HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
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In the matter of:

M/S B N Enterprises, Plot No. 10, Industrial Area, Village Khadeen, Parwanoo, District Solan, HP-173220 **- Complainant**

Vs

1. **Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Parwanoo, District Solan, HP-173220**
3. **The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Parwanoo, District Solan, HP-173220**

- Respondents

Complaint No. 21/2022 (Registered on 16/11/2022)
(Orders reserved on 13/04/2023, Orders passed on 21/04/2023)

Counsel for:

The Complainant: **Sh. Rakesh Bansal, Authorised representative**
The Respondents: **Sh. Surender Saklani Advocate, Sh. Anil kumar God Advocate, Sh. Kamlesh Saklani Law Officer**

CORAM:

Er. K.L Gupta
HP Electricity Ombudsman

Order

The case was received and registered on 16/11/2022. The case was listed for admission hearing on 23/12/2022. The Respondents were to file their reply by 07/12/2022 and the Complainant was to file his rejoinder by 17/12/2022. The Respondents failed to file their reply by 07/12/2022 and the case was further listed for 21/01/2023. The Respondents were to file their reply by 07/01/2023 alongwith certain additional documents and the Complainant was to file his rejoinder by 13/01/2023.

The Respondents again failed to submit their reply by 07/01/2023 and the case was listed for 25/02/2023. The Respondents were to file their reply by 10/02/2023 and the Complainant was to file his rejoinder by 17/02/2023. The Respondents filed their reply by 20/02/2023 but failed to submit additional information. The case was further listed for 25/03/2023 and the Respondents

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were to file additional information by 04/03/2023. The Complainant was to file his rejoinder by 17/03/2023.

The Complainant filed his rejoinder on 16/03/2023 and the case was listed for arguments on 13/04/2023. Arguments were concluded on last date of hearing and orders were reserved. Hence the delay.

A - Brief facts of the case:

1. M/S B N Enterprises, Plot No. 10, Industrial Area, Village Khadeen, Parwanoo, District Solan, HP-173220 have filed an appeal through Sh. Narinder Kumar (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1421/2/22/17, dated 03/06/2022. He has prayed to quash and set aside the orders passed by the Forum below alongwith demand notice dated 08/03/2021 and 12/05/2022 besides overhaul the energy bills for April and May 2020 and refund a sum of Rs 40,500/-.

2. The Complainant have not quoted sub-regulations under which the case has been filed but since he has prayed to quash and set aside the orders of the Forum below, the provisions of sub-regulation (1) (b) of Regulation 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 shall be applicable and the matter shall proceed accordingly.

B - The Complainant's submissions:

PROLOGUE/ BACKGROUND:

1. The Complainant submits that he is filing the said Complaint through Sh. Narinder Kumar, partner of the firm, who has been authorized vide resolution to sign, institute, verify swear affidavits, suits, Complaints, appeal and other proceedings to protect the interest of B. N. Enterprises and to engage counsel(s)/ Advocate (s)/ representatives (s). Further, he is filing the said Complaint under Regulation No. 28 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. His company is a Consumer under the Electricity Act, 2003 i.e. Section 2 sub-Section 15 and the Respondents are Distribution Licensee under Section 2 sub-section 17 of the Electricity Act, 2003. Further, he is also a Consumer under Section 3 (d) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. The Respondents/ non-applicants have failed to adhere to the provisions of the Supply Code, 2009 notified by the Himachal Pradesh Electricity Regulatory Commission under the Electricity Act, 2003 and has wrongly claimed the arrears towards demand charges. He approached the Consumer Grievances Redressal Forum of HPSEBL, for

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redressal of his grievance, who, in the end of the proceeding rejected the Complaint holding it being devoid of merits and substance.

Facts of the Case

2. The Complainant submits that his industrial power connection was released in the year 2013 with a Connected Load of 280 kW and Contract Demand of 240 kVA.

3. The Complainant submits that he applied for temporary reduction of Contract Demand from 240 kVA to 150 kVA and the same was affected by the Respondents w.e.f. April, 2015. The subsequent billing was carried out with a billing demand of 150 kVA and demand charges were levied on the basis of 150 kVA during the following years.

4. Further, that on 08/03/2021, the Respondents issued a demand notice demanding a sum of Rs. 2,43,000/- towards less charged demand charges. The demand notice also stated that the Contract Demand has been switched to original sanctioned Contract Demand of 240 kVA w.e.f. October 19 to March 20 and also for the period October 20 to March, 21. Further, that in the electricity bill issued in the month of April 2021, the Respondents charged the amount of Rs. 2,43,000/- as Sundry Charges over and above the normal billing charges. He was not convinced but deposited the charges under duress as otherwise his power supply would have been disconnected.

5. The Complainant submits that on realizing the nature of charges, he immediately took steps to reduce the Contract Demand on permanent basis to 150 kVA, thereby surrendering the excess sanctioned Contract Demand, which had never come to his use in the past. The application was submitted on 17/04/2021 and subsequently the codal formalities were completed. The process of permanent reduction took two months, during which he was billed on the basis of 240 kVA of Contract Demand. Further, that after the reduction was processed, the bills were issued on the permanently reduced contract demand of 150 kVA.

6. The Complainant submits that the Respondents issued another demand notice on 09/05/2022 for a recovery similar to the previous one and this time calculated the arrears of demand charges for the period Apr-19 to Oct-20 for 19 months. The sum of arrears claimed earlier i.e. Rs. 2,43,000/- was adjusted and the additional liability was worked out as Rs. 2,05,875/-. This time the arrears for the period Apr-19 to Sep,19 were also added to the previous demand, the six month period which was allowed while issuing the previous demand notice dated 08/03/2021.

7. The Complainant submits that the demand notice was corrected by another demand notice dated 12/05/2022 due to error in calculations and the balance sum to be deposited was re-worked to Rs. 1,41,750/-.

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8. The Complainant submits that he wrote a letter to the Respondents on 18/05/2022, which was submitted on 19/05/2022 objecting to the sum charged in both the demand notices. He did not receive any reply on the matter and subsequently approached the CGRF vide Complaint No. 1421/2/22/17, who failed to order interim relief to him. HE then deposited the entire amount that was demanded and continued contesting the grievance before the Forum.

9. Further, that the Forum disposed the grievance vide orders dated 17/10/2022 rejecting the Complaint without any relief to him.

Contentions of the Complainant:

Automatic Resetting of contract demand:

10. The Complainant submits that the Ld. Forum in Para 11, has wrongly interpreted the meaning of the amended para 3.10 after the 2nd Amendment. The Forum in the para has stated that *"The financial year starts from 01st of April and ends on 31st of March of every year. Accordingly, on 31st March of each financial year, the Temporary Contract Demand, as existing will expire. From the 1st of April of the subsequent financial year, the Contract Demand would get reset to the Permanent Contract Demand (in KVA or MVA) unless the Temporary Contract Demand is re-applied by the Consumer. Therefore, in our considered view, a Consumer would be required to apply afresh for re-revision of his Temporary Contract Demand (in KVA or MVA) in any new financial year, else a previously existing Temporary Contract Demand (sanctioned or deemed sanctioned) shall automatically get reset to the last sanctioned Permanent Contract Demand (in KVA or MVA)".*

11. The Complainant further submits that the Forum has exceeded its jurisdiction with regard to interpreting a legislation, whereas such powers are only vested with courts. The mechanism of resetting the Contract Demand automatically in each financial year has nowhere been mentioned even in the amended clause 3.10. The provision that has been added vide second amendment states as follows:

"Provided that the Consumer shall not be eligible for temporary revision of contract demand to a value other than the full sanctioned contract demand for a total period of more than six months in one financial year:

Provided further that in cases involving part period of a year e.g. if a Consumer takes the connection, or the Consumer gets his permanent sanctioned contract demand revised, during the middle of a year, the adjustments shall be made on pro-rata basis.

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Note: *The Distribution Licensee shall, immediately after the publication of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018, in the Rajpatra, Himachal Pradesh, issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.f. 01.04.2019."*

12. Further, that the proviso clearly talks of eligibility of the Consumer being six months in a year, but does not talk of the procedure of resetting etc. The idea resetting of the Contract Demand is the outcome of the Forum themselves.

