



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. 13/2023

**M/S A M Industries R/O Plot No. 97, Jharmajri Baddi, Tehsil Baddi, District Solan,
HP-173205**

- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
 - 2. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Baddi, District Solan,
HP-173205**
 - 3. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL,
Barotiwala, District Solan, HP-174103**
- Respondents**

- 1. Complaint No. 13/2023 (Registered on 05/06/2023)**
- 2. (Orders reserved on 06/11/2023, Issued on 10/11/2023)**

Counsel for:

The Complainant: Sh. Bhagwan Chand Advocate

The Respondents: Sh. Kamlesh Sakhlaini Under Sectt. Law

Sh. Rajesh Kashyap Advocate

Er. Vidur, Assistant Engineer, ESD Barotiwala.

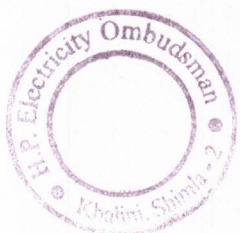
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Er. Deepak Uppal

HP Electricity Ombudsman

Order

1. The case was received and registered on 05/06/2023. The Complainant had however not submitted proof of having deposited 50% of the disputed amount with the Respondents as required under the provisions of Regulation 33 (1) (g) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and was directed to submit proof by 07/06/2023 positively. The case was to be listed only after submission of proof of the such amount.
2. The Complainant was again directed to submit the proof of having deposited 50% of the disputed amount with the Respondents by 07/06/2023 positively which was still awaited. The case was to be listed only after the submission of proof of payment of said amount. The Complainant thereafter submitted proof of 50% of disputed amount deposited with Respondent Board as such this court started with the proceedings, hence forth. The Respondent Board was directed to file their reply duly supported by attested affidavit by



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- 11/08/2023 and ensure services to the complainant who might submit rejoinder by 22/08/2023. The case was listed for hearing on dated 22/08/2023.
3. Case called, heard both the parties. Respondent Board could not submit reply by 11/08/2023 and prayed for one week for submission of same. Prayer granted for submission on or before 29/08/2023. The complainant was to submit rejoinder thereafter. The case was listed for hearing on dated 29/08/2023.
 4. The matter was heard. The Respondent Board could not submit the reply by 29/08/2023 as directed vide this court order dated 22/08/2023 and sought further two weeks' time for submission with a plea that due to catastrophic on account of heavy rain, the concerned officers were still busy with restorations work. Considering prayer in the public interest, prayer granted. The Complainant was to submit rejoinder thereafter. The case was further listed for hearing on 28/09/2023.
 5. Case called, the matter was heard. The Respondent Board submitted the reply on 27/09/2023 and the Complainant was directed to submit rejoinder if any by 10/10/2023. The case was further listed for hearing on 16/10/2023.
 6. Case called, the matter was heard. The copy of the reply submitted by the Respondent Board was not received by the counsel for the Complainant. The Respondent Board was directed to supply the copy of the reply and the Complainant was directed to submit rejoinder within weeks' time thereof. The case was further listed for Arguments on 30/10/2023.
 7. Case called, the matter was heard. The Arguments could not be conducted as per scheduled as the Counsel for complainant added to the discussion that his client wishes to be present during the Arguments and further contended that they shall not submit any rejoinder rather prefer Arguments and prayed for suitable date for final Arguments. After listening to both the parties, the matter was fixed for final Arguments on dt. 06/11/2023.
 8. Case called, the matter was heard. both the parties advanced their arguments orally. During the course of arguments, concerned officers also appeared and exchanged their views on the instant issue. The arguments were heard and concluded and Orders reserved, hence delay.

A-Brief Facts of the Case:

1. M/S A M Industries R/O Plot No. 97, Jharmajri Baddi, Tehsil Baddi, District Solan, HP-173205 has filed an application, received on 05/06/2023, under provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the final Orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti on dated 26/04/2023 in Complaint No. 1453/1/23/03, dated 23/01/2023.
2. The Complainant have also filed an application under the provisions of Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and had prayed for granting order for restraining the Respondents from disconnection of electricity connection.
3. Prayer was granted by the powers conferred under the provisions of Regulation 36 read with Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, accordingly, the Respondents were directed not to disconnect electricity connection of the Complainant's premises during the pendency of the present Complaint with this Appellate Forum.



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4. The Complainant M/s AM Industries, Plot No 97, Jharmajri, Baddi, District Solan, HP, is a Medium Industrial Power Supply (MIPS) category consumer of the Respondent HPSEBL, bearing Consumer ID 100010002641 and availing supply at 11kV.
5. The Complainant is aggrieved by the action of the Respondent HPSEBL to issue monetary demand of arrears for an amount of Rs 7,94,855.48 in energy bill dated 07.01.2023.
6. The monetary demand has been raised by the Respondent HPSEBL at the behest of metering error which existed between 12.03.2020 to 01.08.2022;
7. On 13.10.2022, the Respondent served upon the Complainant a Demand Notice for an amount of Rs 7,83,548/= for the period 12.03.2020 to 01.08.2022 due to one phase missing in meter with a further condition that after the replacement of energy meter, balance amount from 01.08.2022 shall be charged separately;
8. A separate amount of Rs 78,288/= was subsequently demanded by the Respondent vide Demand Notice dated 16.02.2023 for the period from 01.08.2022 to 17.12.2022;
9. The monetary demand for an amount of Rs 7,83,548/= by way of sundry, was first raised by the Respondent in Bill dated 07.11.2022, then as arrear for amount Rs 8,75,572.75 in Bill dated 05.12.2022 and then as arrear for amount Rs 7,97,148.57 in Bill dated 07.01.2023. The event of missing voltage is depicted in the Meter Reading Instrument (MRI) Tamper Report placed on record by the Respondent.

B-The Complainant's Submission:

1. The Complainant submits that the Petitioner/Complainant filed a complaint before the Consumer Grievances Redressal Forum regarding the demand raised in terms of Bill on 07-11-2022 for the month of October 2022 in which the sundry charges to the extent of Rs. 40,775/- has been wrongly reflected. Thereafter the amount of Rs. 8,75,572/- has been wrongly reflected as sundry in bill dated 05-12-2022. After that another bill dated 07-01-2023 in which Rs. 7,94,855/- has been wrongly and illegally levied against the complainant Firm. The petitioner challenged this energy bill before the Forum below.
2. The Complainant submits that the aforesaid amount has been wrongly levied in the bill dated 07-01-2023 with the plea taken by the respondents that energy recording on B Phase of the Metering Unit was missing since 12-03-2020 and the account was over hauled until 01-08-2022 in terms of the clause no. 9.3.5.4 of the Abridged Conditions of Supply. The respondents further alleged in their reply that since the defect in the Metering Unit is continuing, the balance amount on account of defect from 01-08-2022 to the date of defect rectification shall be charged separately.
3. The Complainant submits that the notice as alleged by the respondents in their reply never served upon the petitioner. The respondents have also not supplied requisite documents such as MCO, Complete MRI and other relevant record pertaining to the Metering Unit.
4. The Complainant submits that the petitioner contested the complaint on various grounds but the Forum below has not considered the same. Accordingly, the Forum dismissed the complaint of the petitioner on 26-04-2023. Copy of the Order dated 26-04-2023 is appended herewith as Annexure P-1. The Petitioner/Complainant feeling aggrieved and dissatisfied against the order dated 26-04-2023 passed by the Ld. Forum below, prefers the present Representation on the grounds mentioned below:



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Grounds of Representation:

