



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

the matter of:

Complaint No. 15/2023

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 15/2023 (Registered on 06/06/2023)
2. (Orders reserved on 28/09/2023, Issued on 05/10/2023)

Counsel for:

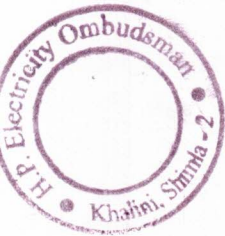
The Complainant: Sh. Rakesh Bansal, Authorized Representative
 The Respondents: Sh. Rajesh Kashyap, Advocate

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 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. 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



(Signature)



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due to inclement weather conditions. The matter was further listed for arguments on 22.08.2023.

3. 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. The case was further listed for Arguments on 29/08/2023.
4. 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 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.
5. Both the parties advanced their arguments. During the course of arguments, the Authorized Representative for complainant and the counsel for Respondent Board argued and exchanged their views on the instant issue. The Complainant/ Petitioner submitted written arguments which were also taken on record. However, the counsel for Respondent Board preferred verbal arguments and did not submit written arguments. 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. 1453/1/23/8 , 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 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

PROLOGUE

1. 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.

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1453/1/23/08 titled as Renny Steels v. HPSEBL and others, whereby the Forum passed orders against the complainant.

FACTS OF THE CASE

2.

| <i>Event</i> | <i>Date</i> | <i>Annexure</i> |
|---|-------------|-----------------|
| The complainant preferred a complaint before CGRF vide complaint no. 1453/2/18/037 in respect of overhauling of Infrastructure Development Charges seeking <ol style="list-style-type: none"> refund of Rs. 6.00 lakhs paid to the respondents as advance cost share at the time of PAC; refund of sum of Rs. 22.71 lakhs towards charges paid for proposed project of laying a line, the work for which never started; refund on interest on the amounts refundable | 21.08.2018 | |
| The Forum ordered that <ol style="list-style-type: none"> Rs. 22.71 lacs deposited by the Petitioner for 66 KV Line from Barotiwala Sub-Station may be refunded to the Petitioner along with interest as the line was never constructed. Rs. 6.00 lacs deposited on account of IDC charges may also be refunded alongwith interest as no account of its utilization has been provided to the Petitioner till date. | 13.11.2018 | C1 |
| 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. | 21.07.2019 | C2 |
| The complainant faced financial problems, which forced him to declare an indefinite lockout in his factory. The complainant informed the respondent in writing vide his letter dated 27.11.2019 about stoppage of manufacturing activity in his factory w.e.f. 15.12.2019, thus giving mandatory notice of fifteen days as required under the applicable rules and tariff. 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 | C3 |



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| <p>The complainant 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 in the overall billing dues payable to the respondents. The respondents till this time had not challenged the orders dated 13.11.2018 passed by CGRF before any court of law and the said orders, therefore, had attained finality. Thereafter, after passage of a long period CWP No. 2100 of 2021 was filed by the respondents on 22.03.2021, assailing the orders of the CGRF, which is pending for listing before the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court till this date has not restrained the complainant to claim the refund due to him as a result of the orders dated 13.11.2018 passed by CGRF in Complaint No. 1453/2/18/037 nor any stay orders have been issued in this respect.</p> | 27.11.2019 | |
| <p>The manufacturing operations of the complainant remained shut during this period. The respondents during the lockdown period continued to levy demand charges in the bills on 2999.70 kVA which is 90% of the sanctioned contract demand of 3333 kVA @ Rs. 425 per kVA for a period of 12 months upto the time when the manufacturing operations were resumed by the complainant. During this period the complainant's supply remained connected, while only the factory and office lighting were used and maximum demand of only 30-50 kVA was recorded every month. The respondents also continued to levy late payment surcharge on the unpaid amount of demand charges, which were excess billed during the lock out period, and is continuing to levy the late payment surcharge even to this date.</p> | Dec 2019 to Nov 2020 | C4 |
| <p>The respondents have 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. The tariff orders provide for non-levy of demand charges in force majeure conditions, in which lock out of a factory is also covered.</p> | | C5 |

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| 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. | 07.11.2022 | C6 |
| The complainant replied to the disconnection notice dated 07.11.2022, demanding various adjustments that were required to be carried out in respect of the dues reflected as payable. Among these adjustments the complainant also demanded the refund of excess demand charges of Rs. 1,51,12,000/- charged during the lock out period and also the corresponding late payment surcharge amounting to Rs. 91,94,985.24 as per calculation attached in Annexure 4 of the reply letter. | 14.11.2022 | C7 |
| The respondents issued disconnection notice dated 17.11.2022 to the complainant. | 17.11.2022 | C8 |
| The complainant objected to the disconnection notice dated 17.11.2022 vide his letter dated 17.11.2022. | 23.11.2022 | C9 |
| 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 account while the matter of excess billing during the lock out period was also one of the contentions of the complainant. | 25.11.2022 | |
| 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. | 29.11.2022 | |
| 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. | 05.12.2022 | C10 |