13. The Complainant submits that it is also proven by the demand notice dated 08/03/2021, wherein the Respondents had given relief of six months in a year, while calculating the arrears. Further, that the subject matter of the said demand notice is *"Switching of Contract Demand to original sanctioned Contract Demand"*. The methodology adopted by the Respondent is different and it did not demand any arrears for the periods April to Sep, in the year 2019 and 2020. The temporary reduced Contract Demand was automatically carried on for next year also and it did not require the Consumer to file a fresh revision for the temporary reduction.

14. Further, that the internal instructions issued by the Chief Engineer (Comm.) on 25/10/2018 after the notification of the 2nd amendment also does not talk of resetting and re-application for reduction of Contract Demand. Para 3 (c) of the said instruction states as follows:

*" 3(c) In this case Consumer shall have the option to continue with revised CD for a maximum period of 3 months i.e. 4th, 5th and 6th month. As per revised clause 3.10(a), if a Consumer does not revise CD then after 6th month **the billing shall be done on the basis of Original Sanctioned Contract Demand only**."*

15. The instruction merely talks of billing but not about revision of contract demand, which stays untouched. In para 12, the Forum has wrongly drawn the conclusion that

"For electricity consumption occurring after 01/04/2019, such monetary demand (in Rs) shall necessarily have to be based on Temporary Contract Demand (in KVA or MVA), if such is reapplied."

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Retrospective Application of the amendment:

16. The Complainant submits that the Forum's view on retrospectivity of the whole issue is summed up below:

In Para 12 of the order:

"In view of above observations, this Forum arrives at a logical conclusion that question of Retrospective application of Supply Code 2nd Amendment, 2018 by the Respondent HPSEBL shall arise only, if a monetary demand is raised by the Respondent HPSEBL after 01/04/2019 for any electricity consumption period/ electricity billing prior to 01/04/2019. Thus, no question of such retrospective application or effect of ibid Supply Code 2nd amendment, 2018 arises if a monetary demand is raised by the Respondent HPSEBL after 01/04/2019 for any electricity consumption period after 01/04/2019."

17. The Complainant submits that the Forum is viewing the retrospectivity only with respect to the period of billing and the period of arrears demanded, but not with respect of the application for temporary reduction which was filed in the year 2015, years before the 2nd Amendment. The issue of retrospectivity w.r.t. the applications which already existed before the amended provisions came into force viz a viz , the applications for temporary reduction which are filed after the amendment in the rules was raised by the Complainant, which the CGRF did not address, but have derived a different meaning of retrospectivity in the matter. He submitted before the Forum that his application of 2015 was governed by the previous rules applicable at the time of filing of the application, but not by the fresh rules made applicable in 2019.

18. Further, that the Himachal Pradesh General Clauses Act, 1968 in its section 4 states that

*" **4. Effect of repeal**.- Where this Act or any Himachal Pradesh Act repeals any enactment then, unless a different intention appears, the repeal shall not-*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

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(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

19. Further, that similar provisions are also available in the General Clauses Act, 1977 which is a Central Act in Section 6 (c).

20. Further, that these sections of the said Act protect his rights as the 2nd amendment cannot affect the right that was available to him before the new enactment.

Delayed action on the part of the Respondents:

21. The Complainant submits that the Ld. Forum in para No. 16 of the order has observed that

"16. The present Complaint under adjudication, relates to the undeniable fact and circumstances where the Complainant has failed to keep vigil on the change in law. Onus of knowledge of statute or change in statute rests with both parties especially when the change is made public and its intimation to the Consumer is not imperative upon the Respondent HPSEBL. There is also no requirement under the Supply Code with regard to prior intimation by the HPSEBL to the Consumers of change in law. The Forum finds that due diligence to exercise vigil especially in respect of change in law affecting the Consumer, has not been made by the Consumer Complainant who ought to have appropriately revised its Contract Demand in pursuance to the Supply Code 2nd Amendment, 2018. Even the 'Note' at the end of Code 3.10 of the Supply Code 2nd Amendment, 2018 is in terms of issuing of detailed procedural instructions by the HPSEBL to only its field units and not to the Consumers."

22. The Complainant submits that the Forum has erred in observing that he has failed to keep vigil on the change in law, while the real position is vice versa, which the Ld CGRF has not put on record. The 2nd Amendment was notified in July 2018, and the provision in question was applicable w.e.f. 01/04/2019, while the internal instructions were issued by CE (Comm,) on 25/10/2018. The question arises as to:

a) What stopped the Respondent field office to issue correct bills to the Complainant immediately after 01/04/2019, within the meaning which they understood of the amendment, be it their version?

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b) Why did the field offices sleep until 08/03/2021, the date of the demand notice and the subsequent demand notices that were issued thereafter, which are contrary to their earlier notices?

c) Were the Respondents not responsible to maintain vigil of the changing law, as they are day in and day out only dealing with the matters related to the subject of electricity?

23. Further, that the Ld. Forum has erred in observing that he was not vigilant, whereas he was of the clear view that the amended provisions were not applicable on him as has been explained in foregoing paras above.

Notice of change:

24. The Complainant submits that even if the Respondents intentions based on their interpretation of the 2nd amendment are to be believed, it would have been fair and in the interest of justice that the intentions should have been conveyed to the such affected Consumers, including him about the fate of facility that they were availing before such amendment, which would have provided an opportunity to him to set his house in order in view of the interpretation of the 2nd amendment. The Hon'ble Commission had provided reasonable period of eight months for smooth implementation of the changed provision. The foot note under the new provision is reproduced below:

Note: *The Distribution Licensee shall, immediately after the publication of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018, in the Rajpatra, Himachal Pradesh, issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the* ***smooth implementation*** *of aforesaid provisions w.e.f. 01.04.2019."*

25. Further, that the approach of the Respondents is highly unfair and contrary to the principles of natural justice. Neither have they implemented the amended provisions well in time, nor had they given any notice of fate of the temporary reductions already in operation since before the amendment period.

The 2nd amendment does not terminate the already existing applications for temporary reduction:

26. The Complainant submits that nowhere in the second amendment, it is mentioned or indicated otherwise that the existing temporary reduction shall automatically stand terminated. Nor does the instructions issued by CE (Comm.) anywhere mentions the lapse of existing reduction cases approved before the amendment came into effect. The Respondents are extrapolating the amendment in order to earn extra revenue as has been

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observed by internal audit of their accounts. The amendment only targeted the prospective applications for temporary reduction.

The delayed action on the part of the Respondents has cast additional liability on the Complainant:

27. Further, that even if the entire version of the interpretation of the Respondents is considered lawful, the delay has cast additional liability on him. Had the first bill after 01/04/2019 issued as per their interpretation, he would have taken adequate action w.r.t. fresh filing of application, modification of demand etc. in order to contain the additional liability to whatever extent possible. The permanent reduction which he carried out after the issuance of demand notices could have been carried out much earlier, immediately after 01/04/2019. His such application on this date will not be entertained retrospectively. Lackadaisical approach of the employees of a public utility should not be permitted at the cost of the Consumers.

Prayer

28. In view of above the Complaint prays that **a)** to quash and set aside the orders dated 17/10/2022 passed in Complaints No. 1421/2/22/17 as the same are contrary to the provisions of the HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013; **b)** to quash the demand notices 08/03/2021 and 12/05/2022 issued by the Respondents; **c)** to direct the Respondents to overhaul the two bills issued on the basis of contract demand of 240 kVA for April and May 2020 and refund a sum of Rs. 40,500 to the Complainant; **d)** to pass orders against the Respondents for their conduct in respect of delayed action in implementing the provisions of the 2nd amendment; **e)** to pass orders directing the Respondents to pay interest on amount refundable to him on the amount already recovered till the date of actual refund as per clause 5.7.3 of the Supply Code, 2009, on the increasing/ reducing balance; **f)** to direct the Respondents to compensate him towards cost of the Complaint amounting to Rs. 1,00,000/-; **g)** to Call for the record of the case and, **h)** 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 Respondents' submissions:

1. The Respondents submit that they are functioning as a Distribution Licensee which has been authorised to operate and maintain a distribution system for supplying electricity to the Consumers in state of H.P. and a regulated entity under HPERC constituted under sub-section (1) of section 82 of the Electricity Act,2003. The Regulations framed and notified by the Regulatory Commission are implemented by the Respondent/ HPSEBL in its letter and spirit. Under section 50 of the Electricity Act,2003 it is provided therein that State

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Commission shall specify of electricity charges, interval for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply Code, 2009 was made complying with the provisions of the Electricity Rules,2005. Further, that the HPERC vide HP Supply Code (2nd Amendment) Regulations,2018 amended the Regulation 3.10 of the Code, with effect from 01/04/2019. Regulation 3.10 after amendment reads as under:

"3.10 temporary revision of contract demand

The Consumer to whom two-part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following conditions: -

a. That the Consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) application to him

Provided that Consumer shall not be eligible for temporary revision of contract demand to a value other than the full sanctioned contract demand for total period of more than six months in one financial year;

Provided further that in cases involving part of year e.g. if a Consumer takes the connection or the Consumer gets its permanent sanctioned contract demand revised, during the middle of the year, the adjustment shall be made in pro rata basis."