5. The Complainant submits that the Ld. Forum below has not appreciated the pleadings of the Petitioner/Complainant in right prescriptive. In this case the reply filed by the Respondents is totally against the provisions of Electricity Act as well as Supply Code. The Respondents have categorically referred the provisions of Abridged Conditions of Supply on the basis of the aforesaid amount of Rs. 7,94,855/- has been levied against the Petitioner/Complainant since 12-03-2020 to 01-08-2022. It is relevant to mention here that the Abridged Conditions of Supply are not applicable at presently and the overhauling of the Metering Unit has to be calculated on the basis of Supply Code as well as Electricity Act. The Respondents have failed to make clear in the reply that how the account of the Petitioner/Complainant was overhauled. The Ld. Forum below has not taken into consideration the pleading and arguments of the Petitioner/Complainant and given the finding against the Petitioner/Complainant without any basis.
6. The Complainant submits that the Ld. Forum below has committed an illegality while passing the order dated 26-04-2023. It is relevant to mention here that the petitioner applied and got load augmentation 35 to 85 KW on 12-03-2020. The load sanctioned in favour of petitioner and accordingly released through installation of new energy meter on 12-03-2020. It is important to submit here that the respondents installed defective meter on 12-03-2020 simply for the reason that since the installation of new energy meter in the premises of the petitioner, it was got defective. The petitioner made various requests to the respondents to check the meter in the authorized laboratory as is required under the provisions of 4.3 of Supply Code. It is the duty of the Distribution Licensee to satisfy itself regarding accuracy of meter before it is installed in the consumer premises. The respondents have failed to comply the provisions of 4.3, 4.4 before installation of energy meter in the premises of the petitioner. These provisions are mandatory and it is the duty of the respondents to fulfill the same before installation of energy meter. This sheer negligence had been committed by the respondents and the petitioner was unnecessarily burdened for the amount of Rs. 7,94,855/-.
7. The Complainant submits that the Ld. Forum below has not appreciated properly the tampered data as produced by the respondents with their reply. As per the tampered data it is quite clear that the One phase of voltage was missing only for the short period and was restored immediately. It is however made clear that the respondents have not placed on record any month-wise-item-wise break-up of the ibid amount. Besides this the respondents have also wrongly and arbitrarily applied the factor of multiplication of value '0.1' against the complainant which is against the provisions of law. As per the tamper data produced by the respondents it is crystal clear that the respondents have wrongly levied the aforesaid amount of Rs. 7,94,855/- against the complainant without any basis.
8. The Complainant submits that the Ld. Forum below has not applied its mind and decided the complaint in a very slip shot manner. The defense developed by the respondents based only on the provisions of Abridged Conditions of Supply. It is reiterated here that Abridged Conditions of Supply are not in existence in the present scenario and as such the defense taken by the respondents is totally against the provisions of Supply Code and Indian Electricity Act. It is important to mention here that as per the Clause 4.4.8 deals with the Overhauling of Consumer Accounts: - (i) If a meter on testing is found to be beyond the limits of accuracy as specified in the regulations framed by the Authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of



Purval



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six months immediately preceding. As such the Demand Notice issued by the respondents is illegal and against the provisions of law and as such is liable to be quashed and set-aside.

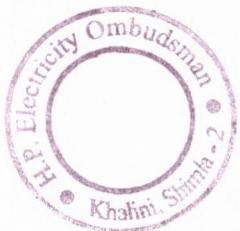
9. The Complainant submits that as per the direction given by the Ld. Forum below to the respondents to raise fresh demand notice to the petitioner accompanied with the *ibid* tabulated account and also accompanied with the MRI data for each month for which this monetary Demand is calculated and raised. The Forum further directs that this fresh Demand Notice be raised to the petitioner within a period of ten days from this order. The respondents have not complied the direction of the Ld. Forum below.
10. The Complainant submits that the Representation filed by the Petitioner/Complainant in the present case is within the period of limitation. The petitioner received the order of the Ld. Forum on 01-05-2023. As per the direction given by the Ld. Forum below to the respondents to raise fresh Demand Notice within 10 days from the order of Forum i.e. 26-04-2023. The petitioner was waiting for the fresh Demand Notice from the respondents but till today the petitioner has not received any fresh Demand Notice from the respondents. The petitioner sent two emails to the respondent no. 2 and 3 on 10-05-2023 and 30-05-2023 regarding the compliance of order of the Ld. Forum. But the respondents have failed to adhere the request of the petitioner. By virtue of these two emails the respondents have failed to settle the dispute as the direction given by the Ld. Forum. However, the petitioner orally requested to respondent no. 2 & 3 regarding the consequence of two emails, but the respondents showed inability to comply the direction given by the Ld. Forum below. In view of these submissions, the present representation filed by the petitioner is within the period of limitation.
11. The Complainant submits that the Petitioner/Complainant has not filed any other Representation/Case in any other court on same and similar ground against the order of the Forum.
12. The Complainant submits most respectfully that the Representation may kindly be allowed and the order passed by the Forum dated 26-04-2023 may kindly be quashed and set-aside.

C- The Respondent's Submission:

1. The Respondent submits that the present complain is not maintainable in the eyes of law.
2. The Respondent submits that there exists no cause of action in favour of complainant and against the respondents.
3. 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.
4. 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:

5. The Respondent submits that the contents of this para insofar as pertains to the record are not denied rest of the averments which are contrary are denied specifically. It is submitted that sundry charges amounting to Rs 7,83,548/- are concerned, they have been levied by the respondents on account of the phase missing. It is submitted that for this amount *ibid*,



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respondent issued notice dated 13-10-2022 to the complainant which is placed on record as Annexure R-1, and the respondent then reflected the amount in the energy bill raised in the month of November, 2022. In the said notice, it was made clear to the complainant that the energy recording on B-Phase of the metering unit was missing since 12-03-2020 and the account was overhauled upto 01-08-2022 in terms of the clause No 9.3.5.4 of the Abridged Conditions of Supply, which are statutory in nature. It is submitted that in the aforesaid notice dated 13-10-2022, it was conveyed to the complainant that since the defect in the metering unit is continuing, the balance amount on account of defect from 01-08-2022 to the date of defect rectification shall be charged separately. So, accordingly, the respondents have served another notice on 16-02-2023 for recovery of 78,288/- on account of defect from 01-08-2022 to 17-12-2022. Copy of notice dated 16-02-2023 is placed on record as annexure R-2 for the kind perusal of this Id Forum. It is submitted that calculation sheet has already been supplied to the complainant when the notices were served by the respondent. However, for sake of convenience the record of MRI showing tamper events, to establish the phase missing is placed on record as Annexure R-3 (colly).

6. The Respondent submits that it is specifically denied that the respondents have violated the provisions of the supply code, 2009 and other terms and conditions, however as submitted above, respondents have acted strictly in terms of the clause No 9.3.5.4 of the Abridged Conditions of Supply. A copy of relevant part of the conditions of supply is placed on record as annexure R-4 for the kind perusal. As stated above, since the B-phase was missing in the metering unit, which has been established from the MRI data, the act and conduct of the respondents is just and legal.
7. The Respondent submits that the contents of this para are totally wrong and incorrect hence denied. The sufficient record has been supplied to complainant consumer.
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.

Reply to Ground of Representation:

9. 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 vide its impugned order has rightly dismissed the complaint. It is submitted that the since there is self-explanatory MRI data available to show that one phase was missing, resulting in to the slowness of the meter, and ultimately caused the less recording of the consumption, in the energy meter, the action of the respondents is perfectly legal and valid as such the complainant is liable to pay the electricity charges as demanded. The Id Forum has rightly appreciated the material on record and thus rendered its findings which deserves to be upheld by this Id Ombudsman.
10. The Respondent submits that the contents of this para are wrong and incorrect hence denied. It is submitted that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events



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related to these, which can be retrieved from the meter using an MRI. Under practical conditions, when electrical parameter inputs such as voltages and currents to the meter are within safe limits, metering of a consumer may simply be with a meter and without metering equipment. However, where these actually exist on an electrical system at excessively high and unsafe levels, metering equipment such as Current Transformer (CT) and Potential Transformer (PT) are deployed to give restricted or practically acceptable and safe electrical parameter inputs such as voltage and currents to the meter. This is done to prevent unsafe parameters from directly inputting into the meter and is done by stepping down these electrical parameters namely voltages and currents by use of ibid mentioned metering equipment. Thus, irrespective of the fact that the meter is with or without recording and storing capabilities or is with or without metering equipment and only the meter becomes defective, then testing of meter may be the only remedy to estimate or ascertain the quantum of electrical consumption done in the past or to determine its accuracy. However, under the condition when metering equipment alone becomes defective and the meter is capable of recording and storing data, then the electricity consumption data, the electricity supply parameters data and the events are recorded and stored in the meter, which become available for retrieval using a Meter Reading Instrument (or MRI). Though the data of consumption and supply parameters may not be recorded correctly, however, the meter would still have recorded the event of the missing input electrical parameter, thus establishing the fact of defective metering and also depicting the reasons for defective metering. This can then be retrieved using an MRI. If the metering equipment alone becomes defective, it may not be necessary to send the meter equipment for Testing to a laboratory for estimating the quantum of unrecorded consumption in the past, unless its accuracy vis-à-vis its accuracy class is either under challenge by the consumer before the distribution licensee or the distribution licensee itself feels the necessity to do so, which is not the case here. Thus the MRI data as evidence, is sufficient in helping in estimating or assessing and calculating the quantum of electricity consumption that may have taken place in the past when metering equipment alone becomes defective.

