, Electrical Division, HPSEB Ltd, Baddi, District Solan, HP-174103**

- Respondents

1. **Complaint No. 14/2023 (Registered on 06.06.2023)**
2. **(Orders reserved on 28/09/2023, Issued on 04/10/2023)**

Counsel for:

The Complainant:

Sh. Rakesh Bansal, Authorized Representative

The Respondents:

Sh. Rajesh Kashyap, Advocate

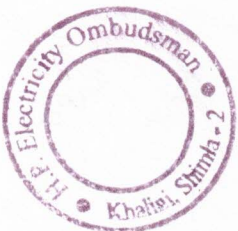
CORAM

Er. Deepak Uppal

HP Electricity Ombudsman

ORDER

1. The case was received (through e-mail dated 05/06/2023) and registered on 06/06/2023, The Complainant had also requested that in two cases, they had already deposited Rs 3,42,44,674/- and additionally Rs 5,00,000/- in CWP No. 2530/2017 on the directions of the Hon'ble HP High Court and said amount was more than 50% of the disputed amount in the Complaint, they do not require any further amount to be deposited as per directions of the Hon'ble HP High Court. Since the Forum(CGRF) below had not worked out any disputed amount between parties and the Complainant had already deposited Rs 3,42,44,674/- and additionally Rs 5,00,000/- in CWP No. 2530/2017 on the directions of the Hon'ble HP High Court, there was no requirement to further deposit any amount with the Respondent Board. The Respondent Board was directed to file their reply duly supported by attested affidavit on or before 19/06/2023 positively and Complainant to file rejoinder on or before 26/06/2023. Separate Interim Order to be issued for fixing the hearing dates. The reply from Respondent Board was still awaited. The respondent Board was further directed to file reply within two weeks positively and Complainant to file



(Signature)



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rejoinder within two weeks after the submission of reply by the respondent Board. The case was listed for hearing on 04/07/2023.

2. Respondent Board was directed to submit the reply on or before 18.07.2023 and complainant to submit rejoinder if any by 25.07.2023. The case was further listed for hearing on 27/07/2023.
3. Respondent Board submitted reply on 12.07.2023 and complainant submitted rejoinder on 24.07.2023 respectively. After assessing the documents submitted by both the parties, the case was listed for arguments on 03/08/2023, however the counsel for complainant could not appear due to inclement weather conditions. The matter was further listed for arguments on 22.08.2023.
4. Due to inability of Sh. Rakesh Bansal, the authorized Representative for pleading the cases on behalf of complainant, to attend the court due to inclement weather conditions as informed through e-mail 21/08/2023, the Arguments as scheduled on dated 22/08/2023 in the said matter could not be conducted.
5. The case is further listed for Arguments on 29/08/2023. However, due to inability of Sh. Kamlesh Saklani Law Officer, the Ld. Counsel for Respondent Board to attend the court due to ill health as informed by Sh. Rajesh Kashyap Advocate, the standing counsel for Respondent Board, the arguments as scheduled today on dated 29/08/2023 in the said matter could not be conducted. However, this court after considering request of standing counsel as genuine one, further listed for final arguments on dated 28/09/2023.
6. Both the parties advanced their arguments. During the course of arguments, concerned officers also appeared and exchange their views on the instant issue. The Complainant / Petitioner submitted written arguments which were also taken on record. The arguments were heard and concluded. Orders reserved. Hence, delay.

A-BRIEF FACTS OF THE CASE:

1. M/S Renny Steels, Village Kunjhal, PO Barotiwala, Tehsil Baddi, District Solan, HP-174103 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 orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumnpti on dated 09/05/2023 in Complaint No. 1453/1/23/10, dated 20/02/2023. Copy of the Complaint had also been sent by post on 05/06/2023 to the Respondents.
2. The Complainant had 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 stay orders directing the Respondents not to take any coercive action during the pendency of the matter with this



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Appellate Forum or for recovery of dues reflected as arrears in the energy bills issued to him.

3. Prayer granted. Under the powers drawn under provisions of Regulation 36 read with 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Respondents were directed not to take any coercive action during the pendency of the matter with this Appellate Forum or for recovery of dues reflected as arrears in the energy bills issued to the Complainant.

B – The Complainant’s submission:

DETAILS OF REPRESENTATION, FACTS GIVING RISE TO THE REPRESENTATION

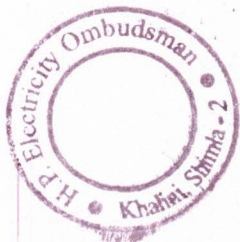
1. PROLOGUE

2. Complainant Submits that this representation is being filed in accordance with the HPERC (CGRF & Ombudsman) Regulations, 2013 as the applicant/ complainant is aggrieved by the non-implementation of orders dated 09.05.2023 passed by the Ld. Forum in the complaint no. 1453/1/23/10 titled as Renny Steels v. HPSEBL and others, whereby the Forum passed orders against the complainant.

FACTS OF THE CASE

3.

| Date | Event | Annexure |
|------------|--|----------|
| Aug 2017 | The complainant could not make the payment against the monthly bills by the due date. The respondents levied late payment surcharge, initially @ 2% per month or part thereof and later in 2020 the rate of LPS was reduced to 1.5% per month or part thereof. As is evident from the sample bills attached. | C1 |
| 21.08.2018 | The complainant preferred a complaint before CGRF vide complaint no. 1453/2/18/037 in | |



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| | respect of overhauling of Infrastructure Development Charges. | |
| 13.11.2018 | The complainant was successful and the matter was decided in favour of the complainant by the CGRF. | C2 |
| 21.07.2019 | The respondents partially complied with the direction no. 1 of the orders of the CGRF and adjusted a sum of Rs. 22.71 lakhs in the electricity bills issued to the complainant. No interest was paid on the said amount. Direction No. 2 of the orders remained totally non-complied. | |
| 27.11.2019 | The financial problems faced by the complainant forced him to declare an indefinite lockout in his factory. At the time the complainant had outstanding dues towards unpaid bills amounting to Rs. 3,12,78,052.14. The complainant resumed operations w.e.f. December, 2020 which was intimated to the respondents vide his letter dated 27.11.2020. | |
| 27.11.2019 | The complainant also preferred CWP NO. 3849 of 2019 before the Hon'ble High Court of Himachal Pradesh, aggrieved by the non-refund/adjustment of his refundable amount resulting out of orders dated orders dated 13.11.2018 passed by CGRF (Annexure C2) in Complaint No. 1453/2/18/037 and the reflection of the arrears in the bills /dues payable to the respondents in an unjustified and unreasonable manner. | |



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| 28.11.2019 | The Hon'ble High Court restrained the respondents from disconnection of electricity vide its orders dated 28.11.2019. | C3 |
| Dec 2019 to Nov 2020 | <p>The manufacturing operations of the complainant remained shut during this period. The respondents levied demand charges in excess amounting to Rs. 1,45,29,758.50, on which the late payment surcharge has amounted to Rs. 89,93,615.31 upto January 2023 by also levying surcharge on surcharge as per the detailed calculations carried out by the complainant.</p> <p>Note: The complainant has filed a separate complaint before this Hon'ble Forum to decide on the issue of levy of demand charges during the lock-out period. If successful, the corresponding late payment surcharge will also be required to be automatically reversed on the relief, if any, given by this Forum. The matter of the current complaint, is purely the methodology of calculation of the late payment surcharge.</p> | |
| 07.11.2022 | The respondents issued a demand notice demand notice to the complainant in respect of the unpaid dues, being reflected in the energy bills issued by them. | C4 |
| 25.11.2022 | The complainant being threatened by disconnection of power supply due to accumulation of unpaid dues, filed CWP No 8203 of 2022 before the Hon'ble High Court of Himachal Pradesh for overhauling of his | |