2. The Respondents submit that hence, after coming into force the 2nd Amendment Regulations, 2018, w.e.f. 01/04/2019, a Consumer revise their Contract Demand within the sanctioned Contract Demand for total period of six months maximum in one financial year.

3. Further, that the Regulatory Commission notified/ published the draft regulation to amend the HP Electricity Supply Code,2009 in the Rajpatra H.P. dated 02/02/2018, as required under sub-section (3) of section 181 of the Electricity Act,2003, Rules 3 of the Electricity Rules, 2005 and notice for inviting suggestion and objections from the public and stakeholders was published in the various leading newspapers. The Hon'ble commission has circulated the draft of the impugned regulations to the Supply Code to the Review Panel, constituted under para 1.3 of the HP Electricity Supply Code,2009 for their consideration and recommendations and the commission after considering the various suggestions and objections received from the various stake holders vis-à-vis the comments/ recommendations of the supply code review panel, notified the final 2nd Amendment Regulation On 31/07/2018. Hence, the required procedure had been adopted by the

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Commission while notifying the amendment which is impugned in the present Complaint as such there is no merits in the Complaint and same is liable to be dismissed.

4. The Respondents submit that the issues as to whether the regulations framed by the Electricity Regulatory Commission override the existing contracts or not is not reintegrate as the Constitution Bench of the Hon'ble Apex Court in the case titled as PTC India LTD Versus Central Electricity Regulatory Commission (2010) 4 SCC 603 Settled the law on the point wherein it was held that the existing contracts have to be aligned with the provisions of the Regulations. Further, that the as per the HP Electricity Supply Code, 2nd Amendment Regulations, 2018, a Consumer is entitled to revise their Contract Demand within the sanctioned Contract Demand for total period of six months in a financial year. Further, that vide letter dated 09/05/2022, the Complainant was requested to deposit the unbilled amount w.e.from 04/2019 to 10/2020 to the tune of Rs 2,05,875/- since the original Sanctioned Contract Demand i.e 240 kVA therefore, the notice dated 12/05/2022 has been further revised to Rs 1,41,750/-. The unbilled amount to the tune of Rs 1,41,750/- has been deposited by the Complainant vide receipt No. 110301508032 dated 13/06/2022. Further, that the electricity dues cannot partake contractual in character and being statutory one, Complainant is liable to make the payment of the demand charges without protest. Further, that vide letter dated 12/05/2022, the Complainant was requested to deposit the final calculated amount after the amount of the Complainant was overhauled, since the Contract Demand was switched to its original sanctioned Contract Demand from 150 kVA to 240 kVA w.e.f April/2019 to Oct/2020. The Complainant cannot evade from making payment of the charges on this account as such the representation filed by the Complainant is liable to be dismissed. Further, that the ld Forum has passed very reasoned and speaking order in accordance with the mandate of the regulation occupying the field, no further interference is warranted in the matter.

5. The Respondents submit that the ld Forum has passed well-reasoned and speaking order dated 17/10/2022, wherein the regulatory provisions occupying the filed have been very well appreciated as such there is no further scope for the interference of this id Ombudsman. Further, that this ld Ombudsman has already disposed off similar Complaint wherein, the action of the Respondent/ HPSEBl has been upheld qua the demand on account of the 2nd Amendment (Regulation),2018 wherein, 3.10 of the HP Electricity Supply Code,2009 stands amended. The present matter is squarely covered and as such the Complainant /representation filed by the Complainant deserves only dismissal.

On Merits:-

6. The Respondents specifically denied that they have failed to adhere to the provisions of the Supply Code,2009 notified by the HPERC under the Electricity Act,2003. Further, that the ld Forum has rightly dismissed the Complaint filed by the Complainant since there were no such grounds to make out any case. The instant representation as filed by the Complainant

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is also devoid of any merits and the order dated passed by the id Forum being reasoned and speaking in accordance with the provisions of the regulations, no such interference is called in this matter.

7. The Respondents submit that the detail reply has already been submitted by them Respondents /HPSEBL before the ld CGRF, for the sake of brevity, same may be read to the part and parcel to the reply under reference. Further, that since the ld Forum has passed very reason and speaking order dated 17/10/2022, there is no scope for further scrutiny of this Ld Ombudsman. Detailed reply has already been furnished by them before the ld forum, same may be read as part and parcel in reply to this representation.

Reply to the facts of the case

8. The Respondents specifically denied that the ld Forum while passing the impugned order dated 17/10/2022 has wrongly interpreted the clause 3.10 of the HP Electricity Supply Code,2009. Further, that the ld forum has rightly appreciated the true intent and purpose of the amended provisions of clause 3.10 of the Supply Code and has passed the impugned order. They further specifically denied that the ld Forum has exceeded its jurisdiction with regard to interpreting the legislation. Further, that the clause 3.10 of the Electricity Supply Code, 2009 is very much clear which provides the specific intention of the legislature qua the eligibility of the benefits of the revised contract demand. Terms "one financial year" is mentioned in the clause which leaves no manner of doubt for further interpretation of the language of the clause. Further, that the Complainant is trying to make out his case purely on the basis of the assumption and presumptions which is not allowed. The internal communication which has been issued by them is totally mis-interpreted by the Complainant. Further, that the language of the clause 3.10 of the Supply Code,2009 is very much clear as such, ld forum has rightly dismissed the Complaint filed by the Complainant.

9. The Respondents submit that the ld Forum has rightly appreciated the contention of the parties and rendered its detailed findings on the each and every issue which was brought before it. The Complainant has mis-read and misinterpreted the statement, object and reasons of the 2nd Amendment, 2018 to the HP Electricity Supply Code,2009. It is settled position of the law that the existing contracts have to be aligned with the provisions of the Regulations. This ld Ombudsman has already disposed of matters with identical issues, where the action of the Respondents has been declared just and legal. The Complainant is arguing in air regarding application of the General Clause Act.

10. The Respondents submit that the contention of the Complainant are totally wrong and incorrect hence denied. Further, that when 2nd Amendment, 2018 was brought by the Hon'ble HPERC, detailed draft was uploaded in the website of the Hon'ble Commission and comments/objections were sought from the stakeholders on the proposed amendment. The Hon'ble Commission has followed the proper procedure as required under law and

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further having public hearing on the matter, the clause 3.10 of the Electricity Supply Code, 2009 was amended. Further, the same amendment was publication in the official gazette of the HP for its wide publication. Further, that the impugned order dater 17/10/2022, passed by the ld Forum, dealt each and every aspect of the matter and there is no further scope for kind of interference by this ld Ombudsman.

11. The Respondents thus prayed that the representation filed by the Complainant being meritless, may kindly be dismissed.

D - The Complainant additional submissions through rejoinder:

1. The Complainant submits that he at the outset repeat, reiterate and confirm all the statements and averments made by him in the Complaint and deny all the statements and averments made in the said reply unless and until the same are specifically admitted by the Complainant company. The objections raised by the Respondents are lacking merit.

2. Further, keeping in view the Complaint filed by him and the reply filed thereafter by the Respondents, no matter of the Complaint stands resolved. The Respondents have missed or have denied the main issues raised by him, which still need redressal by this Hon'ble Forum. The pointwise rejoinder to the reply and objections raised by the Respondents is as below:

Reply to preliminary submissions:

3. The Complainant submits that the question of whether the Commission followed the required procedure under the law is not at all the matter of this grievance. He has not challenged the manner in which the amendment was carried out and is fully conversant with the legal procedure. That it is only the manner in which the said amendment was implemented by the Respondents, which is a matter under this grievance.