11. 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 Regulations issued by the Hon'ble Commission. The contentions of the complainant are totally baseless and self-contradictory in nature.
12. The Respondent submits that Needs no reply as the detailed reply has already been come in the paras supra.
13. The Respondent submits that the contents this para are wrong and incorrect hence denied. It is submitted that Respondent board vide letter no..... dated..... has raised the fresh demand notice to the Complainant consumer.
14. The Respondent submits that in reply to para it is submitted that the copy of order dated 26-04-2023 passed the Id. CGRF has received in the office of Respondent no. 2 on 15-05-2023 and thereafter sent to Respondent no. 3 for re-calculation of amount so that same could be vetted from Respondent No. 2 after keeping in view all the parameter of MRI data. Further vetted calculation sheet sent to Respondent no. 3 for issue fresh demand notice to the complainant on 29-05-2023. Thereafter afresh demand notice on..... has been issued by the Respondent no. 3. That the delay in issue the fresh demand notice to



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the complainant neither intentional nor deliberate but due the above stated reasons. Needs no reply.

15. The Respondent submits that keeping in view the facts and circumstances narrated herein above, it is most respectfully prayed that the representation/complaint of the complainant is liable to be dismissed.

D- The Complainant's Additional Submissions through Rejoinder:

1. The Complainant did not submit any rejoinder.

E- The Complainant's written Arguments:

1. The Complainant did not submit any written arguments instead preferred oral arguments.

F- The Respondent's written Arguments:

The Respondent also did not submit any written arguments instead preferred oral arguments.

G- The Arguments of both during proceedings :

1. During the arguments in this court during final hearing on dt.06.11.2023, the counsel for Complainant prayed to confine overhauling of the account only to the extent of missing events retrieved through MRI data in the said period and also gave reference of para-50 (in original order) of CGRF and read out in the court for clarity and asserted that CGRF in its order dt.26.04.2023 has also imparted directions to Respondent Board that no demand shall be raised for any month which is not supported with the MRI data for that month. The Respondent Board did not raise any arguments on this and agreed to the contentions of Complainant in this regard. The counsel for Complainant also did not raise any further objection on application of MRI data retrieved in the said period 12.03.2020 to 17.12.2022 for overhauling of the accounts.
2. The Complainant during arguments also mentioned about the multiplication factor of 0.1 used in computations. The Respondent Board could not provide valid explanation and this Appellate Forum was also not convinced on the adjudications on this point and directs the Respondent Board to provide authentic reasons for application of said multiplication factor to complainant before final settlement of accounts.

H- Consumer Grievance Redressal Forum Order No.

BRIEF FACTS OF THE CASE –

1. Complaint has been filed under regulation 17 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant M/s AM Industries, Plot No 97, Jharmajri, Baddi, District Solan, HP, is a Medium Industrial Power Supply (MIPS) category consumer of the Respondent HPSEBL, bearing Consumer ID 100010002641 and availing supply at 11kV;
2. The Complainant is aggrieved by the action of the Respondent HPSEBL to issue monetary demand of arrears for an amount of Rs 7,94,855.48 in energy bill dated 07.01.2023 (Annexure-C1);



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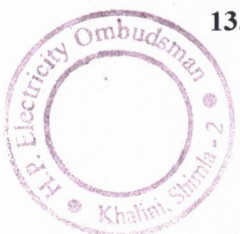
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3. The ibid monetary demand has been raised by the Respondent HPSEBL at the behest of metering error which existed between 12.03.2020 to 01.08.2022;
4. On 13.10.2022, the Respondent served upon the Complainant a Demand Notice for an amount of Rs 7,83,548/= for the period 12.03.2020 to 01.08.2022 (Annexure R1) due to one phase missing in meter with a further condition that after the replacement of energy meter, balance amount from 01.08.2022 shall be charged separately;
5. A separate amount of Rs 78,288/= was subsequently demanded by the Respondent vide Demand Notice dated 16.02.2023 (Annexure R2) for the period from 01.08.2022 to 17.12.2022;
6. The ibid monetary demand for an amount of Rs 7,83,548/= by way of sundry, was first raised by the Respondent in Bill dated 07.11.2022 (Annexure C3), then as arrear for amount Rs 8,75,572.75 in Bill dated 05.12.2022 (Annexure C2) and then as arrear for amount Rs 7,97,148.57 in Bill dated 07.01.2023 (Annexure C1). The event of missing voltage is depicted in the Meter Reading Instrument (MRI) Tamper Report (Annexure R3) placed on record by the Respondent.

COMPLAINANT –

7. Complainant submits that sundry charges of Rs 40,775/= have been wrongly reflected in electricity Bill dated 07.11.2022. Thereafter Sundry amount of Rs 8,75,572/= has been wrongly reflected in electricity bill dated 05.12.2022. Thereafter, amount of Rs 7,94,855/= has been wrongly and illegally reflected in disputed Bill dated 07.01.2023;
8. That new electricity connection was installed in March 2020. Meter was fully intact and there was no complaint from Respondent with regard to meter tampering. Regular bills were being issued to Complainant since March 2020. The Respondent after lapse of 2½ issued the ibid energy bills and levied the illegal amounts in them;
9. That when a new meter is installed, meter is to be sealed by the licensee and the licensee will not cast any liability on the consumer in case of delay in affixing these seals. There is no complaint before the licensee regarding removal and breaking of seals;
10. That when the ibid condition of phase missing came into the knowledge of the Respondent, the meter had to be got inspected in the Laboratory. The Respondents have been issuing regular energy bills and it is sheer negligence on part of Respondent who did not notice this defect while issuing bills from March 2020;
11. During the Final hearing stage, while reiterating its complaint, the Complainant expressed its desire to extend the relevant arguments, made by it in a similar matter previously decided by this Forum, to the instant complaint. The Complainant had broadly argued therein that the action of the Respondent was in pursuance to the Abridged conditions of Supply under the Respondent's Sales Manual, which are not applicable in the instant matter and that the action of the Respondent was not in accordance with sub code 4.3 specified in respect of Testing of meters which was not followed by the Respondent and that in accordance with the law, the action of the Respondent for not getting the meter tested was wrong and illegal;
12. Complainant further submits that the alleged demand of the Respondent is wrong, illegal and arbitrary, being against the provisions of Supply Code and thus not payable by the Complainant;
13. The Complainant has sought relief in terms of Orders for declaring the monetary demand of Rs 7,94,855/= raised vide energy bill dated 07.01.2023, as wrong, illegal, arbitrary, unsustainable in the eyes of law.



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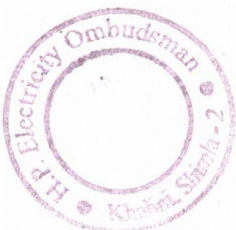
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RESPONDENT:

14. On the other hand, the Respondent HPSEBL has replied that amount of Rs 40,775/= in electricity Bill dated 07.11.2022 are arrears on account of pending outstanding dues of the Complainant for the month of October 2022;
15. That Respondent vide ibid Demand Notice dated 13.10.2022 (Annexure R1) for Rs 7,83,548/= had informed the Complainant of the missing phase of the meter and account was accordingly overhauled;
16. Subsequently, as already conveyed in ibid Demand Notice (Annexure R1), another Demand Notice was issued on 16.02.2023 (Annexure R2) for an amount of Rs 78,288/=;
17. That the Complainant has failed to understand that this is not a case of theft or unauthorized use of electricity. The condition of phase missing is established by way MRI data. The MRI data depicting Tamper events are placed on record (Annexure R3). The ibid demands are of statutory nature and there is no violation of Supply Code and the action of the Respondent is legal;
18. That issue regarding raising of additional or supplementary demand is no more res-integra in view of Hon'ble Apex Court decision dated 05.10.2021 in Civil Appeal 7235 of 2009 titled M/s Prem Cortex Vs Uttar Haryana Bijli Vitaran Nigam Ltd, where in it has been held that by issuing revised electricity bill / supplementary bill, does not constitute unfair trade practice;
19. The complaint being meritless may be dismissed.