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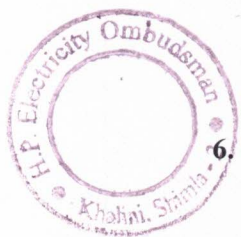


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| CWP NO. 3849 of 2019 was disposed by the Hon'ble Court in view of the orders dated 05.12.2022 in CWP No 8203 of 2022. | 13.12.2022 | C11 |
| As per orders dated 05.12.2022 of the Hon'ble High Court in CWP 8203 of 2022, the complainant deposited the 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. | | C12 |
| The complainant decides to file complaint on this matter before the CGRF as directed by the Hon'ble High Court in orders dated 05.12.2022 in CWP No. 8203 of 2022. | 08.02.2023 | |
| The Forum dismissed the complaint No. 1453/1/23/08. | 09.05.2023 | C13 |

CONTENTIONS OF THE APPELLANT/ COMPLAINANT

3. **Complainant submits that orders passed by CGRF in complaint no. 1453/1/23/08 are not in the interest of justice and contravenes the applicable rules and regulations and the complainant deserves relief under force majeure conditions.**
4. Complainant submits that the CGRF had passed orders dated 09.05.2023 in Complaint No 1453/1/23/08, without actually considering the applicable rules and have denied relief to the complainant.
5. Complainant submits that the Forum has wrongly concluded in Para 33 of the order that the complainant could have manipulated the contract demand in order to reduce demand charges. The revision of contract demand, whether temporary or permanent are altogether for different purposes. Had the complainant reduced the contract demand on temporary basis, he could have reduced only upto 50% of the sanctioned contract demand, whereas the complainant only required about 5% of the contract demand for working of his office and factory lighting, while the manufacturing operations were shut. The temporary reduction is provided for seasonal fluctuations in business during a year. Had the complainant reduced the contract demand permanently, the restoration would have required an altogether fresh application. Moreover, the Forum has wrongly observed that this methodology could be adopted. Why should the complainant manipulate the system, when a logical solution to address his difficulty was already legitimately available in the rules and regulations in terms of force majeure provisions.
6. Complainant submits that the Forum in Para 35 of the order has failed to recognize the the Para E, defining the Force Majeure conditions are also a part of the tariff order. The Tariff order has to read in totality and not just in isolation to the extent of demand charges and other charges. The exception has been provided from the levy of demand charges, wherever force majeure conditions arise. Such conditions have also been defined in the tariff order and the complainant's case very well fall in the purview of lockout, which has been defined by the HPERC as a force majeure condition.



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7. Complainant submits that the Forum in Para 36 has wrongly concluded that only natural calamities are covered under force majeure. It is pertinent to mention over here that even the strikes and lockouts which occur in industry due to non-natural causes are covered under the definition of force majeure.
8. Complainant submits that the Forum in Para 37 have wrongly stated that the adverse business conditions cannot be covered under the fore majeure. It is very basic and logical that the respondent utility will get revenue only out of the business proceeds of the complainant industry. In the absence of business how can they expect recovery of tariff and for how long. The working of an industry is based on several other factors such as manpower, finances, raw material availability etc. Even in the labour laws, the industry is allowed to shut down and declare a lockout if any such conditions develop and go beyond the control of the business owner.
9. Complainant submits that the Forum has wrongly concluded in Para 39 that the force majeure conditions have to be approved necessarily by HPSEBL. It is very clear that certain specific conditions have been defined clearly, whereas any such condition which has not been defined can also be considered as force majeure, but which has been considered as force majeure by HPSEBL. The consent of HPSEBL is not required in the conditions such as earthquakes, fires, strikes, lockouts, etc. as these are primary conditions already considered and allowed by HPERC.
10. Complainant submits that the Forum is wrong in stating in Paras 40,41,42 and 43 of the order that the specific permission of HPERC is required for waiver of demand charges under the already defined force majeure conditions. The provisions of the tariff order are binding on the complainant as well as respondents and no agreement, whatsoever can override the same. The complainant in no way is seeking a separate tariff for himself or any special treatment.
11. **Complainant submits that the complainant is also eligible for the roll back of the late payment surcharge on the demand charges unlawfully charged during force majeure conditions and which is still continued to be charged in the arrears reflected in the electricity bills.**
12. Complainant submits that the Ld Forum has not commented on the relief on late payment surcharge which has been levied on the wrongly charged amount in terms of demand charges in the electricity bills, during the force majeure period. As the principal relief has been denied by the Forum, consequently, the further relief in terms of Late Payment Surcharge neither stands denied or allowed. The complainant is aggrieved by the application of late payment surcharge on the wrongly levied charges and is eligible for the refund / adjustment of the same once the Hon'ble Ombudsman determines whether the relief in principle on account of force majeure should be allowed to the complainant.
13. **Complainant submits that the complaint has been wrongly held as argumentative, baseless and without any merit.**
14. Complainant 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



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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 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.