4. The Complainant submits that it is also agreed that the existing contracts have to be aligned with the provisions of the regulations. But it is the methodology adopted by the Respondents to align the existing contracts with the provisions of the regulations which he is questioning. The Respondents simply raised demand for arrears after a period of two years rather than issuing the regular monthly bills as per provisions of the regulations immediately after the date of amendment in the regulations. Nor did the Respondents consider their responsibility to issue a notice in a timely manner to him, so that he could take any action to prevent excess liability being cast by the new/ amended provisions. Further, that it is the sudden realization on the part of the Respondents after the lapse of two years that the amended provisions could realize more revenue if applied retrospectively from the date of the demand notice. The amendment which came into force on 31/07/2018, with the date of applicability of the relevant provision w.e.f. 01/04/2019,

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was affected by the Respondents on 09/05/2022, after a lapse of almost three years. He is suffering on account of late action and implementation of the same amendment in regulation, which the Respondents have stated to be binding on them, while they have also quoted themselves as law abiding entity. The Respondents have themselves contravened the amended regulations and instead of making it effective immediately on 01/04/2019, failing to do so, have put him into a position where he is being made to suffer additional financial burden due to delay in action of the Respondents.

Contentions of the Complainant

5. The Complainant submits that there is no logic in the denial of the Respondent on the understanding of the term 'one financial year', which clearly goes by its literal meaning that a financial year begins from 1st of April every year and ends on 31st March the next calendar year. The restriction imposed by the amendment for a period of six months in a financial year does not necessarily means that it has to be the first six months of a financial year. If a Consumer reduced his contract demand on 1st of October 2019 and continues on the reduced contract demand upto 30/09/2020, he still would have availed the benefit of six months in a financial year for two consecutive financial years 2019-20 and 2020-21. Such a case also clearly meets the requirement of amended clause 3.10. Whereas the automatic switching over of Contract Demand on 1st of April every year will require two revisions over the two years. The CGRF in its interpretation has further curtailed the flexibility given to the Consumer by the regulations. He also further contested that the once temporarily reduced demand shall continue to remain in force, however, only the billing for six months in a year shall be carried out on the basis of the sanctioned Contract Demand, without even necessitating the temporary reduction of Contract Demand every year. That the interpretation of the CGRF is not correct and such interpretation cannot be allowed to unilaterally change the objective of the amendment.

6. The Complainant submits that the CGRF has only considered the meaning of retrospectivity with respect to the date of amendment, while he has all the time been referring the retrospectivity with reference to the date of his application for the reduction of Contract Demand. The revisions/ reductions carried out prior to the effective date of the new amended clause 3.10, i.e. 01/04/2019, remain untouched by the new amendment as the such revisions were carried out under the applicable erstwhile provisions prior to the amendment coming in force. For instance, in the present case, he had temporarily reduced the Contract Demand in the year 2015, when there was not such restriction on the benefit of such reduction for six months in a financial year. Such cases cannot be covered under the new amendment unless and until he approaches the Respondents for a subsequent revision after the onset of the new rules. It would be well within the rights of the Respondents to allow such reduction only for a maximum period of six months in a year, if the Consumer approached them after 01/04/2019. Hence, the amendment is not being questioned in the present representation.

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7. The Complainant, in view of above, prays that the Complaint deserves to be allowed by the Hon'ble Ombudsman. He once again prays to the Hon'ble Ombudsman to grant relief as prayed in the Complaint.

E – The Complainant' additional submission through written arguments:

Brief Synopsis

1. The Complainant temporarily reduced his Contract Demand which was effected by Respondents from April, 2015 from 240 kVA to 150 kVA.

2. On 08.03.2021 the Respondents issued a demand notice for Rs. 2,43,000 towards differential demand charges for the period of October, 19 to March 20 and for the period October,2020 to March 21, while for the rest of the period the earlier reduced contract demand was considered for billing.

3. The Complainant permanently reduced his Contract Demand from 240 kVA to 150 kVA following the demand notice on 17/04/2021, which was processed with prospective effect.

4. The Respondents issued another demand notice on 09/05/2022 for similar reasons, this time revising the earlier notice, which stood paid by the Complainant and this time the notice was revised to calculate additional liability of Rs. 2,05,875/-, but this time the period was taken as 19 months upto October 2020.

5. Another demand notice was issued on 12/05/2022, wherein the difference of Rs, 2,05,875/- was further revised to Rs. 1,41,750/- for the same period as in Sr. No. 4 after corrections in the calculation.

6. The Complainant approached CGRF vide Complaint no. 1421/2/22/17, who disposed the same vide its final orders dated 17/10/2022 denying any relief to the Complainant.

7. The Complainant approached the Hon'ble Ombudsman for further redressal of his grievance.

Arguments:

8. Provision of 2nd amendment inserted in Clause 3.10 of the Supply Code.

   The provision reads 'the Consumer shall not be eligible for temporary revision of contract demand ..... for a period of more than six months in a financial year:

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The said provision only restricts the Consumer from the benefit of the temporary reduction to a maximum period of six months.

9. The said inserted provision does not talk of the procedure to be followed, whether a Consumer is required to re-apply for temporary reduction every year or whether the reduction will expire in six months. It neither talks of the which period of the year these six months of benefit can be.

10. In the first demand notice, the Respondents have interpreted this provision in a manner that no repetitive reduction application processing for reduction was required and had exempted the period of six months in each financial year i.e. 2019-20 and 2020-21 from levy of additional levy of charges.

11. In the second and third demand notice the Respondents changed their stand and issued revised demand notice, now interpreting differently stating that once restored to the sanctioned level the temporary reduction would have to be applied again each financial year, while the interpretation of the CGRF also is the same in their orders.

12. The Hon'ble Ombudsman in the case of M/s Mohan Meakin Ltd versus HPSEBL has interpreted the same in a third manner upholding that the previous continuing temporary reduction will automatically expire on 30/09/2019 and thereafter fresh applications would be required each year.

13. The Complainant's interpretation is that the new provision will not apply on the temporary reductions which were already continuing on 01/04/2019. Any Consumer who would approach for temporary reduction after 01/04/2019 shall be bound by the new provisions.

14. The temporary reduction of contract demand which was governed by the rules prevailing in 2015 cannot be terminated by an amendment which specifically does not contain such provision. The Complainant's temporary reduction shall continue to be governed by the old provisions under which such sanction/ approval was granted until and unless such reduction is changed / withdrawn by the Complainant on his own. In the absence of such clarity in the amendment, the provisions of section 4 of the H.P. General Clauses Act, 1968 and the provisions of corresponding section 6(c) of the General Clauses Act, 1977 of the Union of India, would automatically apply. **When there is a disagreement between pre-constitutional laws and post-constitutional laws or when there is a lack of clarity in the specific enactments, the General Clauses Act is highly useful. To minimize confusion, the Act provides a clear suggestion for contradictory sections and separates the law according to when it will take effect and how it will be applied.**

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15. This amendment since it is creating confusion, will attract the provisions of the General Clauses Act, to protect the Consumers. He further stated that the Electricity Act, 2003 is a

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Consumer centric Act, with one of its objective as Consumer protection and hence the Consumers must be protected, even if it is from the delayed action on the part of the Respondents, who failed to put in place a proper mechanism well in time so that the Consumers do not suffer.

" ***4. Effect of repeal.***- *Where this Act or any Himachal Pradesh Act repeals any enactment then, unless a different intention appears, the repeal shall not-*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or...."

16. The Respondents failed to issue timely notices to the Consumers including the Complainant for termination of the temporary reduction carried out in 2015. The Respondents also failed to issue proper bills, even if his stand is taken to be correct w.e.f. 01/04/2019. The application for permanent reduction carried out by the Complainant should be considered applicable w.e.f. 01/04/2019 due to the lapse on the part of the Respondents.

17. In view of above, it is prayed before the Hon'ble Ombudsman that the relief as prayed in the representation be allowed in the interest of justice.

