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

**M/S J. B. Rolling Mills Ltd., Vill Kheri, Trilokpur Road, Kala Amb, The Nahan, Distt Sirmour HP-173030**
**- Complainant**

**Vs**

1. **Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
2. **The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Nahan, District Sirmour, HP-173001**
3. **The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Kala Amb, District Sirmour, HP-173030**
**- Respondents**

**Complaint No. 07/2023 (Registered on 28/03/2023)**
**(Orders reserved on 06/05/2023, Issued on 16/05/2023)**

**Counsel for:**

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| **The Complainant:** | **Sh. O.C. Sharma Advocate** |
| **The Respondents:** | **Sh. Anil K God Advocate, Sh. Kamlesh Saklani Law Officer** |

**CORAM**

**Er. K. L. Gupta**
**HP Electricity Ombudsman**

**Order**

The case was received and registered on 20/03/2023. The case was first listed for 01/04/2023. The Respondents were to file their reply by 01/04/2023. The Respondents failed to file their reply by 01/04/2023 and the case was further listed for 13/04/2023. The Respondents were to file their reply by 10/04/2023 and the Complainant was to file his rejoinder by 12/04/2023.

The Respondents filed their reply on 12/04/2023. The Complainant stated that they will not file any rejoinder and instead argue the case on next date of hearing. The case was listed for arguments on 06/05/2023. The arguments were heard and concluded on 06/05/2023. Orders were reserved. The case is within the limit of 60 days for passing the orders by this Appellate Forum.

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## A – Brief facts of the case:

1. M/S J. B. Rolling Mills Ltd., Vill Kheri, Trilokpur Road, Kala Amb, The Nahan, Distt Sirmour HP-173030 have filed the current appeal through Sh. Saurabh Jain Director (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 03/03/2023 in Complaint No. 1515/4/22/31, dated 30/11/2022. He has prayed to quash and set aside the orders passed by the Forum below including the demand notice dated 12/07/2022 for Rs 7,76,10,713/-. He has further prayed for directions to Respondents to pass on the rebate on expansion in the monthly energy bills.

## B – The Complainant's submissions:

**BRIEF FACTS OF THE CASE:**

1. The Complainant submits that he filed a Complaint under Regulation 17 of the H.P.E.R.C. C.G.R.F. and Ombudsman Regulation 2013 before the Ld. C.G.R.F. which was registered by the Ld. C.G.R.F. as Complaint NO. 1515/4/22/31.

2. The Complainant submits that briefly stated the facts of the Complaint filed before the Ld. C.G.R.F., are that his is a limited Company duly incorporated under the Companies Act and is having its works at Village Kheri, Trilokpur Road, Kala Amb, Tehsil Nahan, District Sirmaur, H.P. Further, his Company is a body corporate by the name aforesaid, having perpetual succession and common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and can by the said name sue or be sued. Shri Surender Jain is its Director and is a competent person to file, sign and verify the present Complaint/ representation, rejoinders, replications, applications and other pleadings on behalf of the Company. He is competent person to depose on oath as to the facts of the present Complaint/ representation.

3. The Complainant submits that his Company is presently having Connected Load of 47336.31 kW with a Contract Demand of 47475 kVA at 132 kV Supply voltage. Further, his Company has been categorized for the billing purpose under the category LIPS (EHT).

4. The Complainant submits that the Respondent No. 1 is Licensee and the Respondent No. 2 and 3 are its officers having their offices at Nahan and Kala Amb, respectively for regulating the electricity supply, taking monthly meter reading through MRI and for raising the monthly demand charges and energy charges for the consumption of electricity.