Prayer

15. Complainant submits that 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. 1453/1/23/08.
 - b. To grant relief to the complainant in terms of demand charges waiver during the closure period under force majeure;
 - c. To grant further relief in terms of rollback of late payment surcharge levied on the excess demand charges claimed during the force majeure period;
 - d. To direct the respondents not to take any coercive action against the complainant during the pendency of this grievance;
 - e. Cost of litigation to an extent of Rs. 2,00,000/-;
 - f. Call for the record of the case.
 - g. Any other or further orders which this Hon'ble Ombudsman 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.
16. Complainant had also submitted 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.

RESPECTFULLY SHEWETH:-

17. Complainant submits 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.
18. 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/-."
19. Complainant submits that the complainant has already deposited payments to the respondents for Rs. 3,42,44,674/-, as detailed in **Annexure C-12** 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



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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.

20. Complainant submits 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.
21. Complainant submits 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.
22. Complainant 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-The Respondent's submission:

1. The Respondent submits reply to the complaint filed by the complainant under Regulations 28 1 (C) of the HPERC (CGRF and Ombudsman) Regulations, 2013.

ON MAINTAINABILITY:

2. The 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 (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. The 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 relevant to submit here that as self stated by the complainant the alleged notice for lock out of the premises was December, 2019 and as per the clause (c) of the Regulation 19 of the regulations supra, complaint before this Id. Forum is maintainable up to December, 2021 i.e. within two years from the arisen of the cause of action. It is further submitted that cause of action since been arisen in December, 2019, at this belated stage, the complaint is not maintainable as such the same is liable be dismissed on this sole count.
4. The 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



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issued by the replying respondent on account of the non-payment of energy bill to tune of 9,23,72139/- a copy of disconnection notice dated 07-11-2022 has already placed on record annexure C-6 with the complainant which kindly be perused. It is submitted that complainant made reply to the disconnection notice cited ibid vide its letter dated 14-11-2022 wherein it was mentioned in point no.2 that due to financial difficulties the firm has declared lock out with effect from 15-12-2019 to 27-11-2020. Copy of the letter dated 14-11-2022 is already placed on record by the complainant itself as Annexure C-7. The replying respondent replied to the aforesaid communication of the complainant and stated clearly that HPSEBL has not received such kind of intimation of the lock out of the premises vide letter dated 17-11-2022. It is relevant to submit here mere stating the financial difficulties cannot be considered as force majeure hence the complaint filed by the complainant is liable to be dismissed.

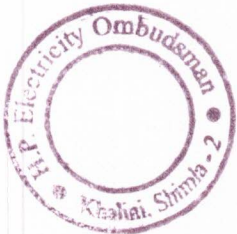
5. The Respondent submits that the Id Forum vide impugned order dated 09-05-2023 has rightly dismissed the complaint filed by the complainant by appreciating all relevant material, regulations governing the field and the tariff order issued by the Hon'ble HPERC, as such there is no such interference warranted by this Hon'ble Ombudsman.
6. The Respondent submits 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:

7. The 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 contention of the appellant/complainant:

8. The 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 leave no manner of doubt that the impugned order is well reasoned and speaking one which dealt each and every issue involved in the case.
9. The Respondent submits that the contents of this para are wrong and incorrect hence denied.
10. The 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 the provisions of the tariff order and clause of the force majeure as contained in the tariff order. The issue of the force majeure has been taken as afterthought by the complainant as after the receiving of the disconnection notice from the respondent/HPSEBL on 07-11-2022. It is further submitted that the complainant is claiming the alleged benefit of the force majeure clause for the period 15-12-2019 to 27-11-2020. It is further submitted that the complainant is placing much reliance on the letters addressed to the respondents, which are not received by the respondents at any point of time.
11. The Respondent submits that the contents of the this para are wrong and incorrect hence denied. It is submitted that if the clause E of the tariff order in question is seen then it is crystal provided that the event of the lockout, fire or any other circumstances has to be considered by the HPSEBL beyond the control of the consumer, then the consumer shall be entitled for the proportionate reduction in demand charges or any other fixed charges, if applicable, provided he serves 3 days notice on the supplier for shut down of not less than 15 days duration. In this context, it submitted that complainant never served notice upon the



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respondents, and the event was never considered by the respondents to be beyond the control of the complainant. It is pertinent to submit here that complainant has never objected to the regular energy bills generated by the respondents for the period in question and if the complainant raised the issue at that time, then the event would have been considered by the respondents in terms of the tariff order.