F - CGRF Order:

1. This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and the HP Electricity Supply Code, 2009 (or the Supply Code, 2009 or the Supply Code or the Code) including amendments thereto, record and facts along-with pleadings of the parties. We have heard the parties at length. The considered opinion of the Forum has been gathered after examining and analyzing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

2. At the outset, this Forum observes that the Complainant has raised the instant Complaint by merely reproducing certain provisions of the Supply Code amendments. The Complainant has argued that the ibid amendment no-where states that the Consumers who were being billed on the Temporary Contract Demand prior to the notification of the ibid 2 nd Amendment shall fall into the purview of the new mechanism. Complainant further

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argues that the ibid 2nd Amendment shall be applicable to the future Temporary Contract Demand and that he had sought Temporary reduction of Contract Demand in the year 2015. The Complainant has not clearly stated the legal basis of the Complaint. The Complainant is merely alluding that the Supply Code 2nd Amendment notified on 31.07.2018 is not applicable to him as he had revised / applied for Temporary Contract Demand (in kVA or MVA) before the enactment of ibid Supply Code 2nd Amendment, 2018. It is from the Complainants letter addressed to the Respondent dated 18.05.2022 (Annexure C-7), where-in reference to retrospective application of ibid Supply Code amendment has been made by him, that this Forum is taking up 'Retrospective application of ibid 2nd Amendment' as the main issue for determination;

3. This Forum, before proceeding with the issue(s) that have come up for determination in the instant Complaint, considers it necessary and expedient to reproduce for clarity's sake, certain relevant amendments to the HP Electricity Supply Code, 2009 enacted by the Ld HP Electricity Regulatory Commission (or the HPERC). The ibid Supply Code, 2009 was notified by the Ld HPERC on 26th May, 2009. Later Amendments were carried out. Amendments pertinent in the instant matter with regard to 'Temporary' revision of Contract Demand, were first introduced by the HP Electricity Regulatory Commission (or the HPERC) vide Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 notified on 11th June, 2014 where-in Code 3.10 was introduced. Thereafter, amendment to this Code 3.10 was done by the HPERC vide the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018. For the sake of convenience, relevant extracts of these amendments are reproduced here-in-under:-

(A) Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014 -
Quote

10. Insertion of para 3.10.- In the said Code, the following para 3.10 shall be inserted; namely:- "3.10 Temporary revision of contract demand.– The Consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition-

10 (a) that the Consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to a further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) applicable to him;

(b) that the Consumer shall not be entitled to revise the contract demand more than twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months;

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(c) that the Consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the Consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;

(d) that in cases where the contract demand is reduced under this mechanism, such reduced contract demand shall be applicable for billing purposes; and

(e) that in cases where the Consumer gets his contract demand reduced permanently, the limit under clause (a) shall be considered with respect to such reduced contract demand, but such reduction shall not be considered to have been made under this mechanism and the time gap of 3 months as per clause (b) shall be reckoned from the date from which the demand was last revised under this mechanism.

Illustration.- If a Consumer who is having sanctioned contract demand of 10 MVA temporarily revises the contract demand to 6 MVA w.e.f. 01.08.2014 under this mechanism but gets his sanctioned contract demand permanently reduced to 8 MVA w.e.f. 01.09.2014, he shall have to pay charges based on 6 MVA contract demand till 31.10.2014 (i.e. till the expiry of 3 months period from the date at which the contract demand was last revised i.e. from 01.08.2014). However, if the contract demand is to be reduced permanently to lesser than 6 MVA (say 4 MVA as on 01.09.2014), the demand charges would have been based on a contract demand of 4 MVA during the period upto 31.10.2014."

Un-Quote

(B) Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018-

Quote

3. Amendment of para 3.10:- For the sign ";" occurring after clause (a) of para 3.10 of the said Code, the sign ":" shall be substituted and thereafter the following provisos shall be inserted, namely:- "Provided that the Consumer shall not be eligible for temporary revision of contract demand to a value other than the full sanctioned contract demand for a total period of more than six months in one financial year: Provided further that in cases involving part period of a year e.g. if a Consumer takes the connection, or the Consumer gets his permanent sanctioned contract demand revised, during the middle of a year, the adjustments shall be made on pro-rata basis. Note: The Distribution Licensee shall, immediately after the publication of the Himachal Pradesh Electricity Supply Code (Second

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Amendment) Regulations, 2018, in the Rajpatra, Himachal Pradesh, issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.f 01.04.2019."

Un-Quote

4. Before proceeding to determine the issue(s) arising in the instant Complaint, this Forum briefly delves into the working of the Contract Demand (in KVA/ or MVA). The Contract Demand is a provision of the Electricity Supply Code and the Tariff Orders and is a Demand (in KVA/ or MVA) contracted by the Consumer at the time of his original application for connection which is also subjected to permissible revisions during the life of the connection, in accordance with the Supply Code, 2009. This Contract Demand is applied for by the Consumer and sanctioned by the licensee, inter-alia with the underlying purposes of determining the Standard Supply Voltages at the time of connection, for billing of the Consumer etc. The original Contract Demand is of 'Permanent' nature and the said revisions on the choice of the Consumer may be of 'Permanent' or of 'Temporary' nature which are regulated in accordance with the provisions of the Supply Code. This Contract Demand (in KVA or MVA) serves as a reference vis-à-vis the actual maximum Demand (in KVA or MVA) recorded on the meter during the times of electricity consumption and is applied towards the billing of the Consumer or other matters as may be prescribed by way of HPERC Regulations / Supply Code. When the Supply Code regulates the revision of Contract demand, the respective Consumer is required to keep a vigil on his consumption pattern by managing the peaks of his actual Demand (in KVA or MVA) while also keeping a vigil and managing / revising his Contract Demand from time-to-time so as to keep both in synchronization and consequently the optimization of its electricity bills;

5. Vide Supply Code 1st Amendment dated 11.06.2014 conditions for Temporary revision of Contract Demand (in KVA or MVA) were first introduced by insertion of code 3.10 and this Code was later amended vide Supply Code amendment dated 31.07.2018 when certain Provisos were added. In respect of this 'Temporary' revision of Contract Demand, while the amendment notified on 11.06.2014 introducing therein code '3.10 Temporary revision of contract demand' which provided for limits of revision, number of revisions in a year, gap between successive revisions etc, the later amendment dated 31.07.2018 introduced certain 'Provisos' into the ibid Code 3.10 which specifically provided for total period of 6 months of Temporary contract demand (in KVA or MVA) in a 'Financial Year'. This 2nd amendment was made effective from 01.04.2019. The key word here is the 'financial year'. The financial year starts from 01st of April and ends on 31st of March of every year. Accordingly, on 31st March of each financial year, the Temporary Contract Demand, as existing will expire. From the 1st of April of the subsequent financial year, the Contract Demand would get reset to the Permanent Contract Demand (in KVA or MVA) unless the Temporary Contract Demand is re-applied by the Consumer. Therefore, in our considered view, a Consumer would be required to apply afresh for re-revision of his Temporary

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Contract Demand (in KVA or MVA) in any new financial year, else a previously existing Temporary Contract Demand (sanctioned or deemed sanctioned) shall automatically get reset to the last sanctioned Permanent Contract Demand (in KVA or MVA);

6. Therefore, from the foregoing implications of express provisions of Temporary revision of Contract Demand (or Temporary Contract Demand) (in KVA or MVA) as prescribed in the Supply Code 2nd Amendment, 2018, this Forum holds that after 01.04.2019, any monetary demand (in Rs) raised by the Respondent HPSEBL based on a Temporary Contract Demand (in KVA or MVA) existing prior to 01.04.2019, can only be with regard to electricity consumption done prior to 01.04.2019. For electricity consumption occurring after 01.04.2019, such monetary demand (in Rs) shall necessarily have to be based on Temporary Contract Demand (in KVA or MVA), if such is reapplied. In absence of such re-application, this monetary demand shall have to be based upon Permanent sanctioned Contract Demand. This process shall follow for each new financial year. In view of above observations, this Forum arrives at a logical conclusion that question of Retrospective application of Supply Code 2nd Amendment, 2018 by the Respondent HPSEBL shall arise only, if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity consumption period/ electricity billing prior to 01.04.2019. Thus, no question of such retrospective application or effect of ibid Supply Code 2 nd amendment, 2018 arises if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity consumption period after 01.04.2019. This is based on the condition of 'financial year' contained in the amended provisions of Code 3.10 of the Supply Code, 2009 2nd Amendment, 2018 ibid. This Forum in the facts and circumstances of the case, safely sums up that any Temporary revision of Contract Demand that may have existed in the past before 01.04.2019 shall cease to remain effective beyond 01.04.2019 therefore, the Complainant shall have to apply afresh, if he so requires and in absence of such revision or re-application the only Contract Demand that survives is the Permanent Contract Demand (in kVA or MVA) on the basis of which further billing can be made or demand can be raised. When Complainant does not apply afresh or does not revise, any Temporary revision of Contract Demand (in KVA or MVA) sought before 01.04.2019, such shall deem to get reset to the sanctioned Permanent Contract Demand (in KVA or MVA) from this date onwards, till such time a fresh application for Temporary revision of contract demand is received from Consumer or sanctioned by the Respondent. This process shall follow for each financial year beyond 01.04.2019 and accordingly all matters of electricity billing shall be dealt vis-à-vis this 'Permanent' Contract Demand (in KVA or MVA) under such a condition;