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| | account while the matter of excess billing during the lock-out period was also one of the contentions of the complainant. | |
| 29.11.2022 | The respondents disconnected the supply of the complainant on 29.11.2022, which was restored on 15.12.2022 after the orders passed by Hon'ble High Court of Himachal Pradesh dated 05.12.2022 in CWP No. 8203 of 2022 after the deposit of the first instalment of Rs. 1,14,14,891/- as per orders of the Hon'ble High Court. | |
| 05.12.2022 | The Hon'ble High Court of Himachal Pradesh disposed CWP No 8203 of 2022 , while it ordered on 05.12.2022 that out of the total dues claimed by the respondents amounting to Rs. 10,27,34,021/-, the complainant must pay the one third of the said amount in three equal instalments of Rs. 1,14,14,891/- each at an interval of 15 days, while it was also ordered that the complainant should approach the CGRF for the redressal of his grievance under section 42(5) of the Electricity Act, 2003. The Hon'ble Court also restricted the CGRF from insisting on further payment/ deposit while deciding the dispute after the amount of Rs. 3,42,44,674/- is paid by the complainant. | C5 |
| 13.12.2022 | CWP NO. 3849 of 2019 was also disposed by the Hon'ble Court in view of the orders dated 05.12.2022 in CWP No 8203 of 2022 . | C6 |
| | As per orders dated 05.12.2022 of the Hon'ble High Court in CWP 8203 of 2022, the | C7 |



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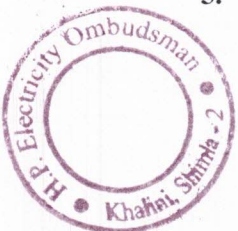
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| | complainant deposited the amount as ordered to be paid in three instalments. While the complainant had sought further extension of time for deposit of these instalments from the Hon'ble High Court, who disallowed the same and hence the amounts were deposited as per earlier orders. | |
| 08.02.2023 | The complainant decided to file separate subject-wise complaints on this matter his accumulated arrears before the CGRF as directed by the Hon'ble High Court in orders dated 05.12.2022 in CWP No. 8203 of 2022. The complainant has already filed a separate complaint seeking in the waiver on levy of excess demand charges during force majeure conditions resulting in lockout and also late payment surcharge actually charged thereof on such excess charged amount. This grievance is only restricted to challenge the methodology of calculation and levy of late payment surcharge. | |
| 09.05.2023 | CGRF dismissed the complaint with no relief to the complainant | C9 |

CONTENTIONS OF THE APPELLANT/ COMPLAINANT

4. Complainant Submits that the orders passed by CGRF in complaint no. 1453/1/23/10 are not in the interest of justice and contravenes the applicable rules and regulations and the complainant deserves relief in the late payment surcharge which has been wrongly computed.
5. Complainant Submits that the CGRF had passed orders dated 09.05.2023 in Complaint No 1453/1/23/10, without actually considering the applicable rules and have denied relief to the complainant.



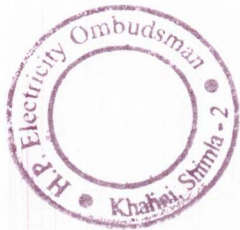
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- a. The Forum has wrongly concluded in Para 45 of the order that the complainant's reliance on the judgement of the Karnataka High Court and income tax cess and law, is utterly misplaced. It is pertinent to mention over here that the said judgement deals with exactly the same issue in which the late payment surcharge levied by another electricity board is under litigation, where the language is exactly the same as in the tariff notified by HPERC. The authorities of higher court are used to substantiate the issues in the judicial process and the Forum has wrongly chosen to ignore it. But, strangely, the Forum itself takes support of various judgements announced by several courts in India, in order to support its own decision/ orders. There is no denying that the merits of each case have to be considered even while deriving something from any such judgement. The said judgement was attached with the complaint, but as the Forum states the same is not on record is probably an error in filing the documents and is of clerical nature.
 - b. The Forum in Para 46 and 47 have brought out the necessity of the imposition of the late payment of surcharge and the reasons for such levy. But at the same time it is contested that such levies cannot be stretched beyond its meaning for a wrongful gain of the utility as has been contested in the complaint. The methodology of calculations of the late payment surcharge is a bona fide issue which the complainant has raised before this Forum, primarily on two issues that the late payment surcharge should not be charged on monthly basis, but for the actual period of delay in making payment on pro rata basis at the rate of 1.5% per month and the second issue being that the late payment surcharge is to be levied on simple basis and not to be compounded. Nowhere in the tariff or any other regulations has it been mentioned that the surcharge is also to be levied on late payment surcharge component (compounding of late payment surcharge).
 - c. The Forum in Para 48 has wrongly concluded that late payment surcharge is not similar to bank interest. In fact, the surcharge is a kind of interest imposed to compensate the utility for the delay in payments without prejudice to their other rights under the law.
6. Complainants Submits that the complaint has been wrongly held as argumentative, baseless and without any merit.
 7. Complainants Submits that the Ld. Forum has wrongly observed in the concluding para that the instant complaint is merely argumentative. The complainant has raised basis questions which are required to be answered in order to serve the interest of justice in the instant complaint. It is strange for the Forum to observe that they cannot interpret the tariff order. It is not possible to decide any issue without a reasonable interpretation, whatever the dispute maybe. The correct interpretation of rules and regulations and understanding their meaning is the crux of passing any judgement in the judicial process. It is wrongly denied by the Ld. Forum that CGRF does not have powers to interpret the tariff orders etc. notified by the HPERC. It is pertinent to mention over here that in a plethora of complaints the Ld. CGRF interpreted the provisions of the 2nd amendment modifying Clause 3.10 of the Supply Code, 2009 viz. the complaints of Mohan Meakin Ltd., B N Enterprises, and Milestone Gears Pvt. Ltd. It is also pertinent to mention over here that a different interpretation has been derived by the Ombudsman in these cases, than what was



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interpreted by the Forum. It is important to accept that no case can be decided without interpretation of law, whether it is Act, Rule, or regulations. It is only when the different interpretations arise that the Courts of law intervene to pass judgements to deliver overall justice in view of the basic intentions of the legislation. Force majeure has been recognized by HPERC in the tariff order itself and the same has to be honored by the respondents.

8. Complainants Submits that in Para 50 and 51 The Forum has wrongly observed that matter should have been taken up with HPERC at the time of filing objections/suggestions. The matter in dispute is not what the HPERC has notified, but it is the matter of implementation of the true intentions of HPERC while notifying the relevant provisions. The complainant is not seeking any amendment in the notified provisions with respect to late payment surcharge. The complainant is not seeking any retrospective change in the content of the provisions of the late payment surcharge, but is only seeking overhauling of his account for the last few years, even when the same provisions were applicable in the past times also. Therefore, there is no question of retrospectivity.
9. Complainants Submits that the complainant is not raising any dispute saying that the prevailing rules are faulty are there is any confusion or difficulty being faced with respect to tariff order or the rules and regulations. Therefore, it is not correct for the CGRF to observe in Para 53 of the orders that the complainant should approach HPERC in case of any dispute regarding the tariff orders. The complainant has nothing against the tariff order. There is no issue of interpretation. It is the respondent's interpretation/implementation that is faulty as a result of which the complainant has been overcharged.