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5. Further, that on 03/10/2012, M/s Aditya Industries, a partnership firm, Village Rampur Jatan, Nahan road, Kala Amb, District Sirmaur, H.P. applied to the Director Industries for clubbing of its Connected Load/ Contract Demand with his Company and the said permission was accorded on 18/11/2014 by the D.I. Further, that the Director Industries accorded No Objection for clubbing the loads of his Company and M/s Aditya Industries by HPSEBL with metering facilities at single point in his name at Kala Amb recognizing them for their internal arrangement for power supply and accounting purpose. The Respondent Board issued its Office Order dated 03/03/2017 and approved clubbing of loads of M/S Aditya Industries and his Company and his Company was considered and treated as Principal Unit for the total Connected Load of 24475 kW with contract demand of 18675 kVA at 132 kV Supply voltage. Further, that the previous Connected Loads of M/s Aditya Industries and his Company were disconnected and Contract Demand surrendered in terms of office Order dated 03/03/2017 and A&A Form executed thereafter. Further, that on the issuance of Office Order dated 03/03/2017 and subsequently executing of A&A Form with the HPSEBL for Connected Load of 24475 kW with Contract Demand of 18675 kVA, the original sanctioned Contract Demand of his Company (Principal Unit) became 18675 kVA for all intents and purposes.

6. The Complainant submits that his Company filed a Complaint No. 1515/3/17/052 before the Ld. C.G.R.F. Shimla for passing appropriate directions to the HPSEBL for treating the Contract Demand of his Company as 22675 kVA instead of 18675 kVA more particularly in the facts situation that the permission for additional Contract Demand of 4000 kVA stood accorded by the Assistant Engineer, Kala Amb. The Complaint of his Company was dismissed by the ld. C.G.R.F. on 08/05/2018 and original contract demand of 18675 kVA was upheld with the observation that the Assistant Engineer was not competent to enhance the Contract Demand. Further, that his Company made representation to the Ld. Electricity Ombudsman Shimla and the additional Contract Demand of 4000 kVA was ordered to be restored in terms of Order dated 23/07/2018. The HPSEBL has assailed the Order dated 23/07/2018 of Electricity Ombudsman before the Hon'ble High Court of H.P. by filing CWP No. 1136 of 2019 and the same is pending adjudication. The issue regarding the additional Contract Demand of 4000 kVA of this Company is subjudice in CWP No. 1136 of 2019 and is yet to be decided by the Hon'ble High Court of H.P.

7. The Complainant submits that his Company made expansion and thereafter applied for the release of additional Contract Demand of 1800 kVA to the HPSEBL. The HPSEBL released Contract Demand of 1800 kVA in terms of sundry job order dated 15/05/2018. Thereafter, his Company again made expansion in its unit and applied for release of additional Contract Demand of 5000 kVA which stood released in terms of sundry job order dated 17/11/2018.

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8. The Complainant further submits that in the wake of outburst of Covid-19 pandemic and consequent country wide lock-down, his Company was constrained to apply for permanent reduction of Contract Demand by 11000 kVA and the HPSEBL in terms of Office order dated 06/05/2020 accorded sanction for permanent reduction of Contract Demand by 11000 kVA. The original Contract Demand of his Company was 18475 kVA as on the date of notifying tariff order dated 06/06/2020 (effective from 01/06/2020) by the Ld. H.P.E.R.C. The provision for expansion rebate was introduced by the ld. H.P.E.R.C. for the first time in terms of tariff order dated 06/06/2020. which came into force w.e.f. 01/06/2020. After easing of restrictions of Covid-19 pandemic, his Company applied on 22/05/2020 for PAC for additional Contract Demand of 11000 kVA to the HPSEBL and the HPSEBL in terms of Office order dated 23/07/2020 accorded sanction for permanent extension of Contract Demand for 11000 kVA.

9. The Complainant submits that his Company thereafter made four periodical expansions in its unit and applied for additional Contract Demand of 6000 kVA, 2000 kVA, 5000 kVA and 5000 kVA and the said additional Contract Demand of 6000 kVA, 2000 kVA, 5000 kVA and 5000 kVA were released on 13/10/2020, 01/01/2021, 14/12/2021 and 05/04/2022, respectively.

10. Further, that on making time to time expansion and sanction of additional Contract Demand, his Company applied for expansion rebate in terms of provisions contained in tariff orders issued and approved by the HPSERC on 01/06/2020 and thereafter.