7. Now coming to the instant Complaint, it is observed by this Forum that the Complainant was allowed 'Temporary' revision of Contract Demand to 150 kVA in April 2015 and thereafter, it had not revised or applied afresh for this Temporary Contract Demand (in KVA or MVA) even after the enforcement of the Supply Code 2nd Amendment notified on 31.07.2018. The Permanent reduction of Contract Demand was applied for by the Complainant and sanctioned by the Respondent HPSEBL to value of 150 kVA which appears

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to have been made only somewhere around June 2021 (fact not verifiable from record). Consequently, the Respondent HPSEBL raised the total monetary demand to the Complainant of Rs 3,84,750/= vide two Demand Notices placed on record (Annexure C-1, Annexure C-6) on account of Supply Code 2nd Amendment, 2018, only for those periods of electricity consumption occurring after 01.04.2019. This fact has not been denied by the Complainant. Therefore, the application of the amended provisions of the Supply Code, 2009, vide Supply Code 2nd Amendment, 2018, cannot be held to be applied retrospectively by the Respondent HPSEBL;

8. This Forum also observes that the arguments extended by the Complainant in general with regard to Temporary Contract Demand, pertain to the conditions which are applicable within a financial year and not in terms of start of the financial year or its end. In fact, this Forum is of the considered view that the it is the arguments of the Complainant which have the net effect of the application of bid 2nd Amendment, 2018 becoming retrospective, which cannot be allowed by the Forum;

9. The Complainant has also argued that the Respondent has tried to gain financially by remaining silent regarding the need for revision of the Contract Demand and no Notices for revision of Contract Demand were served upon the Consumer by the Respondent and the 'Note' at the end of Code 3.10 of Supply Code, 2009 2nd Amendment, 2018 for the purpose of intimating the procedure to the field offices, was not followed. It is a settled position that ignorance of law is no excuse. The change of law through amendments is done after following due process and after inviting objections etc from stake holders. After amendments enacted, the same is notified and published in official gazette for the knowledge of public/stake holders. This procedure of notification and publication has not been challenged by the Complainant. Thus, there is no requirement of any prior notice to raise monetary demand (in Rs) as per amended provisions of the Code as has been done in the present case. Monetary demands based upon Statutes, Regulations/ Codes notified by the HPERC and on Tariff Orders passed by the Ld HPERC, cannot be held to be illegal. The pleas of the Complainant are devoid of any substance and therefore not tenable on this count;

10. The present Complaint under adjudication, relates to the undeniable fact and circumstances where the Complainant has failed to keep vigil on the change in law. Onus of knowledge of statute or change in statute rests with both parties especially when the change is made public and its intimation to the Consumer is not imperative upon the Respondent HPSEBL. There is also no requirement under the Supply Code with regard to prior intimation by the HPSEBL to the Consumers of change in law. The Forum finds that due diligence to exercise vigil especially in respect of change in law affecting the Consumer, has not been made by the Consumer Complainant who ought to have appropriately revised its Contract Demand in pursuance to the Supply Code 2nd Amendment, 2018. Even the 'Note' at the end of Code 3.10 of the Supply Code 2nd Amendment, 2018 is in terms of

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issuing of detailed procedural instructions by the HPSEBL to only its field units and not to the Consumers.

11. However, the Complainant during the course of arguments admitted that the amended provisions of Code 3.10 of the Supply Code, 2009 2nd Amendment notified on 31.07.2018 with regard to the Temporary revision of Contract Demand, had not been applied by the Respondent HPSEBL on the electricity consumption existing prior to 01.04.2019 which is evident from Annexure C-1, Annexure C-5 and Annexure C-6;

12. It is evident from the observations made here-in-above that the instant Complaint pertains to non-application /non-revision of contract demand (in kVA or MVA) on Temporary basis (Temporary Reduction of Contract Demand) after 01.04.2019 by the Complainant. This resulted in Permanent Contract Demand (in kVA or MVA) becoming the basis for raising of a net monetary demand by the Respondent HPSEBL on 08.03.2021 (Annexure C-1) and on 12.05.2022 (Annexure C-6) for Rs 2,43,000/= and Rs 1,41,750/= respectively. These Demands are for the consumptions done in the financial years after 01.04.2019 based on the Supply Code 2nd Amendment, 2018 notified on 31.07.2018. This Forum is not inclined to accept the arguments extended by the Complainant. `There is no force in the arguments of the Complainant that amended provisions of Code 3.10 of Supply Code 2nd Amendment, 2018 are not applicable to him and by making such applicable, it amounts to giving retrospective effect to the Supply Code 2nd Amendment, 2018. From the observations made above, it is established and held that the monetary demands (in Rs) have not been raised by the Respondent HPSEBL by way of retrospective application of or by giving retrospective effect to the amended Code 3.10 of Supply Code 2nd Amendment notified on 31.07.2018;

13. After examining the material facts placed on record, provisions of the Supply Code 2009 and amendments made thereto, law / case laws etc and having heard the parties at length etc, this Forum finds the present Complaint devoid of any substance and merits and rejects the same accordingly. Forum finds no fault with the impugned demand notices issued by the Respondent HPSEBL which have not been issued by giving retrospective effect to the amended provisions of code 3.10 of Supply Code, 2009 vide 2nd Amendment notified on 01.07.2018 (effective 01.04.2019). Thus, no illegality can be found in the Demand Notices dated 08.03.2021 (Annexure C-1) and 12.05.2022 (Annexure C6). This Forum finds no reason to interfere with the ibid Demand Notices issued by the Respondent HPSEBL which are in tune with the HP Electricity Supply Code, 2009 and amendments ibid made thereto. The present Complaint is found to be argumentative and severely lacking in substance.

14. In the aforesaid terms, the Complaint being devoid of substance and merits is rejected. The Complaint is accordingly decided on merits against the Complainant and in favour of the Respondents HPSEBL and stand disposed of as dismissed.

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G - Analysis of the Complaint:

1. The case file in Complaint No. 1421/2/22/17, dated 03/06/2022 orders on which were passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 have also been requisitioned and gone through.

2. The documents on record and arguments made by both parties have also been gone through.

3. This case is akin to already decided case bearing title M/S Mohan Meakins Vs HPSEB Ltd & others (Case No. 24/2022) orders on which were passed on 31/01/2023. The facts and dates are although different. Now let us examine this specific case.

4. The Complainant has a Connected Load of 280 kW with initial Contract Demand as 240 kVA released in the year 2013. The Complainant reduced his Contract Demand temporarily vide SJO dated 13/04/2015 from 240 kVA to 150 kVA which also started reflecting in their energy bills.

5. The Respondents issued a demand dated 08/03/2021 for Rs 2,43,000/- for less demand charges levied in view of amendment dated 31/07/2018 in Clause 3.10 of the Himachal Pradesh Electricity Supply Code 2009. The period of short recovery was Oct 2019 to March 2020 and October 2020 to March 2021. They further charged the demand as Sundry in the energy bill issued in April 2021. The Complainant deposited the amount fearing disconnection.

6. Immediately, the Complainant requested for reduction of his permanent Contract Demand to 150 kVA on 17/04/2021 and the Respondent Board took two months to process the request and continued billing on 240 kVA of Contract Demand. Afterwards, the bills were issued on reduced Contract Demand of 150 kVA.

7. Another demand notice was issued on 09/05/2022 for recovery of additional liability of Rs 2,05,875/- after adjusting Rs 2,43,000/- already deposited. The period of arrear was April 2019 to September 2019. This demand notice was further corrected on 12/05/2022 to additional liability of Rs 1,41,750/- instead of Rs 2,05,875/-. The Complainant also deposited the same on 13/06/2022. The Respondents didn't reply to objections filed by the Complainant on 18/05/2022 (received on 19/05/2022) and the Complainant then approached the Consumer Grievance Redressal Forum at Kasumpti vide Complaint No. 1421/2/22/17, dated 03/06/2022 which decided the case on 17/10/2022 rejecting the contention of the Complainant.

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8. The contention of the Complainant is that the Forum below have wrongly interpreted the meaning of the amendment in Clause 3.10 of Himachal Pradesh Electricity Supply Code

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2009 in para 11 of their order and have exceeded their jurisdiction by interpreting the legislation. Further, his contention is that mechanism of reseting of demand automatically in each financial year has nowhere been mentioned in the said amendment. The proviso clearly talks of eligibility of the Consumer to avail Contract Demand for six months at reduced value but there no procedure for resetting the same.