12. The 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.
13. The Respondent submits that the contents of the this para are wrong and incorrect hence denied. The complainant has miserably failed to understand that since he falls under the LIPS category under the tariff order, and it is not only the energy charges which are required to be paid by the consumer but there is fixed charges also which are mandatory to be paid by the consumer. It is submitted that respondents have to make the proper arrangement for the supply of the power from the various sources including the power exchange as per the schedule, hence the cost on account of this has to be paid in terms of the tariff of order issued by the Hon'ble HPERC.
14. The Respondent submits that the contents of this para are wrong and incorrect hence denied. It is submitted that Id Forum has passed the impugned order strictly in line with the tariff order issued by the Hon'ble Commission. The contentions of the complainant are totally baseless and self contradictory in nature.
15. The Respondent submits that the contents this para are wrong and incorrect hence denied. It is submitted that Id Forum has passed the impugned order strictly in line with the tariff order issued by the Hon'ble Commission.
16. The 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.
17. The Respondent submits that the contents this para are wrong and incorrect hence denied
18. The 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 Id 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.
19. The Respondent submits that keeping in view the facts and circumstances narrated herein above, the complaint of the complainant is liable to be dismissed.

D- The Complainant's additional Submissions through Rejoinder:

Rejoinder to Reply filed by the respondents



On maintainability

1. **Para 1:** Complainant Submits 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. 1,45,29,758.50 on account of demand charges and Rs. 89,93,615.31 on account of late payment surcharge upto the date of filing amounting to Rs. 89,93,615.31. The total amount in dispute in this complaint is only Rs. 2,35,23,373/-, 50% of which amounts to 1,17,61,687/-. The 2nd dispute which is listed as Case No. 14 before the Hon'ble Ombudsman is on account of wrong calculations of late payment surcharge is of about Rs. 3 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 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 s. 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 amount 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. **Para 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



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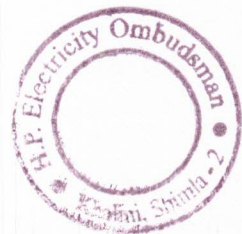
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demand charges upto December 2020, before which it was a continuous cause of action and the complainant's disputes was under adjudication before the Hon'ble High Court, who has provided liberty to approach the CGRF. The limiting period under Regulation 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. **Para 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. In the present case, the respondents ignored the intimation letter regarding closure of the manufacturing operations and continued to bill excess demand charges during the closure period contravening the provisions of force majeure as laid down in the tariff orders. It is further stated that strikes and lockouts are covered under the definition of force majeure conditions. The lockout further covers conditions such as non-availability of raw material, market, orders, adequate work force, finances, etc. and it is a right of an employer under the labour laws governing the manufacturing sector.
4. **Para 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. **Para 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. **Para 3.1:** Complainant Submits that the contents of this para of reply are denied.
7. **Para 3.1.1:** Complainant Submits that the complainant maintains the contents of this para.
8. **Para 3.1.2:** Complainant Submits that the contents of this para of reply are denied.
9. **Para 3.1.3:** Complainant Submits that the contents of this para of reply are denied. The complainant served adequate notice, the period of which is only three days as defined in Para E defining the force majeure conditions. Worst cum Worst the respondents can deduct the period of three days from the relief. The contention that the complainant never objected to the energy bills issued during the period does not hold good. It is evident on the face of record that the complainant never paid these bills is more than enough, besides filing a CWP before the Hon'ble High Court, which remained pending for quite some time.
10. **Para 3.1.4:** Complainant Submits that the contents of this para of reply are denied.
11. **Para 3.1.5:** Complainant Submits that the contents of this para of reply are denied. The Hon'ble Commission while deciding the tariff orders has reserved such contingencies under force majeure conditions and that is what force majeure is to save the parties from contractual liabilities in certain conditions.
12. **Para 3.1.6** Complainant Submits that the contents of this para of reply are denied.
13. **Para 3.1.7** Complainant Submits that the contents of this para of reply are denied.
14. **Para 3.2:** Complainant Submits that the contents of this para of reply are denied. If the basic amount is waived off by the Hon'ble Ombudsman, then it is obvious that the late payment surcharge levied so far on such amount will be required to be adjusted.
15. **Para 3.3** Complainant Submits that the contents of this para of reply are denied. The definition of the Force Majeure is very clear and lock out is covered. There is no question of interpretation as is being stated by the respondents in this para of reply. No judgement / orders



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can be passed without some kind of interpretation and the establishments such as CGRF and Ombudsman shall become meaningless if they are not allowed to take decisions judiciously.