11. The Complainant submits that the Respondents allowed the expansion rebate to his Company w.e.f. 01/06/2020 only in the monthly energy bills and the same remained continued upto May 2022. The said factum of grant of expansion rebate is evident from the monthly energy bill issued for the month of May 2022.

12. The Complainant submits that the Respondents issued demand notice dated 07/06/2022 for recovery of wrong expansion rebate amounting to RS. 7,76,10,713/- covering the period August 2020 to December 2021. The said demand notice dated 07/06/2022 has been issued on reference of Account Officer (Comm.) F&A/Comm.-454-58 dated 05/04/2022. The Respondents further issued demand notice dated 08/06/2022 and thereby demanded the deposit of Rs. 6,10,72,283/- on account of excess expansion rebate. Further, that the communication dated 08/06/2022 was made in supersession to earlier communication dated 07/06/2022.

13. The Complainant submits that his Company had filed CWP No. 4275 of 2022 before the Hon'ble High Court of H.P. for laying challenge to the demand notice dated 07/06/2022 and demand notice dated 08/06/2022 and also for the grant of expansion rebate on additional contract demand of 11000 kVA released on 25/07/2020. The CWP No. 4275

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of 2022 stood withdrawn by him on 16/08/2022 with a liberty to avail alternate remedy available with regard to the reliefs prayed for in the writ petition.

14. The Complainant submits that the Respondents issued bill dated 25/06/2022 and the requisite expansion rebate was not allowed therein by the Respondents.

15. The Complainant submits that the Respondents issued bill dated 12/07/2022 and raised therein demand of Rs. 21,93,75,212/-. Further, that in the bill dated 12/07/2022, the Respondents have demanded an amount of Rs. 7,76,10,713/- as Sundry and an amount of Rs. 1,08,42,331.87 paise as arrears. The Respondents have not allowed any expansion rebate in bill dated 12/07/2022 for the additional Contract Demand released in their favour from time to time. Further, that his Company has disputed the correctness of bill dated 12/07/2022 by writing letter dated 14/07/2022 and thereby requested the Respondents for the issuance of revised bill. The Respondents have indulged in raising the wrong and erroneous energy bill dated 12/07/2022 by raising therein demand of Rs. 7,76,10,713/- as sundry and Rs. 1,08,42,331.87 as arrears and further by not allowing the expansion rebate on the additional Contract Demand released from time to time in terms of tariff orders issued by Ld. H.P.E.R.C.

16. The Complainant Submits that the demand of the Respondents for the recovery of wrong expansion rebate amounting to Rs. 7,76,10,713/- covering the period 8/2020 to 12/2021 is absolutely wrong, illegal, unsustainable and deserves to be set-aside and quashed by this Hon'ble Authority. Further, that the original sanctioned Contract Demand of his Company was 18475 kVA as on the date of notifying the tariff order dated 06/06/2020 by the Ld. H.P.E.R.C. which came into force on 01/06/2020. The provision of expansion rebate was introduced by the Ld. H.P.E.R.C. for the first time in tariff order notified on 06/06/2020. The additional Contract Demand of 11000 kVA was sanctioned by the HPSEBL on 23/07/2020 and the same was released on 25/07/2020 in terms of SJO which is annexed herewith alongwith the office order dated 23/07/2020. Further, that his Company is entitled for expansion rebate on 11000 kVA additional Contract Demand @ 15% w.e.f. 25/07/2020 for next 3 years on the quantum of energy consumption corresponding to proportionate increase in Contract Demand in terms of tariff order notified by Ld. H.P.E.R.C. on 06/06/2020. The alleged demand notice dated 07/06/2022 for recovery of wrong expansion rebate for Rs. 7,76,10,713/- is absolutely wrong, unsustainable, arbitrary and the same deserves to be quashed and set-aside by this Ld. Forum.