10. Prayer:

In view of above submissions, the complainant firm prays to Hon'ble Ombudsman:

- a. To quash and set aside the orders passed by the CGRF in complaint no. 1453/1/23/10;
- b. To direct the respondents not to take any coercive action against the complainant in conformance with the orders dated 05.12.2022 of the Hon'ble High Court of Himachal Pradesh in CWP NO. 8203 of 2022;
- c. To direct the respondents to overhaul the account of the arrears shown as due and recoverable form the complainant by charging the late payment surcharge on the basis of actual delay period @ 2% per month or 1.5 % per month as applicable during the period;
- d. To direct the respondents to overhaul the account of the arrears shown as due and recoverable form the complainant by charging the late payment surcharge on simple calculation basis while disallowing the compounding on the late payment surcharge;
- e. To direct the respondents to levy 12% simple interest on the late payments in lieu of late payment surcharge for the past overhauling as an alternative and as a relief to the complainant due to financial hardship faced by him and in order to keep the complainant's unit in working and as a measure of reconciliation;
- f. To direct the respondents to overhaul the overall dues shown as arrears and segregate the same into the principle due, late payment surcharge due and other dues if any;



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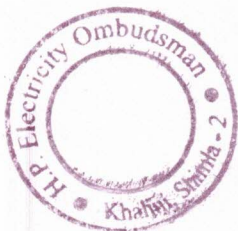
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- g. Cost of the complaint amounting to Rs. 2,00,000/-.
 - h. Call for the record of the case.
 - i. Any other or further orders which this Hon'ble Forum may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the complainant company and against the respondents/distribution licensees.
11. Complainant Submits that he had also filed an Application under Regulation 36 of the HPERC Consumer Grievances Redressal (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013 read with Section 151 of the CPC for staying the recovery of arrears in line with the Para (ii) of the Orders dated 05.12.2022 in CWP NO. 8203 of 2022 passed by the Hon'ble High Court of Himachal Pradesh.
- a. That the complainant/applicant had approached the Hon'ble High Court of Himachal Pradesh vide CWP No. 8203 of 2022 on several matters resulting in unpaid dues shown as recoverable from the complainant, one of which matters is the matter of this complaint.
 - b. That the Hon'ble High Court of Himachal Pradesh while disposing the CWP No. 8203 of 2022 in Para (ii) of the orders issued directions as below:
"(ii) The petitioner-firm shall approach the Consumer Grievances Redressal Forum, Kasumpti, Shimla-9 as provided under Section 42(5) of the Electricity Act, 2003. The Consumer Grievances Redressal Forum shall not insist on further payment/deposit of amount by the petitioner-firm and shall decide the case of the petitioner-firm after the petitioner-firm has deposited the entire aforesaid amount of Rs. 3,42,44,674/-."
 - c. That the complainant had already deposited payments to the respondents for Rs. 3,42,44,674/-, as detailed in **Annexure C-7** of the complaint. Out of this a sum of Rs. 5.00 lakh was deposited on the orders passed by the Hon'ble High Court of Himachal Pradesh in CWP NO. 2530 of 2017. The said amount calculates to more than 50% of the disputed amount in the instant complaint and stay does not require the deposit of any further amount as per the directions of the Hon'ble High Court.
 - d. That the complainant is threatened by the coercive action in terms of disconnection of power supply, or any other coercive action, while the matter is in consideration before this Hon'ble Forum. Any such action by the respondents shall cause irreparable loss to the complainant which cannot be monetarily compensated.
 - e. That the complainant prays for interim relief in terms of the issuance of stay orders directing the respondents not to take any coercive action during the pendency of this matter before this Hon'ble Forum or for recovery of the dues reflected as arrears in the energy bills issued to the complainant.
 - f. It is, therefore, most humbly and respectfully prayed that this application may kindly be allowed and during the pendency of the complaint /application, OR any other or further orders which this Hon'ble Forum may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the complainant company and against the respondents/distribution licensees.

C- Respondent's Submission:

1. Respondent Submits Reply to the complaint filed by the complainant under Regulations 28 1 (C) of the HPERC (CGRF and Ombudsman) Regulations, 2013.
2. Respondent Submits that the complainant/representation filed by the complainant is neither maintainable nor competent in the eyes of law in as much as the complainant has not deposited the mandatory deposit of 50% of the amount as per provisions of Regulations 33 (1) (g) of the HPERC



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(CGRF and Ombudsman) Regulations, 2013, as such the complainant is outrightly liable to be rejected. It is pertinent to submit here that the complainant had deposited the 1/3rd of the disputed amount to the tune of Rs. 3,42,44,674/- before the Id CGRF and as per the mandate of the regulation supra, the 50 % amount as assessed by the Id Forum is liable to deposited which becomes around Rs 1,71,22,336/-. It is submitted that until this amount is not deposited, the representation cannot be maintainable.

3. Respondent Submits that the complaint filed by the complainant is maintainable in the eyes of law in as much as same is barred by limitation as prescribed under Regulation 19 (c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. It is submitted that as per mandate of Regulation 19 (c) of the ibid regulations, the forum may reject the grievances at any stage in cases where the grievances has been submitted two years after the date on which the cause of action has arisen. It is submitted that the later payment surcharge (LPS) is not a new component in the tariff order as the Hon'ble Commission has only revived the rates from time to time and further the complainant has never challenged the correctness of the LPS as contained in the tariff order, at this belated stage, the complaint is not maintainable as such the same is liable be dismissed on this sole count.
4. Respondent Submits that the present complaint filed by the complainant is complete afterthought as same has been filed after receiving the disconnection notice dated 07-11-2022 issued by the replying respondent on account of the non-payment of energy bill to tune of 9,23,72,139/- a copy of disconnection notice dated 07-11-2022 has already placed on record with the complaint before the Id Forum, which kindly be perused.
 - a. That the Id Forum vide impugned order dated 09-05-2023 has rightly dismissed the complaint filed by the complainant by appreciating all relevant material, regulations governing the field and the tariff order issued by the Hon'ble HPERC, as such there is no such interference warranted by this Hon'ble Ombudsman.
 - b. That the complainant has suppressed the material facts before this Id Forum as such the complaint as preferred is liable to be dismissed.

Reply on Merits:

5. Respondent Submits that the contents of para No 1-2 of the complaint in so far they pertain to the matter of record are not denied rest of the averments which are contrary to the record are denied specifically.

Reply to the contentions of the appellant/complainant

6. Respondent Submits that the contents of this para are totally wrong and incorrect hence denied. It is specifically denied that the Id Forum has passed order by ignoring the rules and regulations governing the field. However, it is submitted that if the order of the Id Forum is perused, it will leaves no manner of doubt that the impugned order is well reasoned and speaking one which dealt each and every issue involved in the case.
7. Respondent Submits that the contents of this para are wrong and incorrect hence denied.
8. Respondent Submits that the contents of this para are wrong and incorrect hence denied. It is submitted with the utmost respect that complainant has totally misconceived and misunderstood as the instant matter is governed by its own applicable statute and merits. The instant matter is governed by the tariff orders passed by the Ld. HPERC under Electricity Act, 2003 and regulations and rules framed there under.