FORUM:

20. This Forum has 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, CEA (Installation and Operation of Meters) Regulations, 2006, HP Electricity Supply Code, 2009 notified by the HPERC, amendments thereto 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;
21. At the outset Forum finds that the Complainant has not raised challenge to the original Demand Notice dated 13.10.2022 (Annexure R1) for Rs 7,83,548/= and neither to Bill dated 07.11.2022 (Annexure C3) wherein the ibid amount has been raised as sundry. Complainant has however raised challenge to Bill dated 07.01.2023 (Annexure C1) where the ibid amounts have been carried over as arrears due to non-payment;
22. Before the Forum proceeds in the matter, Forum feels it necessary to frame the issues for determination in the instant complaint –
 - a. Issue 1: Whether, this is a matter of Tampering of meter falling under section 126 or under section 135 of the Electricity Act, 2003, whereby there is unauthorized use of electricity through a tampered meter or where there is dishonest tampering of meter?
 - b. Issue 2: Whether the Meter Reading Instrument (or MRI) data is sufficient evidence to establish defective metering or even when the MRI data is available, is it necessary to undertake Testing of meter and/or metering equipment under provisions of code 4.3 of HP Electricity Supply Code, 2009, hereinafter referred to as the Supply Code?



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- c. Issue 3: Whether, the Respondent is within its rights to raise monetary demand as past period arrears on account of defective metering and whether Complainant is liable to pay this monetary demand so raised by the Respondent?

23. At the outset Forum finds it expedient to reproduce the relevant provisions of the Supply Code for the sake of clarity—

Quote

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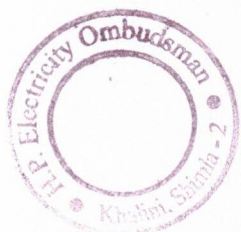
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4.3 Testing of Meters .—

- 4.3.1 It will be the responsibility of the licensee to satisfy itself regarding the accuracy of a meter before it is installed at the consumer premises.
- 4.3.2 The licensee shall maintain such number of accredited testing laboratories as per the standards prescribed by the National Accreditation Board for Testing and Calibration Laboratories (NABL) as the Commission may require and all such laboratories will at least be equipped with testing equipment as provided in the regulations framed by the Authority under Section 55 of the Act.
- 4.3.3 After testing in the laboratory, the body of the meter will be duly sealed by an officer(s) authorized by the licensee.
- 4.3.4 The licensee may also conduct periodical inspection/testing of the meters installed at the consumer's premises as per Central Electricity Authority (Installation and Operation of Meters) Regulations , 2006 made under Section 55 of the Act.
- 4.3.5 The Commission may also require the licensee to undertake third party testing of meters/metering equipment installed at the consumers' premises.

4.4 Defective Meters .—

- 4.4.1 The licensee will check and have the right to test any meter and metering equipment installed at a consumer's premises if there is a reasonable doubt about its accuracy and the consumer will provide the licensee all necessary assistance in conducting the test. The consumer will have the right to be present during such testing.
- 4.4.2 (a) A consumer may request the licensee to test the meter/metering equipment installed in his premises, if he doubts its accuracy. The licensee will undertake such site testing within seven days on payment of fee as specified in the Schedule of General Charges approved by the Commission.
- (b) If, after testing, the meter is found to be defective then the fee deposited in accordance with sub-para (a) will be refunded by adjustment in the electricity bills for the immediately succeeding months. In case, the meter is found to be correct then the licensee will not refund such fee.



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- 4.4.3 In case a consumer is not satisfied with the site testing of the meter installed in his premises or the meter cannot be tested by the licensee at site then the meter will be removed and packed for testing in the laboratory of the licensee and another duly tested meter will be installed at the premises of such a consumer. In the event the licensee or the consumer apprehends tampering of meter and/or its seals then the licensee and the consumer will jointly seal the packing containing the meter. The seals will be broken and testing undertaken in the laboratory of the licensee in the presence of the consumer, if he so desires.
- 4.4.4 In case of testing of a meter, removed from the consumer premises for the purpose of testing in the licensee's laboratory, the consumer would be informed of the date of testing at least seven days in advance. The signature of the consumer, or his authorized representative, if present, would be obtained on the Test Result Sheet and a copy thereof shall be supplied to the consumer.
- 4.4.5 (a) Subject to the provisions in sub para (b), in case a meter installed at a consumer's premises gets burnt/ broken/ defective or stops functioning, a new tested meter will be installed within the time lines specified in the schedule to the Himachal Pradesh Electricity Regulatory Commission (Distribution Licensees' Standard of Performance) Regulations, 2005. If the meter gets burnt, broken or damaged due to reasons attributable to the consumer, the licensee will debit the cost of the meter (if provided by the licensee) to the consumer who will also be informed about his liability to bear the cost.
- (b) in case of failure of supply due to the burnt, broken, damaged or defective meter, the licensee shall endeavor to restore the supply on the same day by way of installation of new tested meter.

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24. The Forum now proceeds to determine each issue on merits –
25. Issue 1: After examining the record, the Forum finds that the impugned monetary demand of Rs 7,94,855/= in electricity bill dated 07.01.2023 raised by the Respondent, has not been done under section 126 or under section 135 of the Electricity Act, 2003. These Sections are in terms of unauthorized use or theft of electricity respectively. The Demand Notices dated 13.10.2022 (Annexure R1) for Rs 7,83,548/= and 16.02.2023 (Annexure R2) for Rs 78,288/=, also do not refer to any action by the Respondent as being in pursuance to these sections of the Act in terms of any tampering. However, Forum does find Meter Reading Instrument (MRI) data sheets comprising the Tamper Report (Annexure R3) having been placed on record by the Respondent;
26. It is a known fact that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events related to these. The Forum is also aware that these events and data can be retrieved from the meter using an MRI. On examining the MRI data, it becomes clear that the MRI Tamper Report is merely a Report of anomaly events being recorded in the Meter and is not in terms of unauthorized use or dishonest use of electricity. Thus, the Forum on this very basis concludes that the Complainant is misconceived in assuming that the present matter is of tampering of meter / meter seal broken for unauthorized use of electricity or a case of dishonest tampering where



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the question of removal or broken meter seals may arise, which is certainly not the case herein. It is merely an apprehension of the Complainant. Had the present matter been one of unauthorized use of electricity or a case of dishonest tampering, such would then have appropriately been dealt under the relevant provisions of either Section 126 or Section 135 of the ibid Act and the corresponding Regulations framed in this regard, which is not the case herein.