17. The Complainant submits that the Respondents have indulged in unfair trade practices by making wrong and erroneous billing in bill dated 12/07/2022 more particularly wherein an amount of Rs. 7,76,10,713/- has been demanded as sundry and an amount of Rs. 1,08,42,331.87 paise has been demanded on account of arrears and further no expansion





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rebate has been allowed for the additional Contract Demand released from time to time. Further, that the Respondents have also indulged in unfair trade practices by not allowing the expansion rebate in the bill dated 25/06/2022.

18. The Complainant submits that the Respondents after putting in appearance before the Ld. C.G.R.F. filed their reply and resisted his grievances on the ground that the granting of expansion rebate involves interpretation of tariff order issued on 01/06/2020 (notified on 06/06/2020) and that the recovery notice dated 07/06/2022 for Rs. 7,76,10,713/- and subsequent notice for Rs. 9,20,46,325/- issued in the month of December 2021 are justified and further that the same are payable by his Company.

19. The Complainant submits that his Company filed rejoinder to the Complaint in view of the reply filed by the Respondents. Further, that the Ld. Forum below heard the counsels appearing for him and the Respondents on 15/02/2023 and the order was reserved.

20. The Complainant further submits that during the course of final hearing in the matter on 15/02/2023, the Ld. Forum below put a quarry to his counsel as to what constitutes **'Expansion'** and in respond to the said quarry the counsel representing his Company apprised the Ld. Forum below that modernization/ additions has taken place in his Industrial Unit and an amount of Rs. 542.94 Lacs and 13.23 Lacs has been invested on Plant and Machinery and other Fixed assets as on 24/05/2020 and this tantamount to expansion in the Industrial Unit. Further, that the counsel appearing for his Company also made oral submissions to the Ld. CGRF that the requisite documents issued by the Members Secretary SWC Kala Amb regarding expansion made in its unit would be placed on the record of the present Complaint.

21. The Complainant submits that the counsel representing his Company placed letters dated 01/07/2020, 30/03/2021 and 22/06/2022 on the records of Complaint and thereby requested the Ld. Forum below to appreciate and consider the same while making fair and judicious application of mind in the Complaint. Further, that he wrote letter dated 14/07/2020 to the Respondent No. 3 herein for grant of 15% rebate on consumption of energy as the expansion has been approved by the Department of Industries on 24/05/2020.

22. The Complainant submits that the Ld. Forum below pronounced its order dated 03/03/2023 in Complaint No. 1515/4/22/31 with the following observations and the relevant paras 28, 29, 30, 31, 32 and 33 are being reproduced as here under:

*"(28) The Forum further finds that the ibid Tariff Order dated 06.06.2020 does not define the word or expression 'expansion' and neither does it provide for its treatment. It is a known fact that the word "expansion implies physical increase of factors such as size,*

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*number, importance etc. What constitutes expansion in industry, like whether industries merging/splitting or industries undergoing increase/decrease in production or industries increasing/decreasing capital/manpower with or without increase in capacity or the point of start/end of infusion of capital or some yardstick by the Respondent's technical parameters/standards, has not been laid out in the Tariff Order to assess the fact, quantum and effective time of expansion:*

*(29) In view of foregoing discussion, the Forum concludes that while expansion of industry is a physical outcome, the Contract Demand (kVA) is a contractual obligation. Thus the Contract Demand (kVA) or its increase or decrease does not imply expansion or contraction of Industry and it is to be applied in the context of expansions as provided in Tariff Order dated 06.06.2020 only for the limited purpose of calculating the proportionate increase in energy consumption so as to determine the applicable rebate. However, before this Contract Demand is applied, Expansion will still have to be verified and established in clear unambiguous terms by the Respondent HPSEBL to extend the benefits of ibid rebate:*

*(30) From examination of the Complaint, the Forum finds that the Complainant has not proven the requisite expansion duly verified by the Respondent who has to give effect to the Tariff Order notified by the Ld HPERC. The Complainant has largely based its contention of expansion on the assumption and argument of increase or decrease of Contract Demand (in kVA). This assumption and argument of Complainant is flawed and is neither in tune with the extant provisions of the Regulations nor the Tariff Order dated 06.06.2020. Thus, the Forum is constrained to reject the assumption and argument of the Complainant that increase or decrease of Contract Demand (in kVA) implies expansion or contraction of industry. As discussed by the Forum in paras supra, such assumption and argument of the Complainant is neither tenable nor valid;*