16. the 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:

1. The Complainant submitted written arguments also on dt.28.09.2023 during the course of final arguments which are as under:
 - 1) That the arguments on maintainability of the representation are already on record in the rejoinder filed by the complainant.
 - 2) That 'lockout' is a clearly mentioned event in the clause E of the General Conditions to Tariff, and is automatically covered under the definition of 'force majeure' as laid down in the tariff. The observation of the Forum that the demand charges are levied to cover the fixed cost in the tariff is an accepted fact and is not denied in general by the complainant. But since, the same tariff order has provided exception to the levy of fixed charges in force majeure conditions. The Ld. Forum has exceeded its authority in interpreting the tariff philosophy which is the domain of the State Regulatory Commission.
 - 3) That the Forum's observation that the complainant could have manipulated the contract demand is rather suggestive to evade the genuine law. How can a Forum even suggest such a thing, which is directly deceiving the utility. The purpose of reduction of contract demand is entirely different and it has a limited tenure and the reduction can only be done upto a limited level. The complainant suffered a genuine force majeure event, towards which the Ld. Forum has suggested that the consumer should have mis-utilized such provisions.
 - 4) That no further procedure has been notified in any rules and regulations except for giving notice to supplier and that the closure should be at least for 15 days, the conditions which has been provided in the definition provided in the tariff order. The complainant has completed the process and he cannot be held responsible for the inaction on the part of the respondents to contravene the provisions of the tariff.
 - 5) That The Forum in Para 36 has wrongly concluded that only natural calamities are covered under force majeure. It is pertinent to mention over here that even the strikes and lockouts which occur in industry due to non-natural causes are covered under the definition of force majeure. Lockout is specifically mentioned in the definition, but it is definitely not a natural calamity. Lockout is the right of an employer, when he shuts down the work and the entry is closed to the workmen, be it for different reasons such as non-availability of raw material, sale orders, finance, or even a dispute with the workforce. Further in Para 37, the Ld. Forum has again wrongly concluded that adverse business conditions cannot be covered under force majeure.
 - 6) That the Forum has wrongly concluded in Para 39 that the force majeure conditions have to be approved necessarily by HPSEBL. The consent of HPSEBL is not required in the conditions such as earthquakes, fires, strikes, lockouts, etc. as these are primary conditions already considered and allowed by HPERC and the term 'OR' is used for any other conditions, which may be considered as force majeure by HPSEBL.
 - 7) That the Forum has wrongly dismissed the complaint filed by the complainant stating in Paras 40,41,42 and 43 of the order that the specific permission of HPERC is required for waiver of demand charges under the already defined force majeure conditions. The provisions of the tariff



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order are binding on the complainant as well as respondents and no agreement, whatsoever can override the same. The complainant in no way is seeking a separate tariff for himself or any special treatment.

- 8) That due to delay in the providing the relief under force majeure, a huge amount of late payment surcharge has been levied on the fixed charges since the same were not paid by the complainant. The complainant is thus eligible for roll back of the consequent late payment surcharge levied.
 - 9) That it Forum on one hand has largely interpreted the provisions related to force majeure to the level beyond what is mentioned in the text of the definition. Whereas on the other hand, the Forum has categorically denied that it has powers for such interpretation.
2. 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. It is prayed that as per directions of the Hon'ble High Court, orders may kindly be passed on merits in the interest of natural justice rather than not allowing the complaint on technical infirmities, if any observed by the Hon'ble Ombudsman.

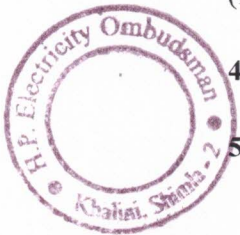
F- Respondent's Written Arguments:

The respondent Board preferred verbal arguments and did not submit any written arguments.

G- Consumer Grievances Redressal Forum Order:

ORDER

1. Two (2) complaints had been filed by the Complainant M/s Renny Steels, Village Kunjhal, PO Barotiwala, Tehsil Baddi, District Solan (HP)-174103, under regulation 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant is a Large Industrial Power Supply (LIPS) category consumer of the Respondent HPSEBL, bearing Consumer ID 100012001923;
2. The ibid two complaints were filed in February 2023;
3. On examination of these complaints and Orders of the Hon'ble High Court, it is found that in these matters, Hon'ble High Court of HP has passed two (2) Orders on-
 - (i) 05.12.2022 (Annexure-C10 of Complaint 1 / Annexure-C5 of Complaint 2) in Civil Writ Petition CWP 8203 of 2022; and
 - (ii) 13.12.2022 (Annexure-C11 of Complaint 1 / Annexure-C6 of Complaint 2) in Civil Writ Petition CWP 3849 of 2019.
4. The Complainant had come before the Forum in compliance of the ibid Orders passed by the Hon'ble Court on 05.12.2022 and 13.12.2022;
5. The Hon'ble High Court in ibid Order dated 05.12.2022 (Annexure-C5), has directed this Forum to decide the matter on its own merits and in accordance with law and without being influenced by the said Order;
6. The Hon'ble High Court in its Order dated 13.12.2022 (Annexure-C6), has also directed the petitioner, now Complainant, to raise all contentions before this Forum;
7. In compliance of the Orders of the Hon'ble High Court, the Forum deem it expedient and proper to club the complaints and dispose both the complaints by way of this single Order recorded here-in-below.
8. The Forum has examined the instant two complaints on merits-
9. The Forum has also examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or



(Signature)



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;

10. 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;
11. 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:

Quote

12. 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

13. (ii) Tariff Order (MYT) dated 29.06.2019 and earlier passed by the Ld HPERC: Quote 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.