27. On the anvil of foregoing discussion, the Forum concludes that the instant matter is not one of tampering / meter seal broken or one of unauthorized use of electricity or a case of dishonest tampering covered under provisions of either ibid Section 126 or Section 135 of the Act. Thus, the Forum rejects the contention raised by the Complainant with regard to broken meter seals, as being misplaced. Issue 1 is decided accordingly.
28. Issue 2: Before the Forum delves on issue 2, it is expedient and necessary to discuss metering – As has been stated in para supra, it is a known fact that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events related to these, which can be retrieved from the meter using an MRI. Under practical conditions, when electrical parameter inputs such as voltages and currents to the meter are within safe limits, metering of a consumer may simply be with a meter and without metering equipment. However, where these actually exist on an electrical system at excessively high and unsafe levels, metering equipment such as Current Transformer (CT) and Potential Transformer (PT) are deployed to give restricted or practically acceptable and safe electrical parameter inputs such as voltage and currents to the meter. This is done to prevent unsafe parameters from directly inputting into the meter and is done by stepping down these electrical parameters namely voltages and currents by use of ibid mentioned metering equipment;
29. Thus, irrespective of the fact that the meter is with or without recording and storing capabilities or is with or without metering equipment and only the meter becomes defective, then testing of meter may be the only remedy to estimate or ascertain the quantum of electrical consumption done in the past or to determine its accuracy;
30. However, under the condition when metering equipment alone becomes defective and the meter is capable of recording and storing data, then the electricity consumption data, the electricity supply parameters data and the events are recorded and stored in the meter, which become available for retrieval using a Meter Reading Instrument (or MRI). Though the data of consumption and supply parameters may not be recorded correctly, however, the meter would still have recorded the event of the missing input electrical parameter, thus establishing the fact of defective metering and also depicting the reasons for defective metering. This can then be retrieved using an MRI;
31. On the basis of foregoing discussion, the Forum is convinced that if the metering equipment alone becomes defective, it may not be necessary to send the meter equipment for Testing to a laboratory for estimating the quantum of unrecorded consumption in the past, unless its accuracy vis-à-vis its accuracy class is either under challenge by the consumer before the distribution licensee or the distribution licensee itself feels the necessity to do so, which is not the case here;
32. Thus the MRI data as evidence, is sufficient in helping in estimating or assessing and calculating the quantum of electricity consumption that may have taken place in the past when metering equipment alone becomes defective;



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33. Accordingly, in the instant complaint the Forum is convinced that because it was the metering equipment which was defective and not the meter, therefore, the event of missing phase of voltage, would be reflected in the meter and become available for retrieval using MRI and accordingly the meter would not be required to be sent for testing. Testing of meter would only tend to establish its current status and would not help in estimating the quantum of consumption that may have taken place in the past;
34. Record does not lie. The Forum from record of the MRI data sheets (Annexure R3) finds that in the instant matter, input to the meter from the metering equipment namely the potential transformer (or PT) was faulty as a result of which one (1) phase of voltage out of the three (3) phases, was not being recorded by the meter, while the other two phases were being recorded. There is indeed defective metering in terms of missing of one phase due to defective metering equipment namely the PT. Under these conditions, the events of defective electrical parameter inputs have been recorded and stored in the meter which have become available by way of the MRI data and which clearly depict that one (1) voltage phase to the meter is missing, resulting in less recording of consumption;
35. It is also a known electrical fact that there are three (3) voltage phases for a three phase connection. Thus, when one (1) voltage phase from the metering equipment goes missing, the meter tends to record 66.6% (or $\frac{2}{3}$ rd) of actual consumption and when two (2) voltage phases go missing, the meter tends to record 33.3% (or $\frac{1}{3}$ rd) of actual consumption. The estimation of actual consumption in case of defective metering equipment can therefore be done on reasonable considerations;
36. On the anvil of foregoing discussion, the Forum concludes that the fact of MRI data is sufficient evidence to establish that the meter was not defective but the metering equipment was defective and therefore for the purpose of estimating the historic consumption, the meter and metering equipment shall not be required to be sent to laboratory for testing;
37. Further, on bare perusal of the provisions of code 4.3.1 and 4.4.1 of the Supply Code reproduced supra, it becomes clear that it is within the licensee's rights to test or get tested the meter including metering equipment installed at the consumer premises which the licensee has rightly exercised by not sending the meter and metering equipment for testing;
38. Thus, from the foregoing discussion and for the simple reason that the data necessary for determining the reasons of defect had already become available to the Respondent from the MRI itself, which is sufficient evidence, the Forum holds and concludes that it was not necessary for the Respondent to send the meter for testing or for testing it at the site. Further, it was within the Respondent's rights to determine the necessity for the testing of the meter which has rightly been exercised by the Respondent. Issue 2 is decided accordingly.
39. Issue 3: In view of foregoing position, once it is settled that there was a metering error, as is evident from the MRI data sheets placed on record, the only issue remaining to be decided by the Forum, is whether the Respondent HPSEBL, can or cannot raise monetary demands as arrears for the past period from 12.03.2020 to 01.08.2022 and from 01.08.2022 to 17.12.2022 vide ibid Demand Notice dated 13.10.2022 (Annexure R1) for Rs 7,83,548/= which was later included in Bill dated 07.11.2022 (Annexure C3) and vide Demand Notice dated 16.02.2023 (Annexure R2) for Rs 78,288/= due to ibid metering error being a bona-fide mistake / error which went unnoticed and further whether Complainant consumer of the HPSEBL is or is not liable to make payments towards these arrears;



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40. Forum observes that the Complainant has not challenged the right of the Respondent to raise past period arrears. However, in order to settle the matter, it is imperative for the Forum to delve into this aspect as well-
41. After examining the record, facts and settled position of law coupled with provisions of the Electricity Act, 2003 on the matter, it is established that the issue of recovery of past dues of arrears by the DISCOM is no more resintegra, in view of the settled position of law laid by the Hon'ble Apex Court in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah Khan alias Rahamjula in Civil Appeal No 1672/2020 decided on 18.02.2020 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No7235 of 2009 decided on October 5, 2021;
42. In the instant matter, on examining the monetary demand raised by the Respondent HPSEBL to the Complainant for the past period from 12.03.2020 to 01.08.2022 for Rs 7,83,548/= raised vide Demand Notice dated 13.10.2022 (Annexure R1), later included in Bill dated 07.11.2022 (Annexure C3) and thereafter another Demand Notice dated 16.02.2023 for the past period from 01.08.2022 to 17.12.2022 (Annexure R2) for an amount of Rs 78,288/=, it is found that these demands have been raised by the Respondent at the behest of a metering error which existed in the past being a bona-fide mistake / error and which was later noticed;
43. In the ibid Judgment of the Hon'ble Supreme Court dated 18.02.2020, which refers to other Judgments as well, Electricity has been held to be 'goods' by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd. Further, as also referred to in the Judgment ibid, under the Sale of Goods Act, 1930, a purchaser of goods is liable to pay for it at the time of purchase or consumption and that the quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute. It is therefore clear from settled law that while the consumer uses electricity being a good, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity which are determined by the Ld HP Electricity Regulatory Commission (HPERC) vide its Tariff Orders passed in pursuance to Regulations framed under the Electricity Act, 2003. These tariffs / charges are applied to the consumption or goods and thereafter a Bill or monetary demand is raised to the consumer;
44. Thus, Forum is of the considered opinion that the Respondent HPSEBL being a distribution licensee cannot recover any tariff / charges in excess of that specified by the HPERC. At the same time, it is also relevant to mention that the Respondent HPSEBL being a distribution licensee, is bound to recover the cost / price of electricity consumed by a consumer strictly, as per tariffs /charges that are determined and specified by the HPERC vide its Tariff Orders;
45. Accordingly, the consumer is bound to pay for the electricity consumption at the determined tariffs / charges being of statutory nature. These Tariff Orders lay out statutory charges. Any lapse, mistake or bona-fide error by the distribution licensee with regard to under recovery of actual tariff / cost / price of electricity, if not recovered from the respective consumer, who has availed the goods, may result either in permanent loss to the distribution licensee being a public utility or with the burdening of this utility's loss upon other consumers. Both of these situations or eventualities are bad and against mandated provisions of Tariff Regulations on the matter;
46. The Forum finds that the Complainant, without substantiating its dispute with facts and proof, is simply denying the alleged defective metering by simply making arguments which this Forum finds as baseless and not legally tenable;