*(31) In view of foregoing observations, the Forum also does not find merit in the argument of the Complainant that because the Complainant has increased its Contract Demand (in kVA) from time to time, therefore this is expansion and therefore Complainant is eligible for expansion rebate as allowed to industries in the ibid HPERC Tariff Order dated 06.06.2020. The Forum is thus constrained to also reject this argument as well as not being tenable. It is reiterated that Contract Demand is of contractual nature and is to be applied only to determine the eligible rebate based on increase in energy consumption proportionate to the said Contract Demand (in kVA);*

*(32) In view of the observations made here-in-, the Forum does not find merit in the Complaint. There are no plausible reasons or grounds that have been made out by the Complainant, to enable this Forum to interfere with the action of the Respondent to raise monetary demands by way of impugned Notice dated 07.06.2022 (Annexure C-16/ Annexure R-4), impugned electricity Bill dated 25.06.2022 (Annexure C-19) and impugned electricity Bill 12.07.2022 (Annexure C-20) and the future electricity bills with or without*

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*rebate as specified in the Tariff Order dated 06.06.2020 notified by the Ld HP Electricity Regulatory Commission:*

*(33) Thus the ibid impugned Notice (Annexure C-16/Annexure R-4), impugned electricity Bill dated 25.06.2022 (Annexure C-19) and impugned electricity Bill 12.07.2022 (Annexure C-20) and the impugned future bills raised by the Respondent HPSEBL are accordingly upheld.*

*On aforesaid terms, the instant Complaint filed by M/s JB Rolling Mills Ltd is decided on merits, in favour of the Respondents HPSEBL and against the Complainant and is accordingly dismissed."*

23. The Complainant further submits that feeling aggrieved by and dissatisfied with the non-redressal of his grievances, his Company prefers the present representation before this Ld. Authority on the following grounds:

a) That the findings and conclusions returned and arrived at by Ld. C.G.R.F. in its order dated 03/03/2023 in Complaint No. 1515/4/22/31 are perverse, illegal, unjust and against the very spirit and intendment of tariff orders issued by the Ld. H.P.E.R.C., Supply Code and the same deserves to be quashed and set aside by this Ld. Authority. Further, that the observations made by the Ld. CGRF in its order dated 03/03/2023 are based on erroneous consideration of documentary evidence and non-consideration of material documents, as such, the same deserves to be quashed and set aside.

b) That the Ld. CGRF below, in the impugned order dated 03/03/2023, has gravely erred in assigning a very irrelevant narrow meaning to the expression **'Expansion'** by holding that word **Expansion** implies physical increase of factors such as size, number, importance etc. and further that the same is a physical outcome. The Ld. Forum below has gravely erred in not appreciating the wider and actual meaning of expression **'Expansion'** to include additional Contract Demand applied for and sanctioned after undergoing expansion on account of modernization/ addition on plant and machinery and other fixed assets. The Ld. Forum below has failed to appreciate that consequent to the expansions made and additional Contract Demand of 11000 kVA released on 25/07/2020 qua the same, his Company is eligible for 15% rebate on energy charges for a period of three years for quantum of energy consumption corresponding to proportionate increase in Contract Demand. Further, that his Company has undergone expansions by making investments on modernization/ additions on plant and machinery and other fixed assets for Rs. 542.94 Lacs and Rs. 13.23 Lacs, respectively as on 24/05/2020 and this factum is evident from the letter dated 01/07/2020 of Member Secretary SWC Kala Amb and the copies of the same were

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duly submitted to the Ld. CGRF for consideration but despite this the Ld. C.G.R.F. below has dismissed his Complaint on erroneous and unsustainable grounds.