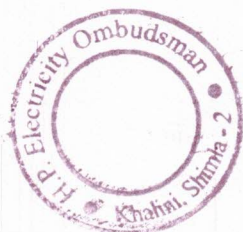
Perusal



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9. Respondent Submits that the contents of this para are wrong and incorrect hence denied. It is submitted that respondent have levied Late Payment Surcharge strictly in terms of the tariff order issued by the Hon'ble Commission. Moreover, it is submitted that at the time of issuance of tariff order, the Hon'ble Commission has called objections/suggestions from the stakeholders and holds the public hearing before the issuance of the tariff order. This issue could be represented in the Hon'ble Commission at the time of the tariff proceedings but the complainant did not file any objections on this issues and before this Id Ombudsman, this issue cannot be adjudicated or interpreted.
10. Respondent Submits that the contents of this para are wrong and incorrect hence denied. It is submitted that complainant is trying to make out a case on the very hypothetical grounds/premises as such the Id CGRF has rightly dismissed the complaint. As submitted in the para supra, since this issue is purely falls within the jurisdiction of the Hon'ble HPERC, the respondents would not have any objections if, the reference is made to the Hon'ble Commission by this Id Ombudsman for the sake of clarity and interpretation.
11. Respondent Submits that the contents of this para are wrong and incorrect hence denied. It is submitted that late payment surcharge is essential component of the tariff order hence the respondents have rightly levied the demand charges. The Id Forum has decided the complaint on merits hence the order of the Id Forum is liable to upheld.
12. Respondent Submits that the contents this para are wrong and incorrect hence denied. It is submitted that interpretation of the tariff order cannot be undertaken by the Id CGRF or the Ld Electricity Ombudsman. It is submitted that if any interpretation is required, the Hon'ble Commission being the author of the Tariff Order has jurisdiction to interpret the same. The complainant is wrongly placing reliance on the clause 3.10 of the HP Electricity Supply Code, 2009 as the facts of the that matter are totally different from the present matter. However, it is added that for the sake of clarity, if interpretation of the clause 3.10 of the Supply code arises, then it only the Hon'ble HPERC, where the jurisdiction lies. The Id CGRF and Ombudsman are bound to follow the plain and clear language of the tariff order, Regulations etc. issued by the Hon'ble HPERC.
13. Respondent Submits that the contents of this para are wrong and incorrect hence denied. It is submitted that complainant is trying the mix and match the entire matter and trying to interpret the tariff order directly or indirectly in his favour. It is submitted that complainant in the garb of litigations, trying to evade from the payment of statutory electricity dues and other charges, which resulted the outstanding to the tune of 10 crore, which is not good for the health of the distribution licensee.
14. Respondent Submits that the contents of this para are totally misconceived. It is submitted that the interpretation of the tariff order is required to offered by the Hon'ble Commission who is author of the tariff order as such if the Id. Ombudsman thinks appropriate to refer the matter for interpretation before the Hon'ble HPERC, the respondent would not have any objection. However, it is submitted at the cost of repetition that for setting the controversy at rest for all times, proper course of action may be adopted by way of making a reference to the Hon'ble Commission.
15. Respondent Submits that in view of the facts and circumstances narrated herein above, the complaint of the complainant is liable to be dismissed.



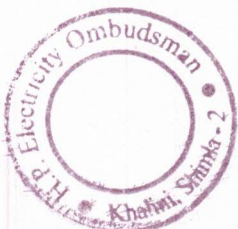


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D – The Complainant’s Additional Submission through Rejoinder:

1. That the respondents are wrong in stating that the representation is not maintainable as the mandatory deposit of 50% under the provisions of Regulation 33(1)(g) of the HPERC (CGRF and Ombudsman) Regulations, 2013. In respect of this the complainant submits as below:
 - i) That it is pertinent to mention over here that the Hon’ble High Court while remanding back the disputes of the complainant to the Consumer Grievances Redressal Forum in its order dated 05.12.2022 in CWP 8203 of 2022 had directed that the complainant must deposit a sum of Rs. 3,42,44,674/- in order to seek alternative remedy starting from CGRF. The Hon’ble High Court never issued any directions that any additional amount is required to be deposited by the complainant.
 - ii) The amount in the present dispute, as has been stated by the complainant, amounts to Rs. 3 Crores on account of late payment surcharge, 50% of which amounts to 1.50 crores. The other dispute which is listed as Case No. 15 before the Hon’ble Ombudsman is on account of force majeure is of about 2.35 crores. There is a third dispute in which the orders passed by CGRF was challenged by the respondents before the High Court in CWP NO. 2100 of 2021. The refund due to the complainant in that case is over Rs. 1 crore approximately, the exact figures of which will be worked out in due course. The said CWP has been dismissed by the Hon’ble High Court recently. The net amount in disputes thus work out to only about Rs. 4 crores against which the complainant has already deposited Rs. 3.42 crores on the directions of the Hon’ble High Court, which is actually much more than 50% of the disputed amounts including all three disputes.
 - iii) That the High Court had observed and directed to deposit the one-third of the amount of Rs. 10.27 crores, which was the total billed liability/ outstanding shown by the respondents. As such Rs. 10.27 crores may include such amounts which are not a part of any of the three disputes pending to be settled by the respondents. One-third of 10.27 crores is far more than 50% of the net disputed amounts in all three complaints.
 - iv) That the Ld. CGRF failed to determine the specific amount that stands payable by the complainant in its orders. The provision 33(1)(g) requires the complainant to deposit 50% of the amount assessed by the Forum. No amount has been assessed to be paid by the Forum after the adjustment of Rs. 3.42 crores ordered by the Hon’ble High Court. Hence the mandatory deposit of 50% is not applicable in the present case as no amount has been assessed to be paid by the complainant. All that is available is complainant’s own calculations, as per which the amount of 50% stands more than covered.
 - v) That the Hon’ble High Court in its order dated 05.12.2023 (Annexure C11) in para 4(vi) has amply made it clear that matters have to be dealt on merits, rather than on technical grounds. Had the Hon’ble High Court not ordered the deposit of Rs. 3.42 crores, the Hon’ble Ombudsman would have been free to demand the deposit of 50% amount, which although stands deposited in the present case.
2. Complainant submits that the respondents’ contention that the complaint is not maintainable under Regulation 19 (c) which requires the complainant to approach the Forum within a period of two years. The complainant in this matter of dispute has challenged the calculation methodology of late payment surcharge which is a continuous cause of action and the complainant’s disputes was under adjudication before the Hon’ble High Court, who has provided liberty to approach the CGRF and



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seek alternative remedy. The limiting period under Regulation 19(c) is not applicable for any proceedings before the Hon'ble Ombudsman and it does not restrict in any manner to deal with the orders passed by CGRF. Moreover, CGRF has not rejected the complainant on the ground that it is time-barred.