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47. In the matter, this Forum holds that the Respondent HPSEBL did make a bona-fide mistake / error in the past by missing to raise statutory amounts in the original Bill arising out of less recording of meter reading due to metering error, which went unnoticed for some time. The Respondent is certainly within its legal rights to raise past arrears or dues of statutory nature, if not discovered earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly or is hit by limitation of 2 years prescribed in ibid section 56(2), which is conspicuously missing on the part of the Complainant. Issue 3 is decided accordingly;
48. On aforesaid terms, the Forum does not find force in the complaint. No illegality is seen in the Demand Notice dated 13.10.2022 (Annexure R1) for Rs 7,83,548/= which was later raised as sundry in Bill dated 07.11.2022 (Annexure C3). Consequently, the arrears on account of metering error, included in impugned Bill dated 07.01.2023 (Annexure C1) cannot also be held to be illegal;
49. Once the issues supra framed by this Forum stand settled, Forum further observes that the Complainant has not raised challenge to the correctness of demand / Demand Notice dated 13.10.2022 (Annexure R1) for Rs 7,83,548/= based upon the MRI data (Annexure R3) for one (1) phase of voltage missing. Forum also observes that neither the Complainant nor the Respondent have placed on record any month-wise-item-wise break-up of the ibid amount based upon the Tariff Orders issued by the Ld HP Electricity Regulatory Commission (HPERC) after accounting for the condition of one (1) phase of voltage missing. Forum from examination of Demand Notices dated 13.10.2022 (Annexure R1) and 16.02.2023 (Annexure R2) also finds that some factor of multiplication of value '0.1' has been applied arbitrarily and without any explanation;
50. Thus, for reasons supra, based upon the MRI data and the applicable Tariff Orders passed by the Ld HPERC, Respondent No 3 is directed to correctly overhaul and redraw the differential month-wise-item-wise account of the Complainant in tabulated form from 12.03.2020 to 17.12.2022 i.e for each month for which the defective metering existed in the past. It is clarified that no demand shall be raised for any month which is not supported with the MRI data for that month;
51. After getting the ibid account validated from Respondent No.2, Respondents are directed to raise fresh Demand Notice to the Complainant accompanied with the ibid tabulated account and also accompanied with the MRI data for each month for which this monetary Demand is calculated and raised. The Forum further directs that this fresh Demand Notice be raised to the Complainant within a period of 10 days from this Order;
52. Thereafter, the Complainant is directed to pay the ibid revised Demand within a period of 15 days from the date the revised Demand Notice is raised to the Complainant. Failure to pay shall attract late payment surcharge and provisions on disconnection in accordance with the extant Tariff Orders passed and Rules and Regulations framed by the Ld HPERC.
53. On aforesaid terms, the complaint is disposed as dismissed
54. Parties are left to bear their own costs.
55. Order is announced before the parties present today on 26.04.2023 at Shimla in open Forum.
56. Certified copies of this Order be supplied to the parties. The complaint along with this Order be consigned to record room for safe custody.

I-Analysis of the Complaint:

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1. The case file bearing Complaint No. 1453/1/23/03, dated 23/01/2023, and orders passed on 26/04/2023 by the Consumer Grievance Redressal Forum at Kasumpti have also been requisitioned and gone through.
2. The submissions made by both the parties have also been incorporated in this order in order to have composite view of the entire case.
3. The documents on record, arguments made by both the parties have also been gone through.
4. The relevant Acts, Supply Codes, Manual of Instructions Part-1 and relevant supply conditions have been referred for the sake of clarity.
5. M/S A M Industries R/O Plot No. 97, Jharmajri Baddi, Tehsil Baddi, District Solan, HP-173205 has filed an application, received on 05/06/2023, under provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the final Orders passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti on dated 26/04/2023 in Complaint No. 1453/1/23/03, dated 23/01/2023.
6. The Complainant have also filed an application under the provisions of Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and had prayed for granting order for restraining the Respondents from disconnection of electricity connection.
7. Prayer was granted by the powers conferred under the provisions of Regulation 36 read with Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, accordingly, the Respondents were directed not to disconnect electricity connection of the Complainant's premises during the pendency of the present Complaint with this Appellate Forum.
8. Going through the record and submissions of both Respondent and Complainant read in conjunction on the contention of the Respondent that the present complaint is not maintainable in the eyes of law, this Appellate forum is convinced with the submissions of Complainant that the Representation filed by the Petitioner/Complainant in the present case is within the period of limitation with the contention that petitioner received the order of the Ld. Forum on 01-05-2023. As per the direction given by the Ld. Forum below to the respondents to raise fresh Demand Notice within 10 days from the order of Forum i.e. 26-04-2023. The petitioner was waiting for the fresh Demand Notice from the respondents but till today the petitioner had not received any fresh Demand Notice from the respondents. The petitioner sent two emails to the respondent no. 2 and 3 on 10-05-2023 and 30-05-2023 regarding the compliance of order of the Ld. Forum. But the respondents failed to adhere to the request of the petitioner. By virtue of these two emails the respondents have failed to settle the dispute as the direction given by the Ld. Forum. However, the petitioner orally requested to respondent no. 2 & 3 regarding the consequence of two emails, but the respondents showed inability to comply the direction given by the Ld. Forum below. Hence, maintainable.
9. The word "Tamper report" used by the Complainant in his report is absurd as after referring to the analysis made by the CGRF in its order, is logical and prudent in the instant case, which is for the sake of clarity is reproduced here as under:

"Issue 1: Whether, this is a matter of Tampering of meter falling under section 126 or under section 135 of the Electricity Act, 2003, whereby there is unauthorized use of



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electricity through a tampered meter or where there is dishonest tampering of meter?

- a. *Issue 1: After examining the record, the Forum finds that the impugned monetary demand of Rs 7,94,855/= in electricity bill dated 07.01.2023 raised by the Respondent, has not been done under section 126 or under section 135 of the Electricity Act, 2003. These Sections are in terms of unauthorized use or theft of electricity respectively. The Demand Notices dated 13.10.2022 (Annexure R1) for Rs 7,83,548/= and 16.02.2023 (Annexure R2) for Rs 78,288/= , also do not refer to any action by the Respondent as being in pursuance to these sections of the Act in terms of any tampering. However, Forum does find Meter Reading Instrument (MRI) data sheets comprising the Tamper Report (Annexure R3) having been placed on record by the Respondent;*
 - b. *It is a known fact that the modern-day meters are capable of recording and storing electricity consumption data, electricity supply parameters including various events related to these. The Forum is also aware that these events and data can be retrieved from the meter using an MRI. On examining the MRI data, it becomes clear that the MRI Tamper Report is merely a Report of anomaly events being recorded in the Meter and is not in terms of unauthorized use or dishonest use of electricity. Thus, the Forum on this very basis concludes that the Complainant is misconceived in assuming that the present matter is of tampering of meter / meter seal broken for unauthorized use of electricity or a case of dishonest tampering where the question of removal or broken meter seals may arise, which is certainly not the case herein. It is merely an apprehension of the Complainant. Had the present matter been one of unauthorized use of electricity or a case of dishonest tampering, such would then have appropriately been dealt under the relevant provisions of either Section 126 or Section 135 of the ibid Act and the corresponding Regulations framed in this regard, which is not the case herein.*
 - c. *On the anvil of foregoing discussion, the Forum concludes that the instant matter is not one of tampering / meter seal broken or one of unauthorized use of electricity or a case of dishonest tampering covered under provisions of either ibid Section 126 or Section 135 of the Act. Thus, the Forum rejects the contention raised by the Complainant with regard to broken meter seals, as being misplaced. Issue 1 is decided accordingly."*
10. This Appellate Forum is convinced on the detailed analysis made by Consumer Grievance Redressal Forum at Kasumpti and for the sake of brevity the above analysis may be considered as part and parcel of this order.
 11. The Complainant submits that Abridged Conditions of Supply are not in existence in the present scenario and as such the defense taken by the respondents is totally against the provisions of Supply Code and Indian Electricity Act.
 12. After going through the averments made by the Respondent Board, relevant instructions of sales manual Part-1, **Application and Agreement form** signed between Complainant & Respondent (collected through e-mail) this Appellate Forum is of the clear view that Conditions of the supply are categorically mentioned in the Sales Manual Part-1 as **"Applicable to consumers of HPSEBL"** and **M/S A M Industries** being one of the consumers of HPSEBL are under the contractual obligations to adhere to Sales Manual Instructions /Conditions of supply whatsoever applicable in terms of specific clause of A&A



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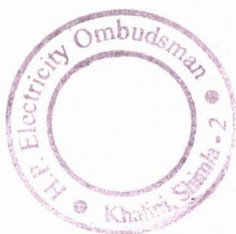
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form, the relevant part of **para-C(iv)** of A&A form signed between the Respondents and Complainant is reproduced as under:

"That I/We undertake to accept and abide by the provisions of Electricity Act, 2003, all applicable laws, conditions of supply, General Conditions of Tariff and Schedule of Tariff, Supply Code, rules, regulations including Safety Regulation by CEA, orders, Directives, Notifications issued and enforced under applicable laws by Himachal Pradesh Electricity Regulatory Commission/CEA/Govt. of India/Govt. of HP and any other instructions/circulars issued by HPSEB Ltd. from time to time, and as amended from time to time, for equitable and efficient distribution of electric energy. These are also available on the website of HPSEBL and Himachal Pradesh Electricity Regulatory Commission i.e www.hpseb.com & www.hperc.org".