9. His further contention is that in the initial demand notice dated 08/03/2021, the Respondents also allowed relief for six months in a year but changed their stand in the revised demand note in May 2022.

10. His further contention is that despite instructions issued by the Chief Engineer (Commercial) on 25/10/2018, the department slept over for more than two years and kept raising the energy bills on reduced demand of 150 kVA. Further, had the Respondents executed the 2nd amendment w.e. from 01/04/2019, they would have acted to reduce their Contract Demand permanently.

11. The Complainant contention is that the Forum below, without even considering his pleadings had applied the doctrine of "ignorance of law is no excuse" on them whereas the officials of the Respondents remained ignorant over the execution of law for more than two years and the Forum below failed to apply the same doctrine on the Respondents.

12. The Complainant has cited provisions of Clause 6 (c) of General Clauses Act, 1977 as well as Clause 4 (c) of HP General Clauses Act, 1968 (Similar) which states that after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not 'affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;' or..

13. The amendment in Clause 3.10 of Himachal Pradesh Electricity Supply Code 2009 states:

"3.10 Temporary revision of contract demand.–

The consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition-

a) that the consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to a further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) applicable to him:

Provided that the consumer shall not be eligible for temporary revision of Contract demand to a value other than the full sanctioned contract demand for a total period of more than six months in one financial year:

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Provided further that in cases involving part period of a year e.g. if a consumer takes the connection, or the consumer gets his permanent sanctioned contract demand revised, during the middle of a year, the adjustments shall be made on pro-rata basis.

Note: *The Distribution Licensee shall, immediately after the publication of the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018, in the Rajpatra, Himachal Pradesh, issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.f 01.04.2019.*

(b) that the consumer shall not be entitled to revise the contract demand more than twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months;

(c) that the consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;

(d) that in cases where the contract demand is reduced under this mechanism, such reduced contract demand shall be applicable for billing purposes; and

(e) that in cases where the consumer gets his contract demand reduced permanently, the limit under clause (a) shall be considered with respect to such reduced contract demand, but such reduction shall not be considered to have been made under this mechanism and the time gap of 3 months as per clause (b) shall be reckoned from the date from which the demand was last revised under this mechanism.

Illustration.- *If a consumer who is having sanctioned contract demand of 10 MVA temporarily revises the contract demand to 6 MVA w.e.f. 01.08.2014 under this mechanism but gets his sanctioned contract demand permanently reduced to 8 MVA w.e.f. 01.09.2014, he shall have to pay charges based on 6 MVA contract demand till 31.10.2014 (i.e. till the expiry of 3 months period from the date at which the contract demand was last revised i.e. from 01.08.2014). However, if the contract demand is to be reduced permanently to lesser than 6 MVA (say 4 MVA as on 01.09.2014), the demand charges would have been based on a contract demand of 4 MVA during the period upto 31.10.2014."*

14. The amendment was made effective w.e. from 01/04/2019 onwards and in the 'Note' after the 2nd proviso, directions were also inserted for the Distribution Licensee to issue suitable detailed procedural instructions within the framework of the above provisions to its field units for the smooth implementation of aforesaid provisions w.e.from 01/04/2019 onwards. The Chief Engineer (Commercial) for the Distribution Licensee issued detailed

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instructions dated 25/10/2018 for implementation of the 2nd amendment in the Himachal Pradesh Electricity Supply Code 2009.

15. The idea of making this amendment by the Commission in advance and giving ample time for its implementation by a later date was for smooth implementation of the temporary revisions of the Contract Demand cases 01/04/2019 onwards. Further, the Commission in its vision had given ample time to the Distribution Licensee directly to issue instructions internally to their field officers and indirectly to inform the affected Consumers so that they could get enough time to make choice to either temporarily reduce their Contract Demand as permanent Contract Demand or to opt for any other remedy available.

16. Now there are two issues, first is the contention of the Complainant that the Forum below applied the doctrine of 'Ignorance of law is no excuse' on him but failed to apply the same to the Respondents. The second issue is what stopped the Respondent Board to issue correct bills as per tariff immediately after 01/04/2019. Were they not responsible to maintain vigil on change in Law? Had they done that, he would have taken immediate steps to reduce his Contract Demand permanently after issuance of bill on full Contract Demand of 240 kVA immediately after 01/04/2019 itself.

17. His further contention is that the Respondents should have conveyed their intentions to affected Consumers but they failed to do so even after instructions issued by the Chief Engineer (Commercial) on 25/10/2018 and before 01/04/2019. Delayed action by the Respondents have cost the Complainant with additional liability.

18. Now the settled legal position is that the same doctrine of 'Ignorance of law is no excuse' also apply to both the Complainant and the Respondent Board equally and no one can escape that position. However, the officials of the Respondent Board failed to implement the provisions of the 2nd amendment for a very long period of almost more than two years and the Distribution Licensee should act against those erring officers who have deprived the legitimate revenue of the Respondent Board for a long time. Their conduct has also put additional financial burden on the Consumers since they could have opted to make their reduced Contract Demand as permanent after 01/04/2019.

19. Further, since the demand of wrong application of tariff i.e. less charging of Contract Demand was first made in March 2021, the provisions under Section 56 (2) of Electricity Act, 2003 does not apply and the demand is covered under the category of bona fide error on account of wrong application of Tariff by the Respondent Board.

20. The Hon'ble Supreme Court's judgment in CA No. 1672 of 2020 Assistant Engineer Ajmer Vidyut Vitran Ltd & Anr Vs Rahamathllah Khan Alias Rahamjulla is clearing applicable in this case. The 'First Due' in this case is March 2021, may be by the Respondent Board's own findings or pointed out by the Audit.

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21. The temporary reduction made by the Complainant in 2015 much prior to the effectiveness of the 2nd amendment w.e. from 01/04/2019 is although not terminated automatically either by the 2nd amendment or by the instructions issued by the Chief Engineer (Commercial) but the Respondents are entitled to recovery of 100% of Contract Demand for atleast 6 months in a financial year as per 2nd amendment.

22. The Consumers are also entitled to retain reduced Contract Demand up to a level of 50% of sanctioned Contract Demand for atleast 6 months in a financial year and accordingly, the Respondents are entitled to recover 100% of the sanctioned Contract Demand after 01/10/2019 on wards till 31/03/2020. But the Contract Demand can't automatically reduce to earlier reduced level of Contract Demand as on 01/04/2020 onwards until and unless the Consumer opts again for reduction of his Contract Demand temporarily.

23. With reference to The General Clauses Act quoted by the Counsel for the Complainant, the Electricity Act, 2003 is also a Central Act and the provisions of Electricity Act, 2003 being later Act and the Regulations made therein by the State Commission shall prevail. Thus, the Change in Regulations/ codes made by the State Commission also can't be ignored which were made applicable by much later date i.e. 01/04/2019 onwards in this case and after inviting the objections from all stake holders following the valid and transparent process.

24. Further, the provisions of General Clauses Act shall only be applicable if the provisions under Electricity Act, 2003 is silent on the issue which is not the case since the Regulations/ Code made under Act have clearly specified that the Consumer is entitled to maintain 50% of the sanctioned Contract Demand for 6 months in a financial year.

25. The Respondents in their arguments have quoted a judgement of Apex Court in CA No. 3902/2006 PTC India Vs CERC citing that on change of legislation, the existing agreements are required to be aligned. The judgement referred by the Respondents is not attracted in the present case however.

26. Now let us examine the Orders passed by the Forum below. The Consumer Grievance Redressal Forum at Kasumpti vide orders dated 17/10/2022 in Complaint No. 1421/2/22/17, dated 03/06/2022 has relied on the provisions of 2nd amendment in Himachal Pradesh Electricity Supply Code 2009. They have tried to explain that it is on the Consumer who should have been aware of change in law and apply fresh for re-revision of his temporary Contract Demand in any financial year and the Contract Demand shall automatically reset to sanctioned Contract Demand on 1st of April of subsequent financial year.

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27. The conclusion of their order is that the temporary Contract Demand existing before 01/04/2019 shall revert back to permanent sanctioned Contract Demand unless and until

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the Consumer applied afresh for temporary reduction of his Contract Demand. Further, the temporary reductions in Contract Demand to 150 kVA in 2015 shall automatically revert back to sanctioned Contract Demand of 240 kVA on 01/04/2019.