3. Complainant submits that the plea of the respondent that the contention of the complainant in the present case is an afterthought is not sustainable. Whether, the complainant demands or not, the respondents are bound with the provisions of the rules and regulations and issue correct bills to the complainant. The complainant is at liberty to challenge the wrong calculations with regard to late payment surcharge at any point of time. The fact that the complainant never raised this issue earlier does not diminish the right to approach the CGRF or the Ombudsman for a billing dispute. The orders dated 05.12.2022 passed by Hon'ble High Court categorically directs that the matters be concluded on merits, which if necessary will require the attention of the Hon'ble High Court at a later stage. Any rejection on technical grounds will necessarily seek the Hon'ble Court's intervention once again in the matter.
- 4.. Complainant submits that it is denied that the CGRF has rightly dismissed the complaint. The complainant has approached the Hon'ble Ombudsman, as he is dissatisfied with the orders passed by CGRF, which is well within his rights.
5. Complainant submits that the respondent has not indicated any clarity on what has been suppressed by the complainant and his words in this para are practically meaningless.

Reply on Merits:

6. Complainant submits that the contents of this para of reply are denied.
7. Complainant submits that the complainant maintains the contents of this para.
8. Complainant submits that the contents of this para in reply are merely a reference to the statute and it is not denied that the matter is governed by tariff orders passed by Ld. HPERC under the Electricity Act, 2003 and the regulations and rules framed there under.
9. Complainant submits that the contents of this para of reply are denied. The respondents' contention that the tariff orders are issued after calling for objections/ suggestions is irrelevant and misplaced in the present matter. The complainant in this representation is not challenging the provisions of the tariff order, but is seeking the correct implementation of the provisions related to levy of late payment surcharge. The wrong implementation of tariff provisions is not eligible for taking up before the Commission at the time of filing objections. The objections suggestions are limited to the tariff petition filed by the respondents.
10. Complainant submits that the contents of this para of reply are denied. The individual billing disputes do not fall into the jurisdiction of the Hon'ble HPERC. The Commission has in several orders categorically denied to intervene into the individual disputes.
11. Complainant submits that the contents of this para of reply are denied.
12. Complainant submits that the respondents statement lacks logic as whether it is para 3.10 of the Supply Code, 2009 or whether it is the tariff order, both of which lie within the jurisdiction of the Commission. The respondents have always been



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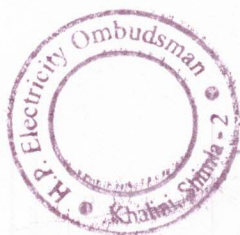
interpreting whatever is written in the tariff order or what is written in any rules and regulation notified by the Commission. They have been doing their best in understanding the text of the legal provisions, which does not necessarily mean that the manner in which they have understood is correct. This dispute is a very simple dispute questioning the compounding of the late payment surcharge which is nowhere written in the tariff order. Also, in addition, the complainant is right in understanding that the late payment surcharge is to be charged on pro-rata basis for the delay and not in a manner that the same amount of late payment surcharge is leviable for delays between 1 and 30 days.

13. Complainant submits that the contents of this para of reply are denied. In fact, it is not that the complainant is trying to mix and match the entire matter. The contentions of the complainant are well within the wordings of the applicable rules. Whereas, the respondents are trying to stretch the provisions in a manner to wrongfully gain from such stretching of provisions. It must be noted and taken on record, that we have seen several units closing down permanently purely on account of wrong levy of late payment surcharge. The manner in which the late payment surcharge is levied does not let a unit to survive, once a consumer falls into the trap of delayed payment. The late payment surcharge has to be logical and is applicable in fair and justified manner as it is a measure only to compensate the respondents for any delay in the payment and is another form of interest. The late payment surcharge (as the name suggests) is not incorporated with a motive that the respondent utility makes undue profit on the same.
14. Complainant submits that the contents of the para of reply are misconceived and misplaced. The respondents are unnecessarily making it an issue of clarification, whereas it is not a matter that needs any kind of clarification. The words and terms used in the provision for late payment surcharge are commonly being used elsewhere in the day to day dealings and it is not a new language. Even the Commission is not empowered to change the legal meaning of the relevant clause by way of clarification.
15. Complainant prays that the submissions made herein in the shape of this rejoinder may be considered part and parcel of the earlier submissions made by the complainant. The contentions of the complainant remain unredressed even after the filing of reply by the respondents, which may be decided by the Hon'ble Forum.

E- Complainant's Written Arguments

The Complainant submitted written arguments on dt. 28.09.2023 during the course of final arguments which were also taken on record and are reproduced as under:

1. That the arguments on maintainability of the representation are already on record in the rejoinder filed by the complainant.
2. That the billing software design is not proper with regard to the levy of late payment surcharge, for which the undermentioned instances are given below:
 - a) The respondents are computing and levying the late payment surcharge for full month even when the delay is only a part month, which is in contravention of the notified provisions. For instance, if the due date is 23.10.2022 and the complainant makes full payment on



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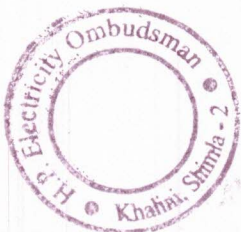
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24.10.2022, the respondents charge the late payment surcharge for a full month even though the delay is for only one day. Similarly, the same amount of late payment surcharge is levied even if the same payment is made after 15 or 30 days. The understanding of the notified provision is grossly in error and billing software does not levy the late payment surcharge in a correct manner. The term '*per month or part thereof*' is very clear that the late payment surcharge is to be levied on the monthly basis, wherein the part month is also allowed. Therefore, the late payment surcharge is required to be calculated on the basis of part month, whenever the delay is only of a few days. The late payment surcharge, in the interest of fairness must be computed on per day basis at the monthly rate notified by the Commission. The complainant has also in support of his contention added the judgement of the Karnataka High Court at Annexure C8 on Pages 64-68 of the representation, which is on an identical matter. The Karnataka High Court in the said case has interpreted the meaning of words 'part thereof' in a very clear manner. The complainant in this representation has prayed for same relief as was before the Karnataka High Court, which is also in the matter of the electricity board of Karnataka. While in the tariff order of Himachal the same is referred as Para J of the general conditions to the tariff order, the similar provision existed in regulation 30.05 of the Karnataka Electricity Supply Regulation of 1988. While in the Karnataka Regulation the compensation for delayed payment has been called as interest instead of late payment surcharge, which practically amount to the same thing. The Hon'ble High Court has clearly derived the meaning of the words 'part thereof'. The bench observed that "*It is declared that the Regulation 30.05 of the Supply Regulation authorizes the respondent-Board to levy interest at the rate of 2 per cent only on the number of actual days of delay in making the payment of electricity consumption bills and not for the whole month.*" in the last para of the judgement.

Also, the CGRF in complaint number **1432/2/018/001 in the case of M/s Shree Siddi Vinayak Tor Pvt. Ltd. in its order dated 25.04.2018 (copy attached)** held that since the payment against the bill was delayed by three days, the late payment surcharge be levied only for 3 days, the late payment surcharge cannot be levied for a full month. The CGRF ordered the late payment surcharge to be levied on pro-rata basis. The said order of the CGRF was compiled by the respondents and was never assailed before any court of law, proving their acceptance of the order. The respondents have still not corrected their billing software to this effect.