Un-Quote

14. (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 1453/1/23/08:

15. The Forum now takes up and delves on the first issue of Force Majeure raised by the Complainant and reproduced in paras supra, which is a general provision of the Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the HPERC) –
16. From examination of the complaint, the Forum finds that the Complainant seeks waiver of 'Demand charges' on grounds of Force Majeure. The Complainant has invoked the general provision of Force Majeure as existing in para / clause 'E' of Tariff Orders reproduced in paras supra, to seek waiver of ibid demand charges. These demand charges along with other charges, are specified by the Ld HPERC in its Tariff Orders



Final



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and are payable at the specified rates by the consumers of the State of Himachal Pradesh which includes the Complainant. These 'Demand charges' become payable based upon the demand (in kVA or MVA) contracted by the Complainant. The Forum further finds that whereas the Complainant could have exercised the right available to it to manipulate its Contract Demand (in kVA or MVA) for the reduction of its demand charges, this has not been done by the Complainant;

17. After examining the Tariff Orders passed by the Ld HPERC, the Forum also finds that the fixed costs incurred by the Respondent distribution licensee are recovered by the Respondent HPSEBL by way of ibid demand charges as well as other charges, of fixed or variable nature, that are specified by the Ld HPERC. These are payable even if the consumer feels that it has not availed of the goods or services. This happens for the simple reason, that these are fixed costs incurred by the distribution licensee for putting in place a system of men, machinery and other assets to give service or goods to the consumer. These may not be apparent to the consumer. It is for this reason that these fixed costs is allowed by the Ld HPERC to be recovered from the consumers by way of tariffs specified in Tariff Orders passed by it. All the charges specified by the Ld HPERC are by way of Tariff Orders passed by the Ld HPERC in pursuance to the law laid down in terms of Electricity Act, 2003 and Regulations framed thereunder and are accordingly of statutory nature. These statutory charges are bound to be recovered by the Respondent distribution licensee. Not allowing these statutory costs to be recovered from a particular consumer may cause these to be recovered from other consumers or to cause permanent loss to the distribution utility, both of which eventualities are bad and against the mandated provisions of the law;
18. Thus, once it becomes clear that tariffs in a Tariff Order are payable by all consumers in a category as may be specified by the Ld HPERC, the Forum holds that for a particular consumer to be charged a different tariff or to be exempt from paying the applicable tariff, a separate Order by the Ld HPERC under the law is *sin-qua-non*;
19. Further, in the context of Force Majeure, the Forum is of the considered opinion that conditions of Force Majeure have to be external and beyond the control of an entity purchasing goods / services from another entity and vice-versa and these conditions have to be such as to make it impossible at that time for the entity to meet its obligations towards the other entity. In general, conditions of Force Majeure for an entity have to be of the nature of natural calamities, an act of god or strikes / lockouts by the workers etc, all of which are external in nature and beyond the control of an entity;
20. The Forum is also of the considered opinion that conditions of financial crisis in the industry / organization, leading to disruption of its business, as is in the instant matter, is certainly not of external nature and certainly does not constitute Force Majeure for the simple reason that such financial crisis arising in an entity may have been gradually building up over years and may be due to its own mismanagement or its own acts of negligence. Similar is the condition under plant maintenance either of forced or of planned nature etc compelling a plant to shut down even for long periods. Assumption by any party of financial crisis or of plant maintenance being of internal nature, causing plant shutdown, are not seen anywhere by this Forum to mean Force Majeure. Further, Force Majeure certainly does not imply purchasing a good or a service by an entity which carries a cost to the other entity and then not paying for it later on the pretext of its inability to do so for whatever reason. Even under the condition of Force Majeure,



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the obligation merely tends to get deferred but does not cease. Assuming otherwise shall tend to be wrong and overly misplaced;