c) That the Ld. C.G.R.F. while passing the impugned order dated 03/03/2023 has not appreciated the provisions contained in condition No. 'V' of the Part-I of Tariff order notified on 06/06/2020 relating to the General conditions of Tariff which envisages that in case any dispute regarding interpretation of this Tariff order and /or applicability of this tariff order arises, the decision of the Commission will be final. Further, that in case the Ld. C.G.R.F. below intended to clarify itself with regard to the meaning of word 'Expansion' and consequential applicability of Expansion Rebate favouring his Company on the additional Contract Demand sanctioned and released, in that eventuality the Ld. C.G.R.F., below ought to have made a reference to the Ld. H.P.E.R.C. for clarifying and making necessary interpretation of word 'Expansion' and consequently the applicability of expansion rebate on additional Contract Demand of 11000 kVA. Further, that the expression 'Expansion' has been explained and defined by the Department of Industries and the same includes modernization/ addition vide communications dated 30/03/2021 and 22/06/2022 which were duly placed on the record of the Complaint filed before the Ld. C.G.R.F. In addition to this the expansion as was made by him as on 24/05/2020 and approved by Department of Industries were duly communicated to the Respondent No. 3 herein by way of communication dated 04/07/2020 and his Company apprised therein that our expansion in the Unit has been duly approved w.e.f. 24/05/2020 by the Director Industries. The Ld. CGRF has gravely erred in not appreciating the definition of 'Expansion' as has been assigned by the Department of Industries and the communication of which has duly been placed on the record of the Complaint by him.

d) That the ld. C.G.R.F. has exercised its jurisdiction which is not vested in it under law. Further, it is beyond the jurisdiction, scope and ambit of the Ld. CGRF to make its own interpretation of Tariff Orders issued by the Ld. HPERC for the applicability of Expansion rebate on the sanctioned additional Contract Demand after going Expansion. In case the Ld. CGRF was of the opinion that his Company is not eligible for the Expansion rebate on the additional Contract Demand of 11000 kVA sanctioned on 23/07/2020 and released on 25/07/2020, in that eventuality it should have referred the matter to the Ld. HPERC for necessary clarification and interpretations instead of holding good the demand for recovery of excess expansion rebate amount of Rs. 7,76,10,713/- raised through letter dated 07/06/2022 and subsequent demand of 9,20,46,325/- and as such, the impugned order dated 03/03/2023 deserves to be set-aside and quashed by this Ld. Authority.

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e) That the Ld. C.G.R.F. below has failed to appreciate that the Respondents were estopped by way of their own acts, conduct and acquiescence's in issuing the alleged



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demand notice dated 07/06/2022 for recovery of excess expansion rebate amounting to Rs. 7,76,10,713/- and subsequent demand of Rs. 9,20,46,325/- at the instance of internal audit party. The Respondents herein have not disputed his eligibility for the expansion rebate @15% on energy consumption charges proportionate to the corresponding increase in Contract Demand by way of any communications. The Respondents should not have accepted the audit para of the internal audit party for alleged recovery of excess expansion rebate amounting to Rs. 7,76,10,713/- or Rs. 9,20,46,325/- as pointed out by them and should have dropped this audit para of the Internal Audit party, more particularly, in the legal aspect of the matter that the audit para of Internal Audit Party is merely an expression of opinion and the same is not conclusive in its nature for entitlement or non-entitlement of expansion rebate on additional contract demand of 11000 kVA released after expansion in favour of his Company.

f) That the Ld. C.G.R.F. has gravely erred in dismissing his Complaint by laying challenge to the demand notice dated 07/06/2022 for Rs. 7,76,10,713/- issued on account of Excess Expansion rebate and bill dated 12/07/2022 containing demand of Rs. 1,08,42,331.87 paise and Rs. 7,76,10,713/- as arrears and sundry despite having made its observations in para 31 of the Order dated 03/03/2023 that Contract Demand is of contractual nature and is to be applied only to determine the eligible rebate based on increase in energy consumption proportionate to the said Contract Demand in kVA. The additional Contract Demand of 11000 kVA sanctioned on 23/07/2020 and released on 25/07/2020 stood contracted by his Company with the Respondents by executing A&A form and it became contractual in nature and the same is to be applied for by the Respondents to determine the eligible rebate based on increase in energy consumption proportionate to the same and as such, the Order dated 03/03/2023 passed in Complaint No. 1515/4/22/31 is erroneous, perverse, based on self-contradictions and observations. The impugned order dated 03/03/2023 passed in Complaint No. 1515/4/22/31 deserves to be quashed and set-aside by this Ld. Authority by allowing the present representation and the reliefs prayed for by his Company may be granted.