28. The Complainant, after receiving the demand for less charge, applied for permanent reduction of Contract Demand to 150 kVA on 17/04/2021 which was made effective after two months. The Forum below also mentioned that although the instructions were imparted on 25/10/2018 to field units for implementation of 2nd amendment w.e. from 01/04/2019 onwards but the same is of no help to the Complainant since his temporary reduction in Contract Demand in 2015 is deemed to have expired or cease to exist on 01/04/2019.

29. At this point, in my considered view, I differ from the stand taken by the Forum below that as on 01/04/2019, the Contract Demand shall automatically revert back to full sanctioned Contract Demand. My considered view is that the Contract Demand shall automatically revert back to 100% only after 01/10/2019 onwards since the earlier temporarily reduced Contract Demand will remain applicable for first six months of the financial year starting 01/04/2019 onwards as the Consumer is also entitled to retain reduced Contract Demand up to a level of 50% atleast for six months in a financial year as per 2nd amendment in Himachal Pradesh Electricity Supply Code 2009.

30. Further, the 2nd amendment in Himachal Pradesh Electricity Supply Code 2009 was made through valid process after publication of draft and inviting objections from all stakeholders and published on 7th August in the official gazette and further supported by the instructions dated 25/10/2018 as directed by the Commission.

31. Initially the Respondents raised the demand for Rs 2,43,000/- considering the Contract Demand of 150 kVA shall be applicable till 30/09/2019 and then applied full sanctioned Contract Demand of 240 kVA w.e. from 01/10/2019 till 31/03/2020 and again on 150 kVA w.e. from 01/04/2020 till 30/09/2020 and then applied full sanctioned Contract Demand of 240 kVA w.e. from 01/10/2020 till 31/03/2021. The demand was further revised to Rs 3,84,750/- after considering full sanctioned Contract Demand of 240 kVA w.e. from 01/04/2019 onwards and continued the same for 2 more months even after application for the reduction in Contract Demand permanently to 150 kVA was made by the Complainant on 17/04/2021.

32. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1421/2/22/17, dated 03/06/2022 are not fully in line with provisions of law and I differ from their opinion of resetting of Contract Demand to full sanctioned Contract Demand from 01/04/2019 onwards since the Consumer is also entitled to retain reduced Contract Demand up to a level of 50% for atleast 6 months in a financial year.

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33. The demands raised by the Respondents on 08/03/2021 for Rs 2,43,000/- corrected to Rs 3,84,750/- on 12/05/2022 are required to be reworked keeping in view that the Contract Demand shall revert back to full sanctioned Contract Demand only after 01/10/2019 onwards.

34. It was the prime duty of the Respondents to implement the provisions of the 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 either by intimating the Consumers well in time or by issuing revised energy bills after 01/04/2019 onwards so that the Consumers could have opted wisely either to revised their permanent Contract Demand or by any other probable remedy. But they have miserably failed to do so.

35. Further, their casual attitude/ negligence of not informing the affected Consumers on time of change in law or not executing the 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 is a matter of grave concern on part of the field officers of the Distribution Licensee since this has not only affected their monthly revenue but will also put additional financial burden on the Consumers as well and also spread mistrust between Consumers and the Distribution Licensee.

G – Issues at hand:

1. **Issue No. 1:** Whether the temporarily reduced Contract Demand of the Complainant shall automatically reset at full sanctioned Contract Demand as on 01/04/2019 onwards due to provisions under 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 or not?

2. **Issue No. 2:** Whether the demand raised by the Respondents on 08/03/2021 for Rs 2,43,000/- corrected to Rs 3,84,750/- on 12/05/2022 are in line with those provisions of 2nd amendment of Himachal Pradesh Electricity Supply Code 2009?

3. **Issue No. 3:** Whether the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1421/2/22/17, dated 03/06/2022 is in line with the existing provisions of Law?

H – Findings on the issues:

Issue No. 1:

1. As is evident from the discussions above and the facts and record available and in my considered opinion, the Respondent Board is entitled to recover full sanctioned Contract Demand in line with provisions of Clause 3.10 of Himachal Pradesh Electricity Supply Code 2009 through 2nd amendment only for a period of 6 months in a financial year.

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2. However, the same shall be applicable w.e. from 01/10/2019 onwards since the Complainant is also entitled to avail reduced Contract Demand for a period of atleast 6 months in a financial year for which they had already applied in the year 2015.

3. However, the same doctrine shall not be applicable for next financial year starting from 01/04/2020 onwards and they should have been aware of change in law and opted for reduction of their Contract Demand either to a level up to 50% of the Contract Demand or for treating the already reduced Contract Demand as permanently reduced Contract Demand at any stage.

Issue No. 2:

1. As is evident from the analysis done above and the facts/ circumstances on record, the demands raised by the Respondents on 08/03/2021 for Rs 2,43,000/- corrected to Rs 3,84,750/- on 12/05/2022 are required to be reworked.

2. The Respondents are entitled to recover 100% of Contract Demand of 240 kVA w.e. from 01/10/2019 onwards for a period of 6 months in a financial year but the same shall not automatically reduce to 150 kVA on 01/04/2020 onwards to level prior to 01/04/2019 and the Complainant should have opted for reduction in Contract Demand as per applicable provisions of 2nd amendment of Himachal Pradesh Electricity Supply Code 2009.

3. The casual and negligent attitude of the Respondents in implementing the Himachal Pradesh Electricity Regulatory Commission regulations in time bound manner have resulted in revenue loss to the Respondent Board by delayed recovery. Further, their casual attitude/negligence of not informing the affected Consumers on time of change in law is a matter of grave concern since this has not only affected their monthly revenue but will also have put additional financial burden on the Consumers and also spread mistrust between Consumers and the Distribution Licensee.

Issue No. 3:

1. As is evident from the analysis done above and the facts/ documents on record, the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1421/2/22/17, dated 03/06/2022 are not exactly in line with the existing provisions of Law.

2. In my considered opinion, the Complainant is also entitled to retain reduced Contract Demand up to a level of 50% of sanctioned Contract Demand for atleast six months in a financial year starting 01/04/2019 onwards.

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

I - Order:

1. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 1421/2/22/17, dated 03/06/2022 are upheld partially subject to the extent of following modification.

    a) The Respondent Board is entitled to recover full sanctioned Contract Demand of 240 kVA w.e. from 01/10/2019 onwards only instead of 01/04/2019 since as per 2nd amendment the Consumer is also entitled to retain reduced Contract Demand up to a level of 50% of sanctioned Contract Demand for 6 months in a financial year.

    b) The Respondents are directed to overhaul the account of the Complainant after treating the Contract Demand of the Complainant as 150 kVA w.e. from 01/04/2019 onwards till 30/09/2019 and thereafter on 240 kVA w.e. from 01/10/2019 onwards till the Complainant reduced his Contract Demand to 150 kVA within a period of 30 days from the date of issue of these orders or latest by 20/05/2023 positively.

    c) The Respondents are directed to rework the demands raised on 08/03/2021 for Rs 2,43,000/- corrected to Rs 3,84,750/- on 12/05/2022 as directed above.

    d) Further, The Respondents are directed to refund the excess amount, if any, through adjustment in the next energy bill to be issued in one go failing which the provisions of Clause 5.7.3 of shall be applicable and the Complainant shall be entitled to a simple interest of 15% per annum after 20/05/2023 on the said amount.

    e) In case, some additional amount is due towards the Respondent Board, then the Respondents shall act to recover the same in line with applicable provisions of the Regulations/ Codes by giving separate notice of 15 days after adjusting the amount already paid and if left unpaid, include the same in the future energy bills of the Complainant.

2. The Respondents are further directed to report Compliance of above directions within a period of 30 days of issuance of the orders or but not later than 20/05/2023 positively failing which the matter shall be reported to the Hon'ble Commission for violations of the directions under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Act.

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3. **The Respondent Board is also directed to take suitable action against the erring officers who have failed to timely implement the provisions under 2nd amendment of Himachal Pradesh Electricity Supply Code 2009 which have resulted in delayed recovery of amount due by almost three years.**

4. **M/S B N Enterprises, Plot No. 10, Industrial Area, Village Khadeen, Parwanoo, District Solan, HP-173220 is hereby disposed off.**

5. **No cost to litigation.**

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Given under my hand and seal of this office.

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Electricity Ombudsman