- b) The billing software adopted by the respondent is also on regular basis transferred the late payment surcharge into the category of SOP, which means sale of power. As a result of this the software is reapplying the late payment surcharge on the late payment surcharge previously charged. This has resulted in further compounding of the surcharge in the case of continued default for a period beyond one month. There is no such provision in the tariff or rules / regulations notified by the provision.
- c) Another type of error in the calculation of late payment surcharge has been observed by the complainant, which result in levy of double levy of late payment surcharge besides the above two instances. The complainant wishes to highlight the same through the following example:

Let us assume that a bill is raised on a consumer on 13.10.2022 for Rs. 1,00,000/- excluding taxes and duties. The due date of such bill as per rules would be 23.10.2022. Let us assume that the complainant makes this payment along with surcharge of Rs. 1500 @ 1.5% on 15.11.2022 with a delay of 23 days from the due date i.e. 23.10.2022. As per routine the



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respondents issue the bill for next month on 13.11.2022, which is before the date of payment of the earlier bill. The respondents reflect Rs. 1,01,500/- as arrears in the next bill, on which again the late payment surcharge is levied in the fresh bill. Since the complainant already paid the earlier amount with a delay of less than one month, he suffers late payment surcharge for two months.

3. In view of above, the complainant prays that the arguments made herein may be considered part and parcel of the earlier submissions made by the complainant.

F- Respondent's Written Arguments:

The Respondent Board preferred verbal arguments and did not submit written arguments during the course of final arguments on dt. 28.09.2023.

G- CGRF ORDER

1. The Forum has examined the instant two complaints on merits.
2. The Forum has also examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, HP Electricity Supply Code, 2009 notified by the HPERC, amendments thereto, the Tariff Orders passed by the Ld HPERC 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 considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties.
3. At the outset Forum finds that the Complainant has approached this Forum to answer argumentative questions reproduced supra and to consequently seek relief. These questions are in terms of provisions of Force-Majeure and Late Payment Surcharge contained in the yearly Tariff Orders passed by the Ld HPERC and thus these constitute the two issues for determination by this Forum;
4. The Forum is of the considered opinion that despite the fact that the Forum is not bound to answer questions raised by way of complaints, yet the Forum feels it necessary to briefly delve on these provisions of Force Majeure and Late Payment Surcharge appearing respectively as clause/ para 'E' and 'J' under Part-1 in Annexure -1 General Conditions of Tariff and Schedule of Tariff contained in the Tariff Orders. These are reproduced here-in-after for the sake of clarity –
 - (i) Tariff Orders in general passed by the Ld HPERC:
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 E. *Force Majeure Clause: In the event of lockout, fire or any other circumstances considered by the HPSEBL to be beyond the control of the consumer, he shall be entitled to proportionate reduction in demand charge or any other fixed charge, if applicable, provided he serves at least 3 day notice on the supplier for shut down of not less than 15 days duration. Un-Quote* (ii) Tariff Order (MYT) dated 29.06.2019 and earlier passed by the Ld HPERC:
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 J. *Late Payment Surcharge (LPS): Surcharge for late payment shall be levied at the rate of 2% per month or part thereof, on the outstanding amount excluding electricity duty/ taxes for all the consumer categories.*



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Un-Quote

(iii) Tariff Orders passed after 29.06.2019 passed by the Ld HPERC:

Quote

J. *Late Payment Surcharge (LPS): Surcharge for late payment shall be levied at the rate of 1.5% per month or part thereof, on the outstanding amount excluding electricity duty/ taxes for all the consumer categories.*

Un-Quote

(A) Complaint No 1453/1/23/10:

5. The Forum now takes up and delves on the second issue of Late Payment Surcharge (LPS) raised by the Complainant, which is a provision contained in Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the HPERC) and reproduced in paras supra. The relevant provision of Late Payment Surcharge (LPS) has been reproduced in paras supra appearing at para / clause 'J' of the Tariff Orders –
6. At the outset, the Forum observes that the Complainants reliance on the Orders of the Hon'ble High Court of Karnataka (not placed on record) and Income tax laws and cess law, is utterly misplaced. The Forum cannot see as to how these are applicable in the context of the instant matter which is governed by its own applicable statute and merits. The instant matter is governed by the Tariff Orders passed by the Ld HPERC under the Electricity Act, 2003 and Regulations and Rules framed thereunder. It is an established preposition of law that each matter is to be decided on its own set of merits;
7. In the instant matter, as has been held by the Forum in paras supra, the Respondent licensee has incurred a cost on providing service or good to the consumers of the State including the Complainant. Further, the Ld HPERC allows the distribution licensee to recover these costs by way of tariffs / charges determined by it in its Tariff Orders. These tariffs / charges are of statutory nature. In order to recover these charges and prevent defaults or delayed payments by the consumers, deterrent provisions in terms of disconnections and Late Payment Surcharge (LPS) are specified by the Ld HPERC in its Tariff Orders passed in accordance with the extant laws governing the power sector;
8. The Forum after examining the bills raised by the Respondent to the Complainant and Late Payment Surcharge (or LPS) levied therein, find that the provision of Late Payment surcharge (or LPS) contained in the Tariff Orders has been applied correctly by the Respondent HPSEBL and is in line with the Tariff provisions. The Complainant is accordingly liable to pay the same and is not entitled to any relief what-so-ever on this count;
9. In the instant matter, the Forum further holds that Late Payment Surcharge (LPS) is not a bank Interest. Had it been so, the Ld HPERC would have referred it as such in its Tariff Orders and not as surcharge. This is a deterrent provision for non-payment or delayed payments by the consumers of dues of the licensee. Accordingly, the Forum concludes that the Complainant has wrongly questioned the applicability and implementation of the provision of Late Payment Surcharge (LPS) in the hands of the Respondent;
10. The Forum further finds that the questions raised by the Complainant to the Forum, reproduced in paras supra, directly or indirectly seek interpretation on provisions of Tariff Orders passed by the Ld HPERC. There is no doubt in the mind of the Forum that the Forum lacks jurisdiction to interpret Tariff Orders. The Forum agrees with the



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Respondent that it is not within Forum's jurisdiction to interpret Tariff Orders passed by the Ld HPERC;

11. The Forum is also in agreement with the Respondent that it was open to the Complainant to have raised objections before the Ld HPERC when the objections and suggestions may have been invited during the ongoing process of determination of tariffs prior to the passing of Tariff Orders, in so many years;
12. The Forum further observes that despite knowing and understanding the preposition of law on its retrospective effect, the Complainant seeks retrospective relief herein on tariffs or statutory provisions which have already attained finality, simply by way of interpretation to these by any authority. The Forum holds that while the cause of action may have arisen to the Complainant when the first bill was raised, it is the fault of the Complainant to not have approached the appropriate authority then for the interpretation and clarification on the Tariff Orders;
13. The Forum is of the considered opinion that even if any authority with which the jurisdiction to interpret is vested, were to clarify or interpret Tariff Orders passed by the Ld HPERC at a later date, it would still not cause to give retrospective effect to application of Tariff Orders. Thus the Complainant is not entitled to any relief, retrospective or other-wise, what-so-ever;
14. On examination of various Tariff Orders passed by the Ld HPERC, under Part-1 in Annexure -1 General Conditions of Tariff and Schedule of Tariff, the Forum also finds the following specific provision / para on interpretation of Tariff Orders which is reproduced for clarity—
“In case any dispute regarding interpretation of this tariff order and/or applicability of this tariff arises, the decision of the Commission will be final and binding.”
Accordingly, the Forum is convinced that giving Interpretation to Tariff Orders passed by the Ld HPERC, is not within its jurisdiction to do so.
15. The Forum concludes that the Complainant is not entitled to any special treatment or to any relief whatsoever for the defaults on its part and is liable to pay the Late Payment Surcharge for delayed payment or for nonpayment of dues of the Respondent licensee as specified by the Ld HPERC in its Tariff Orders;
16. On the anvil of foregoing, the Forum concludes that the instant complaints filed before it are baseless and without any merit. These complaints are clearly of argumentative nature, merely raising therein questions on the interpretation of Tariff Orders passed by the Ld HPERC and at the same time being without any cause of action. The Complainant has not come before the Forum for redressal of its grievances but appears to have come to this Forum only to raise questions and issues mainly involving interpretations of the Tariff Orders passed by the Hon'ble Commission from time to time and involving therein no cause of action. Issues of Interpretations are beyond the scope of this Consumer Grievances Redressal Forum (or CGRF) mandate and irrelevant to complaints / grievance of Complainants.
17. Thus, the present complaints are dismissed in aforesaid terms.
18. Parties are left to bear their own costs.
19. Order is announced before the parties present today on 09.05.2023 at Shimla in open Forum. The Copy of this Order shall be placed on the case file of both these complaints. Certified copies of this Order be supplied to the parties. The complaint along with this Order be consigned to record room for safe custody.