g) That the Order dated 03/03/2023 passed in Complaint No. 1515/4/22/31 is based on surmises and conjectures and the same deserves to be quashed and set-aside by this Ld. Authority by allowing the present representation.

24. The Complainant thus prayed that **a)** the present representation may kindly be allowed and Order dated 03/03/2023 passed in Complaint No. 1515/4/22/31 titled as M/S JB Rolling Mills Ltd. Versus HPSEBL and others by Ld. CGRF at Shimla, may be quashed and set-aside by declaring the demand notice dated 07/06/2022 for Rs. 7,76,10,713/- issued on account of recovery of excess expansion rebate and energy bill dated 12/07/2022 for Rs. 21,93,75,212/-

containing the demand of Rs. 1,08,42,331.87 paise and Rs. 7,76,10,713/- as arrears and sundry as wrong, illegal, unjustified, arbitrary, unsustainable and against the tariff orders dated 01.06.2020 (notified on 06/06/2020) and subsequent tariff order issued by Ld. Himachal Pradesh Electricity Regulatory Commission; **b)** further, necessary orders or directions may be passed to the Respondents to grant expansion rebate in terms of tariff orders issued by Ld. H.P.E.R.C. in the monthly energy bills dated 25/06/2022, 12/07/2022 and other energy bills issued thereafter on additional contract demand released by the Respondents from time to time favouring the Complainant after undergoing expansion; **c)** any other relief which this Ld. Authority deems fit and proper under the facts and circumstances involved in the present representation may kindly be granted in favour him, in the interest of justice.

**C – The Respondents' submissions:**

**Preliminary Submission:**

1. The Respondents submit that the Complainant herein by means of the present Complaint has inter-alia prayed for relief against the Order dated 03/03/2023 passed in Complaint No. 1515/4/22/31 titled as M/s JB Rolling Mills Ltd. Versus HPSEBL and others by Ld. CGRF at Shimla.

2. The Respondents submit that the bare perusal of the Complaint filed by the Complainant before this Hon'ble forum read with the reliefs prayed would go to show that the matter involves the interpretation of the Tariff Order dated 01/06/2020 and the Tariff Orders issued by the HPERC during the year 2020, 2021 and 2022 framed and notified by the ld. HPERC in exercise of its statutory powers vested in it under the provisions of Section-86 (a) of the Electricity Act, 2003 read with all other enabling provisions in this behalf. The dispute in brief involved in the present matter is as to whether the Complainant firm is eligible and entitled to rebate of expansion as alleged by it or otherwise. Further, that the authority which has framed and notified by the Tariff Order is only the appropriate authority to interpret the intention of the Tariff Order, therefore, they had taken up the matter with the ld. HPERC for clarification as to the applicability and admissibility of the rebate of expansion in the case of the Complainant, which in its clarification dated 25/11/2021, has interpreted and clarified that Complainant Industry is not entitled to alleged rebate of expansion in as much as it has already been availing the load upto the connected load of 29336 KW with Contract Demand of 29445 kVA, which demand was reduced on 06/05/2020 for 18475 kVA for a period of 1 ½ month on the ground of COVID-19 pandemic and restored on 20/07/2020 to the original when the COVID-19 pandemic effect was on its peak. The ld. HPERC has clarified that the Complainant in the aforesaid facts and circumstances is not entitled to any rebate for alleged expansion as it cannot be

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treated as expansion. Had the firm increased its load beyond 29475 kVA CD in that event it would have been treated as expansion.