On further examining the above provisions and contractual bindings, this Appellate Forum is of the considered opinion that along with the Acts and Supply Codes, the consumer under the ambit of above agreement till it is declared defunct, cannot absolve himself from the responsibilities of mandatory compliance to the Instructions/ Conditions of supply issued or to be issued from time to time by the (supplier) Respondent Board and this court is convinced that in consonance with such contractual bindings the action of Respondent Board is correct.

13. The respondents during the course of arguments emphasized that missing of B phase is attributable to fault in the metering unit i.e PT of CT/PT whereas, the meter is healthy as established from the MRI data on the recording of events by the meter during the phase missing period.
14. After listening arguments of both the parties and going through the order dt. 26.04.2023 of CGRF in details, this Appellate Forum asserts that the issue arose after it was established through MRI data that "BLUE phase" out of RED, YELLOW, BLUE phases, was found missing resulting in less assessment against the same connected load.
15. This Appellate Forum is convinced with the arguments of the officer appeared in the final hearing as Respondent, to the extent that the PT of the metering unit CT/PT is defective and the meter is healthy as the data retrieved from MRI has established the healthiness of meter.
16. This court is further convinced with the comprehensive analysis of CGRF in this regard as they have categorically mentioned in their order that the MRI data as an evidence, is sufficient in helping in estimating or assessing and calculating the quantum of electricity consumption that may have taken place in the past when metering equipment alone becomes defective; and further CGRF in its order dt. 26.04.2023 without any doubt mentioned that meter is healthy and the metering unit is faulty in the instant case. This clearly overrules contentions on inaccuracy of meter and this court for the sake of brevity shall not further delve and upheld the analysis of CGRF on this issue which may also be considered as part and parcel of this analysis.
17. Once it is established that metering unit is defective and meter is healthy in the instant case, it becomes appropriate to reproduce clause 1.2.36 and 1.2.37 of the Supply Code-2009 which are as under:
 - a. **1.2.36 "meter" means and includes metering equipment or a set of integrated instruments used to measure /record singularly or combined electrical parameters including electrical energy and electrical power both in kWh / kVAh during a given period.**
 - b. **1.2.37 "metering equipment" means set of equipment such as current transformer, potential/voltage transformer, necessary wiring and accessories etc.**



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deployed in conjunction with the meter to measure/record the amount of electrical energy supply.

18. This Appellate Forum after analyzing all above references and contentions, extract with a considered view as under:
- a. that had the CT/PT been considered as meter only, it could not have been defined separately in the supply code clause 1.2.37 in addition to clause 1.2.36 that they are deployed in conjunction with the meter to measure/record the amount of electrical energy supply.
 - b. Since, they are deployed in conjunction with the energy meter to perform certain functions, they are definitely a part of meter but not meter and further to have judicious clarity, it shall be appreciable if both these clauses are read in totality, not in isolation.
19. This Appellate Forum is not convinced with the averments made by the Complainant on the applicability of Clause 4.4.8 of the supply code in the instant case which deals with the Overhauling of Consumer Accounts: - (i) If a meter on testing is found to be beyond the limits of accuracy as specified in the regulations framed by the Authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding .
20. After going through above analysis and CGRF in depth analysis, this Appellate Forum infers without any doubt that the reliance on clause No.4.4.8 of supply code which provides overhauling for preceding six months only, construes futile as the MRI data is an authentic proof in hand to provide exact period of events and hence, the applicability of the clause No. 4.4.8 of the supply code does not stand in the instant matter when it is established that the meter is not defective only the deployed part in conjunction with the meter i.e CT/PT is defective and hence, does not call for contentions on inaccuracy of meter.
21. This Appellate Forum after going through the **Instructions No. 26.4 of Sales Manual part-1 deduces that** on account of this nature of fault where the energy meter is not defective and only CT/PT(B phase) are defective, shows its applicability for prudent overhauling which is reproduced as under:
- “In case of CT/PT meters where the accuracy of the meter is not involved and it is a case of incorrect connections, defective CTs/PTs, genuine calculation & mistakes etc., charges would be adjusted in favour of the HPSEBL/ consumer as the case may be for the period the mistake/defect continued”.***
22. On further scrutiny and averments made by the Respondent Board read with findings of CGRF in this regard, This Appellate Forum is of the considered opinion that in the instant case where the meter is healthy and only metering unit deployed in conjunction with meter is faulty, the situation does not warrant taking meter for lab testing. This Appellate is further convinced with the findings of CGRF in this regard, the very specific quote of findings is reproduced ***“the Forum is convinced that if the metering equipment alone becomes defective, it may not be necessary to send the meter equipment for Testing to a laboratory for estimating the quantum of unrecorded consumption in the past,”.*** Thus, this attends to the averments made by the Complainant on this apprehension.
23. During the arguments in this court during final hearing on dt.06.11.2023, the counsel for Complainant prayed to confine overhauling of the account only to the extent of missing events retrieved through MRI data in the said period and also gave reference of para-50 (in original order) of CGRF and read out in the court for clarity and asserted that CGRF in its



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order dt.26.04.2023 has also imparted directions to Respondent Board that no demand shall be raised for any month which is not supported with the MRI data for that month. The Respondent Board did not raise any argument on this averment and agreed to the contentions of Complainant in this regard. The counsel for Complainant also did not raise any further objection on application of MRI data retrieved in the said period 12.03.2020 to 17.12.2022 for overhauling of the accounts.

24. The Complainant during arguments also mentioned about the multiplication factor of 0.1 used in computations. The Respondent Board could not provide valid explanation and this Appellate Forum was also not convinced on the adjudications on this point and directs the Respondent Board to provide authentic reasons for application of said multiplication factor before final settlement of accounts.

J- Issues in Hand:

Issue No.1:

Whether CT/PT(metering equipment) is also meter or part of meter?

Issue No.2:

Whether the meter is also considered defective even if the metering equipment i.e. CT/PT or wiring is defective?

Issue No.3:

Whether Sales Manual Part-1 Instructions as well as Supply Conditions are invalid?

Issue No.4:

Whether clause 4.4.8 of the supply code is applicable in the instant case?

Issue No.5: Whether the justice warrants overhauling for preceding six months or twelve months or full period of dispute 12.03.2020 to 17.12.2022 (subject to corrections if required)?

K-Findings of the Issues:

Issue No.1:

- Whether CT/PT (metering equipment) is also meter or part of meter, is a very vague preposition as different definitions have been given in the different electricity Acts and codes. The counsel for complainant during arguments emphasised that the whole unit is designated as meter and when any of the part becomes defective, the meter is regarded as defective/inaccurate one or damaged one whereas, both counsel for respondent and officers put forth their contentions that both meter and CT/PT(metering equipment) are different owing to have different nature of functions i.e meter records /registers energy consumption whereas metering equipments such as PTs steps down voltage to the required value to facilitate energy meter to record.
- CGRF in its findings on the functioning of the CT/PT, has deliberated in details i.e. they are attached with meter for stepping down current and voltage to the required level to facilitate meter to accept and measure energy consumption thereof.
- After summing up the arguments, submissions, deliberations, this Appellate Forum deduces that when the energy meter is functioning in conjunction with metering equipment such as CT/PTs, it may be designated as integrated unit where CT/PT is also considered as a part of meter with different functions but not meter.