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H – Analysis of the Complaint:

1. The case file from Additional Consumer Grievance Redressal Forum at Kasumpti (Shimla Circle) in Complaint No. 1453/1/23/10 dt. 09.05.2023 have also been requisition and gone through.
2. The documents on record and arguments advanced by both the parties have also been gone through.
3. For the sake of clarity and for having overall view of the case on submissions by both the parties, the same have also been incorporated as such in this order.
4. The complainant submits that the Hon'ble High Court of Himachal Pradesh while disposing the CWP No. 8203 of 2022 in Para (ii) of the orders issued directions as below:
"(ii) The petitioner-firm shall approach the Consumer Grievances Redressal Forum, Kasumpti, Shimla-9 as provided under Section 42(5) of the Electricity Act, 2003. The Consumer Grievances Redressal Forum shall not insist on further payment/deposit of amount by the petitioner-firm and shall decide the case of the petitioner-firm after the petitioner-firm has deposited the entire aforesaid amount of Rs. 3,42,44,674/-."
5. This Appellate Forum understands that since as per the record, the Forum have not worked out any disputed amount between parties and the complainant had already submitted Rs. 3,42,44,674/- in CWP No. 8203 of 2022 and additionally Rs. 500,000/- in CWP No. 2530 of 2017 on the directions of Hon'ble High Court, there was no requirement for further deposit of any amount with the Respondent Board for initiation of the proceedings.
6. Complainant has filed complaint with the following contentions:
 - a. to direct the respondents to overhaul the account of the arrears shown as due and recoverable from the complainant by charging the late payment surcharge on the basis of actual delay period @ 2% per month or 1.5 % per month as applicable during the period;
 - b. to direct the respondents to overhaul the account of the arrears shown as due and recoverable from the complainant by charging the late payment surcharge on simple calculation basis while disallowing the compounding on the late payment surcharge;
 - c. to direct the respondents to levy 12% simple interest on the late payments in lieu of late payment surcharge for the past overhauling as an alternative and as a relief to the complainant due to financial hardship faced by him and in order to keep the complainant's unit in working and as a measure of reconciliation;
7. This Appellate Forum after going through the averments infers that the issue of financial hardships arose when the complainant construed lockout on account of Financial crisis as Force Majeure event. Whereas the apprehensions of complainant was not in consonance with the spirit of relevant provisions which are considered for acceptance as Force Majeure event.
8. CGRF in its order dt.09.05.2023 has categorically mentioned that unless the lockout happens due to external forces the event cannot be considered as Force Majeure. The instant event which was deemed to be a Force Majeure event in the eyes of complainant, occurred due to financial crisis which attributes to internal mismanagement of finances or may be due to some other reasons hampering finances resulting in lock out but not at all due to strike of workers. CGRF has elaborated at length and analyzed in a very rhythmic form that this court need not to go in details and considers CGRF proceedings as meaningful for the purpose. It is also pertinent to mention here that nothing has been brought on record which may establish that the



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lockout event was not even considered as Force Majeure by HPSEBL which was supposed to be a mandatory requirement as per clause / para E under part-1 in Annexure-1 of General Conditions of Tariff and Schedule of Tariff, the relevant extract is as under:

(i) Tariff Orders in general passed by the Ld HPERC:

Quote

E. *Force Majeure Clause: In the event of lockout, fire or any other circumstances considered by the HPSEBL to be beyond the control of the consumer, he shall be entitled to proportionate reduction in demand charge or any other fixed charges, if applicable, provided he serves at least 3 day notice on the supplier for shut down of not less than 15 days duration.*

9. This court also refers and adds relevant paras of Hon'ble High Court order dt.05.12.2022 in CWP No.8203 of 2022 Annexed as C-5 for the sake of clarity :

"(iv) We make it clear that in the event there is any default on the part of the petitioner-firm, the respondents shall be free to disconnect the electricity supply of the petitioner firm and the proceedings initiated before the Consumer Grievances Redressal Forum, Kasumpti, Shimla-9 shall stand dismissed.

(vi) We also make it clear that we have not gone into the merits of the case and the Consumer Grievances Redressal Forum, Kasumpti, Shimla-9 shall decide the matter on its own merits and in accordance with law and without being influenced by this order. All the contentions are kept open."

10. The Complainant in their submissions / arguments have given reference of the Orders of the Hon'ble High Court of Karnataka (not placed on record) and Income tax laws and cess law, is utterly misplaced. This Appellate Forum after going through the opinion of CGRF in this regard which states *"The Forum cannot see as to how these are applicable in the context of the instant matter which is governed by its own applicable statute and merits. The instant matter is governed by the Tariff Orders passed by the Ld HPERC under the Electricity Act, 2003 and Regulations and Rules framed thereunder. It is an established preposition of law that each matter is to be decided on its own set of merits;"* is convinced as the instant matter is governed in terms of statute of Hon'ble HPERC being universal for Licensee as well as consumer of the state and any misconception thereof, Power to Remove Difficulties under the provisions of Regulation 39 of (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 may be exercised.

I-Issues in Hand:

1. Issue No.1:

Overhauling of the account of the arrears shown as due and recoverable from the complainant by charging the late payment surcharge on the basis of actual delay period @ 2% per month or 1.5 % per month as applicable during the period.

2. Issue No.2 :

Levy of 12% simple interest on the late payments in lieu of late payment surcharge for the past overhauling as an alternative and as a relief to the complainant due to financial hardship



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SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
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faced by him and in order to keep the complainant's unit in working and as a measure of reconciliation.

3. Issue No.3:

overhauling the accounts of the arrears shown as due and recoverable from the complainant by charging the late payment surcharge on simple calculation basis while disallowing the compounding on the late payment surcharge .