21. Further, the Forum observes that the provision of Force Majeure in Tariff Orders reproduced in paras supra is conditional in nature. In order to give effect to these conditions of Force Majeure and on its scope and implementation, the Forum finds that the scope and implementation of Force Majeure has not been left to whims and fancies of individual parties;
22. The Forum, also observes that the condition of the Force Majeure as provided in Tariff Orders has to be considered by the Respondent HPSEBL as one of that being beyond the control of the Complainant. The Forum after examining the record, finds that the Complainant has no-where brought on record before the Forum any such necessary consideration from the side of the Respondent HPSEBL and merely by virtue of its intimation (Notice dated 27.11.2019 - Annexure C3) to the Respondent HPSEBL, has on its own wrongly assumed and wrongly concluded that the conditions of financial crisis faced by the Complainant was that of Force Majeure fitting into the meaning of the provision of the Tariff Order reproduced supra and that therefore it was entitled to benefit and relief under it;
23. Accordingly, it becomes clear that the ibid provision casts obligation upon parties / businesses to come into specific Contract / Agreement on the scope and implementation of Force Majeure. Further, as held by Forum in para supra, once a Tariff Order becomes binding, waiver of any charge is not at discretion and can be done only with the explicit permission of the Ld HPERC, whereby an Order by the Ld HPERC is sin-qua-non;
24. In the complaint before it, the Forum does not find any specific legally binding Agreement / Contractual terms to exist between the Complainant and the Respondent so as to invoke and give effect to the condition of Force Majeure, including that on a financial crisis that may have been faced by it from December 2019 to December 2020 (Annexure C3);
25. In the complaint before it, the Forum also does not find any separate and specific Order having been passed by the Ld HPERC in favor of the Complainant, either for a separate tariff or for its waiver on or without the said grounds of Force Majeure;
26. In absence of any such legally binding Agreement between parties and in the absence of any Order ever having been passed by the Ld. HPERC for a separate tariff or for its waiver in favour of the Complainant, on or without the said grounds of Force Majeure, the Forum holds and concludes that the Complainant is bound to pay the tariffs including the 'Demand charges' and other fixed charges determined in the Tariff Orders passed by the Ld HPERC in respect of the consumer class or category to which the Complainant pertains. The Complainant is not entitled to any special treatment or to any relief whatsoever on grounds of Force Majeure from December 2019 to December 2020 (Annexure C3);
27. (B) Complaint No 1453/1/23/10: **(This part has been taken in 14/2023)**
28. 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 Respondent that it is not within Forum's jurisdiction to interpret Tariff Orders passed by the Ld HPERC;



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29. 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;
30. 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;
31. 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;
32. 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.
33. 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 non-payment of dues of the Respondent licensee as specified by the Ld. HPERC in its Tariff Orders;
34. 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.
35. Thus, the present complaints are dismissed in aforesaid terms.
36. Parties are left to bear their own costs.
37. 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.



Signature



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H- Analysis of the Complaint:

1. The case file bearing Complaint No. 1453/1/23/08 dated 20/02/2023, orders on which were passed on 09/05/2023 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. 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 Kasumpti on dated 09/05/2023 in Complaint No. 1453/1/23/8, dated 20/02/2023.
7. 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 restraining the Respondents from taking 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 him. 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.
8. Complainant submits that the Forum in Para 35 of the order has failed to recognize the the Para E, defining the Force Majeure conditions are also a part of the tariff order. The Tariff order has to read in totality and not just in isolation to the extent of demand charges and other charges. The exception has been provided from the levy of demand charges, wherever force majeure conditions arise. Such conditions have also been defined in the tariff order and the complainant's case very well fall in the purview of lockout, which has been defined by the HPERC as a force majeure condition.
9. However, on analysis of the event, this Appellate Forum is of the clear view that the apprehensions of complainant are not in consonance with the meaning of relevant provisions which could be considered or recognized as Force Majeure event and all surmises of the complainant are contrary to the spirit of the provisions as this Appellate Forum fetches from the Submissions/Arguments of the Complainant that they are extracting meaning only to the extent of their benefit while interpreting the Regulation/ clauses /Instructions on the Issue of Force Majeure.
10. Complainant submits that the Forum in Para 36 has wrongly concluded that only natural calamities are covered under force majeure. It is pertinent to mention over here that even the strikes and lockouts which occur in industry due to non-natural causes are covered under the definition of force majeure.
11. However, on examining the submissions and documents produced, this Appellate Forum is convinced that the reason of lockout on which the complainant is relying is due to internal forces only i.e. mismanagement of finances at their own ends and not attributed to the external



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forces or not even on account of lockout occurred due to strike of workers or shortage of raw material due to strike of transporters which might lead to financial crisis.

12. The Complainant submits under para-6 of the written arguments that the Forum has wrongly concluded in Para 39 that the force majeure conditions have to be approved necessarily by HPSEBL. The consent of HPSEBL is not required in the conditions such as earthquakes, fires, strikes, lockouts, etc. as these are primary conditions already considered and allowed by HPERC and the term 'OR' is used for any other conditions, which may be considered as force majeure by HPSEBL.
13. On examining the above contention of Complainant in written arguments, this Appellate Forum is of the clear view that the Complainant has again misconceived in analyzing the very specific provision of Force Majeure which is crystal clear that all circumstances including or any other mentioned therein the below referred clause are mandatory circumstances to be considered by the HPSEBL to assess the event beyond the control of the consumer. This Appellate further deduces that unless the state of the event is legitimately assessed and considered, how can the Respondent Board make further line of action for providing requisite relief on genuine grounds. Hence, this Appellate Forum infers without any doubt that the contention of complainant is confining to his own benefit only by overlooking the universal essence of the provisions. For the sake of clarity the provision is reproduced as under:
14. (i) Tariff Orders in general passed by the Ld. HPERC:
15. 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 charges 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.*
16. The Respondent Board submits here that as self-stated by the complainant the alleged notice for lock out of the premises was December, 2019 and as per the clause (c) of the Regulation 19 of the regulations supra, complaint before this Id. Forum is maintainable up to December, 2021 i.e. within two years from the arisen of the cause of action. It is further submitted that cause of action since been arisen in December, 2019, at this belated stage, the complaint is not maintainable as such the same is liable be dismissed on this sole count.
17. This appellate forum on analysis in the instant issue infers that the Complainant had the proceedings operative and under adjudication before Hon'ble High Court in CWP 8203 of 2022 in the said period and thereafter in Consumer Grievance Redressal Forum at Kasumpti, in compliance to the directions of Hon'ble High Court, construes continuity. Hence, the complaint is maintainable on account of this reason as contended above by the Respondent Board.
18. However, for the sake of reference, the relevant extract of Order dt.05.12.2022 of Hon'ble High Court in CWP 8203 of 2022 is reproduced as under:

“(iv) We make it clear that in the event of 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.

(v) The petitioner firm shall continue to pay the regular energy bills.

(vi) We also make it clear that we have not gone into the merits of the case and Consumer Grievances Redressal Forum, Kasumpti, Shimla-9 shall decide the matter on its own



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merits and in accordance with law and without being influenced by this order. All the contentions are kept open.

5. The petition to stand disposed of accordingly. Pending miscellaneous application(s), if any also stand disposed of."

I-Issues in Hand:

Issue-1:

Whether the Representation is Maintainable?

Issue-2:

Whether the event of Lockout is Force Majeure?

Issue- 3:

Whether the Contract Demand & LPS as contended can be reduced?

J- Findings on the issues:

Issue-1:

1. The respondent Board gave a reference of the Regulation 19(C) of HPERC (CGRF and Ombudsman) Regulations 2013 and emphasised that the complaint is not maintainable as it has surpassed the duration of 2 years as per relevant regulations. However, the Complainant has mentioned about the proceedings being operative and under adjudication before Hon'ble High Court in CWP 8203 of 2022 in the said period and thereafter in CGRF thereof in compliance to the directions of Hon'ble High Court, construes continuity.
2. This Appellate Forum is convinced with the submissions made by the complainant hence, maintainable.

Issue-2:

1. 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 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 on account of lockout occurred due to strike might lead to financial crisis or strike of transporters causing shortage of the raw material and financial crisis thereof. Hence, the apprehensions of complainant were 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 order dt. 09.05.2023 be read as part and parcel of this order which is sufficient to establish the crux.
2. 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 but not at all Lock Out due to strike of workers leading financial crisis or strike of the transporters resulting shortage of raw material. 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 the lockout event was not even considered as Force



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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 charges 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.*

3. In the instant case the word "**lockout**" in the above definition has not been supplemented with concrete justification attributing to "**Financial Crisis**" causing lockout on account of strike of workers or due to strike of railways etc. leading to shortage of raw material, shows "**Financial Crisis**" due to their own internal financial mismanagement resulting into lockout, hence, does not hold good as a "**Force Majeure event**"
4. After going through the record and order dt. 05.12.2022 of Hon'ble High Court in CWP 8203 of 2022, there is no specific mention of lockout period which commenced w.e.f 15.12.2019 and as per Complainant's submissions lockout is the main cause of excess bill raised, hence litigation. Even Hon'ble High Court in the said order has not mentioned any reference of this very event of lockout period and for judgement relied only on the undertaking given by the complainant.
5. Ref. to the averments made by the complainant in their representations, proceedings/ order of CGRF, judgement dt. 05.12.2022 in CPW 8203 of 2022 of Hon'ble High Court, Arguments and relevant provisions, this Appellate Forum holds that the contentions as put forth by the complainant are devoid of merit and considering said event as a Force Majeure by the complainant is misconception and absurd. As such this Appellate forum is of the considered view that the above findings thereof nowhere support the viability of Force Majeure in the instant case.

Issue- 3:

The findings of this Appellate Forum on Issue-2 is clear and without any doubt is of the considered opinion that all surmises of the Complainant on reduction of Contract Demand & subsequent LPS in the said period of dispute are based upon the fact that the event is Force Majeure one, which is not the case. 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 and further nowhere on the record that the Complainant resorted to clause 3.10 of Supply Code for Temporary Revision of Contract Demand, 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. Hence, the contentions are pointless and irrational. The demand and LPS is sustained as raised subject to ascertaining of correctness of computation by both the parties for the said period of dispute.



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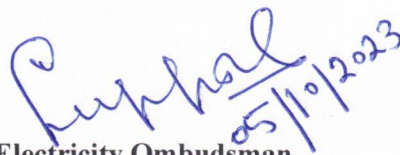


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K-Order:

1. The order dt. 09.05.2023 passed by Consumer Grievances Redressal Forum in the complaint No. 1453/1/23/08 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 Grievances Redressal Forum and Ombudsman) Regulations, 2013 are vacated, hence forth.
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.


Electricity Ombudsman