Final



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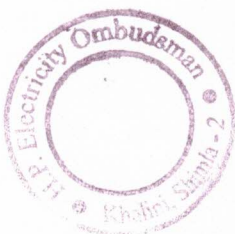
4. Let us also refer to the definition of Meter under clause 1.2.36 read with 1.2.37 of the Supply Code 2009 published by Himachal Pradesh Electricity Regulatory Commission in terms of powers under section 50 of the Electricity Act 2003 which may land to certain consensus and provides as under:
 - a. **1.2.36 “meter” means and includes metering equipment or a set of integrated instruments used to measure /record singularly or combined electrical parameters including electrical energy and electrical power both in kWh / kVAh during a given period.**
 - b. **1.2.37 “metering equipment” means set of equipment such as current transformer, potential/voltage transformer, necessary wiring and accessories etc. deployed in conjunction with the meter to measure/record the amount of electrical energy supply.**
5. This Appellate Forum after analyzing all above references and contentions, appends findings on Issue-1 as under:
 - a. that had the CT/PT been considered as meter as contended by the complainant, it could not have been defined separately in the supply code clause 1.2.37 in addition to clause 1.2.36 that they are deployed in conjunction with the meter to measure/record the amount of electrical energy supply.
 - b. Since, they are deployed in conjunction with the energy meter to perform certain functions, they are definitely a part of meter but not meter.

Issue No.-2

1. Whether the meter is also considered defective even if the metering equipment i.e. CT/PT or wiring is defective. The above findings on issue no 1 paves the way for delving findings on Issue No.2. Since, within the ambit of above findings of Issue-1, it is established that CT/PT (metering equipment) are a part of meter but not meter, further establishes that if CT/PT are defective and meter is healthy, then the meter shall not be considered defective.
2. This Appellate Forum after observing the above findings in conformity with the instant case, where MRI data submitted by the Respondent Board for the period of dispute on different instances of time when “B” phase was missing due to fault in PT unit but the energy consumption pattern got recorded in all the events by the energy meter, substantiated austerity of the findings, clearly concedes and affixes that if the metering equipment such as CT/PT, wiring etc., is defective which are the part of meter and the meter is registering the events and energy consumption as in the instant case, the meter may not be considered defective.
 This gives findings on IssueNo.2.

Issue No.-3

1. Whether Sales Manual Part-1 Instructions as well as Supply Conditions are invalid? This Appellate Forum conceives from above arguments that the conditions of the supply are categorically mentioned in the Sales Manual Part-1 as **“Applicable to consumers of HPSEBL”** and the Complainant is one of the consumers of HPSEBL is under the contractual obligations to adhere to Sales Manual Instructions / conditions of supply, whichever applicable. The same is substantiated through A&A form (**Application & Agreement form**), the relevant part of **para-C(iv)** of A&A form signed between the Respondents and Complainant is reproduced as under:



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"That I/We undertake to accept and abide by the provisions of Electricity Act, 2003, all applicable laws, conditions of supply, General Conditions of Tariff and Schedule of Tariff, Supply Code, rules, regulations including Safety Regulation by CEA, orders, Directives, Notifications issued and enforced under applicable laws by Himachal Pradesh Electricity Regulatory Commission/CEA/Govt. of India/Govt. of HP and any other instructions/circulars issued by HPSEB Ltd. from time to time, and as amended from time to time, for equitable and efficient distribution of electric energy. These are also available on the website of HPSEBL and Himachal Pradesh Electricity Regulatory Commission i.e. www.hpseb.com & www.hperc.org".

2. On further examining the above provisions and contractual bindings, this Appellate Forum is of the considered opinion that along with the Acts and Supply Codes, the consumer under the ambit of above agreement till it is declared defunct, cannot absolve himself from the responsibilities of mandatory compliance to the Instructions/ Conditions of supply issued or to be issued from time to time by the (supplier) Respondent Board and this court is convinced that in consonance with such contractual bindings the action of Respondent Board is correct. This closes the findings on issue No.3.

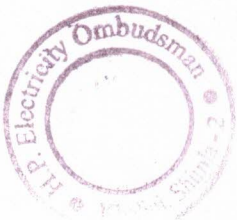
Issue No.4:

1. This Appellate forum is convinced after making detailed findings on the Issue-1 to 3, availability of MRI data read with the findings of the Consumer Grievance Redressal Forum at Kasumpti which may also be considered as part and parcel of these findings, clearly divulges as under:
 - a. That MRI data is a conclusive proof of having consumed less quantum of energy against actual consumption during the period of dispute and further provided that the meter is healthy which is capable of recording and registering the events and in the instant case the MRI data retrieved has provided clarity of events occurred on B-phase missing.
 - b. That MRI data has provided a microscopic view of the exact period of dispute, subject to further authenticity / corrections by the Respondent Board and the quantum of less power consumed during the said period.
 - c. That in view of above findings, this Appellate forum is of the considered view that since the following are established, the applicability of the clause No. 4.4.8 of the supply code does not hold good in the instant case:
 - i. The quantum of less power consumed against the same connected load by the complainant during the period of dispute substantiated with the MRI data placed on record by the Respondent Board.
 - ii. That the meter is not defective, only the deployed part in conjunction with the meter i.e. only PT out of CT/PT is defective.

This closes the findings on issue -4.

Issue No.5:

1. After resorting to the findings on the Issues-1 to 4, this Appellate Forum is of the considered opinion as under that the instant matter is governed by its own applicable statute and merits on account of the following findings:
 - a. That it has been established that the meter is not defective, the only so-called part of meter, the metering equipment deployed in conjunction with the meter as per clause 1.2.37 of supply code is defective i.e. "B" phase of PT unit of CT/PT.



Signature



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- b. That the MRI data has established different events of B phase missing during the said period of dispute.
- c. That due to precise registering / retrieving of MRI data during events, the status of energy meter cannot be construed as Inaccurate Meter.
- d. That in view of the fact that the meter is not defective, clause 4.4.8 of the supply code is not applicable and MRI data is a conclusive proof of having consumed the quantum of energy by the complainant during the period of dispute.
- e. That the instant matter is governed in terms of statute of Hon'ble HPERC being universal for Licensee as well as consumer of the state.

This gives findings on Issue-5

L-Order:

1. The orders passed by the Consumer Grievance Redressal Forum (CGRF) at Shimla on dated 26/04/2023 in Complaint No. 1453/1/23/03 dated 23/01/2023 is upheld.
- 1 The demand notices issued are sustained in principle and in monetary terms, before the revised demand notice is issued, the Respondent Board is directed to adhere and act in line with above findings and append necessary corrections in due cognizance to the following directives:
 - a. Multiplication factor of value '0.1' which appears to be arbitrarily and without any explanation, be explained to Complainant for his clarification and satisfaction by convening a meeting with the complainant in the office of concerned.
 - b. No demand shall be raised for any month which is not supported with the MRI data for that month.
- 2 After attending to above directives, the Respondent Board is directed to correctly overhaul and redraw the differential month-wise-item-wise account of the Complainant in tabulated form for the period 12.03.2020 to 17.12.2022 i.e for each month for which the defective metering existed in the past duly supported by MRI data and the applicable Tariff Orders passed by the Hon'ble Himachal Pradesh Electricity Regulatory Commission and get it validated from the competent authority before issuance of fresh demand thereof.
- 3 The Respondent Board is directed to raise fresh Demand Notice within 15 days excluding holidays from the date of issuance of this order to the Complainant, along with tabulated account and MRI data for each month for which this monetary Demand is calculated and raised.
- 4 The Respondent Board is further directed to ensure the due receipt of all fresh demand notices likely to be served to the Complainant hereafter to curb litigation in future thereof.
- 5 The Respondent Board is also directed to ensure the correctness of above period if required, before issuance of revised demand notice.
- 6 Thereafter, the Complainant is directed to pay the revised Demand within a period of 15 days excluding holiday from the date of issuance of revised demand by the Respondent to avoid further attraction of late payment surcharge as applicable as per prevalent provisions.



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- 7 The Respondent Board is directed not to take any remedial action till the expiry of above period.
- 8 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.
- 9 The parties are left to bear their own costs.
- 10 The Complaint filed by M/S A M Industries R/O Plot No. 97, Jharmajri Baddi, Tehsil Baddi, District Solan, HP-173205 is hereby disposed of.

Given under my hand and seal of this office.



[Signature]
10/11/2023
Electricity Ombudsman