J-Findings on the Issues :

Issue No.1 :

1. On the issue of Overhauling of the account of the arrears shown as due and recoverable from the complainant by charging the late payment surcharge on the basis of actual delay period @ 2% per month or 1.5 % per month as applicable during the period, this court deduces as under:
 2. Now since, it is not a Force Majeure event as contended, the delay in payment shall attract Late Payment Surcharge as per the mandate of following provisions of Tariff Order (MYT) dated 29.06.2019 and earlier passed by the Ld HPERC:
 - J. ***Late Payment Surcharge (LPS): Surcharge for late payment shall be levied at the rate of 2% per month or part thereof, on the outstanding amount excluding electricity duty/ taxes for all the consumer categories.***
 - (iii) Tariff Orders passed after 29.06.2019 passed by the Ld HPERC:
 - J. ***Late Payment Surcharge (LPS): Surcharge for late payment shall be levied at the rate of 1.5% per month or part thereof, on the outstanding amount excluding electricity duty/ taxes for all the consumer categories.***
3. This Appellate Forum after affirming the above mandate asserts that the LPS is a statutory provision to curb the delay in recovery process from the consumers and the contentions of Complainant i.e "Charging the late Payment Surcharge on the basis of actual delay period @ 2% per month or 1.5 % per month as applicable during the period is also misconceived on account of reference of above stated relevant provision by the complainant under Para-J of Tariff Order (MYT) dated 29.06.2019 and earlier passed by the Ld Himachal Pradesh Electricity Regulatory Commission, in isolation and not in conjunction with clause 5.5 (b) of the Supply code under "Additional Charges for Delayed Payment of Electricity" which is reproduced as below:

"The unpaid amount of the bills will be treated as part of next bill and shown as arrear in a separate Column of the bill as per S No. 11 of Annexure-B"

This Appellate after referring both Tariff order and above clause 5.5 (b) of the Supply code in conjunction, infers that the term "**Part thereof**" in the above provision of Tariff shall be read as:

Late Payment Surcharge (LPS): Surcharge for late payment or part thereof shall be levied at the rate of 1.5% per month, on the outstanding amount excluding electricity duty/ taxes for all the consumer categories.
4. This Appellate Forum after going through in depth of these provisions infers that the misconception on the interpretation should not be carried forward to injure the system. As such this Appellate concludes that the provisions of applicable tariff being exercised by the Respondent Board on levy of LPS, are in order and even stands vetted by CGRF also in their detailed adjudication process and apprehensions of Complainant on pro-rata in the said provisions construes misleading the contentions .



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Issue No.2 :

1. On the issue of Levy of 12% simple interest on the late payments in lieu of late payment surcharge for the past overhauling as an alternative and as a relief to the complainant due to financial hardship faced by him, this Appellate is opinioned as under:
2. This Appellate Forum after going through the averments and long thought process, infers that the issue of financial hardships arose when the complainant construed lockout on account of Financial crisis as Force Majeure event which was due to internal forces only i.e mismanagement of finances as mentioned in the CGRF order dt. 09.05.2023 and not attributed to the external forces or not even lockout on account of strike of workers which might lead to financial crisis or due to shortage of raw material on account of strike of transporters might lead to financial crisis. In the absence of such judicious reasons, this Appellate Forum deduces that the apprehensions of complainant are not in consonance with the spirit of relevant provisions which could be considered or recognized as Force Majeure event. The detailed analysis made by CGRF in their order dt. 09.05.2023 be read as part and parcel of this order which is sufficient to establish the crux.
3. The complainant by mentioning 12% simple interest in place of LPS is inter mingling two provisions which are entirely different in nature and implementations. It is emphasized here that the settlement @12% simple interest attracts provisions of clause 7.1.9 of Supply code Amendment dt.3rd July,2020 of sub-para 7.1.9(ii) © which is reproduced as under:
"the delayed payment surcharge shall not be charged for a period beyond the date of permanent disconnection and instead interest shall be charged on the outstanding amount, for the actual number of days for which such amount remains unrecovered/ unadjusted, at a simple interest rate of 12%per annum."
4. After observing the application of the provision 7.1.9 of Supply code Amendment dt.3rd July,2020 of sub-para 7.1.9(ii) ©, this Appellate Forum holds that the complainant has misconstrued the essence of relevant provisions of the tariff order read with the subsequent clauses of the Supply code and the above contention of complainant on settlement @12% simple interest is applicable only in the case of Permanent Disconnection and not viable in the instant case and as per the directives of the statutory provisions, the Complainant has to bear LPS on unpaid amount or part thereof which so ever applicable while doing computation. After going through the provision of above clause 7.1.9 of the Supply code , this Appellate is of the considered view that the terms LPS and Interest are two different entities in terms of Tariff analogy. That is why in the said clause it is made amply clear that LPS is not chargeable for a period beyond the date of Permanent Disconnection and 12% per annum. interest shall be charged on the outstanding amount not LPS. This Appellate Forum after analyzing the essence of said clause of supply code read with relevant provisions of Tariff Order is convinced that the contention of Complainant on levy of 12% interest instead of LPS is absurd and illicit.

Issue No.3:

1. On the issue of overhauling the accounts of the arrears shown as due and recoverable from the complainant by charging the late payment surcharge on simple calculation basis while disallowing the compounding on the late payment surcharge , this court extracts that it is a general analogy that the unpaid amount attracts LPS and when the same situation continues in the next month then the amount which becomes due in the previous month as unpaid amount including LPS and brought forward as unpaid amount in the next month which



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attracts further LPS and so on. This court is of the considered opinion that in the absence nonpayment, the cumulative effect aggregates and cannot be stopped and hence compounding thereof. This Appellate Forum finds no point of further conception when the above stated clause 7.1.9 of the supply code is full of meanings that if dues are not paid by the consumer, LPS as per Tariff Order shall be levied up to the date of permanent disconnection and simple interest of 12% on the outstanding amount thereafter, hence accumulation and compounding thereof in terms of clause 5.5(b) of the supply code which is reproduced as under:

*“The unpaid amount of the bills will be treated as **part of next** bill and shown as arrear in a separate Column of the bill as per S No. 11 of Annexure-B”*

2. This Appellate after going through the submissions, written arguments of the Complainant, reply submitted by the Respondent Board read with relevant provisions of Tariff Order and clauses of the Supply code without any doubt deduces that the contentions and apprehensions of the complainant are not in conformity with the provisions and misconceptions thereof are not in the healthy spirit of justice.

K-Order:

1. The order dt. 09.05.2023 passed by Consumer Grievances Redressal Forum in the complaint No. 1453/1/23/10 is upheld.
2. The Complainant is directed to clear all outstanding dues raised by the Respondent Board within one months' time excluding holidays from the date of issuance of this order to avoid any action as per the provisions there of.
3. The Respondent Board is directed to cooperate with the complainant in overhauling the accounts in legitimate manners strictly conforming to the relevant provisions and supply code if they feel appropriate/required or otherwise demand raised by Respondent Board is sustained.
4. The Respondent Board is directed not to take any remedial action till the expiry of above period.
5. All stays imposed by this Appellate Forum under Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer

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Grievances Redressal Forum and Ombudsman) Regulations, 2013
are hereby vacated.

- 6. The Respondent Board is directed to ascertain and ensure correctness of computation once again before effecting recovery.**
- 7. The parties are left to bear their own costs.**
- 8. The Complaint filed by M/S Renny Steels, Village Kunjhal, PO Barotiwala, Tehsil Baddi, District Solan, HP-174103 is hereby disposed off.**

Given under my hand and seal of this office.



[Signature]
04/10/2023
Electricity Ombudsman