3. The Respondents submit that since in the matter the ld. HPERC has rendered its clarification and they have acted accordingly, therefore, in the humble and respectful submission of the replying Respondent ld. Ombudsman would not have the jurisdiction to try and entertain the Complaint representation under Section-17 of the HPERC (CGRF and Ombudsman) Regulations 2013 read with the provisions of the Electricity Act, 2003. Consequently, the Complaint is not maintainable at all.

4. The Respondents further submit that once the clarification dated 25/11/2021 has been issued by the Hon'ble Regulatory Commission in exercise of its powers vested under the Electricity Act, 2003, HPSEBL being licensee as well as consumer are equally responsible to obey said order. The impugned act and conduct of the Respondents in the present case is strictly in terms of the order dated 25/11/2021 and thus, questioning the legality of the impugned demand Notice dated 07/06/2022 amounting to Rs. 7,76,10,713/- by the Complainant would itself amount to the questioning correctness of the clarification dated 25/11/2021 issued by the Hon'ble HPERC. However, it is submitted that if the Complainant is aggrieved by the clarificatory order of the Hon'ble HPERC, an appropriate remedy to challenge the same is lies somewhere else rather to approach this ld Forum, which itself is under obligation to honor the order of the HPERC. Hence the Complaint preferred by the Complainant is liable to be dismissed.

5. The Respondents submit that the ld Forum has passed well-reasoned and speaking order dated 03/03/2023 and as such there is no scope for the interference by this ld Ombudsman as such the representation preferred by the Complainant is liable to be dismissed.

**REPLY ON MERITS:-**

6. The Respondents further submit that the load of M/s Aditya Industries (Connected load of 5000 kW with 3200 kVA Contract Demand) was clubbed with M/s JB Rolling Mills Limited (Connected load of 19475 kW with 15475 kVA Contract Demand) as principal unit for total connected load of 24475 kW with 18675 kVA Contract demand at 132 kV Supply voltage as per office order dated 03/03/2017 vide letter no. CEO/M&C-42(NHN)-37(JB Rolling)/2015-16-16301-05.

7. The Respondents submits that in respect of submission made by the Complainant that he reduced its Contract Demand permanently from 29475 kVA to 18475 kVA with existing load of 29336.31 kW vide SJO released on dated 06/05/2020 and extended its Contract Demand from 18475 kVA to 29475 kVA vide SJO released on dated 25/07/2020,

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contention of the Complainant has been duly dealt by the ld Forum below and rendered its findings on the proper appreciation of the material on record and taking into consideration the relevant tariff order issued by the ld HPERC. Further, that when the Complainant reduced its Contract Demand permanently from value 29475 kVA to 18475 (i.e. reducing 11000 kVA with Connected Load 29336.31 kW) , the Connected Load of the Complainant remained same, which substantiate the contention of the Respondent that Complainant did not make any expansion in its industrial output. Further, that if the tariff order (FY 2020-21) issued by the Hon'ble HPERC is seen then it leaves no manner of doubt that for the existing industries which have undergone expansion in the FY 2018-19 onwards and/ or shall be undergone expansion in the FY 2020-21, energy charges shall be 10% lower than the approved energy charges corresponding to the respective category for a period of three years for quantum of energy consumption corresponding to proportionate increase in contract demand. Further, that language employed in the tariff order is very much clear which provides that for the expansion rebate it is the quantum of energy consumption corresponding to the Contract Demand. Further, in the present case, the quantum of the energy consumption remained same i.e. 29336.31 kW corresponding to Contract Demand of 29475 kVA and after permanent reduction up to 18475 kVA the energy consumption was 29336.31 kW, this aspect of the matter has already been in very lucid terms dealt by the ld Forum at Para no 24 of the order impugned herein in very detailed manner. For the sake of convenience, the quantum of energy consumption and quantum of contract demand is given in the tabular form as under:

| Sr No. | Billing Month | Recorded Demand (kVA) | kVAh Consumption | kWh Consumptiomn |
|---|---|---|---|---|
| 1. | March 2020 | 28760 | 15730000 | 15742000 |
| 2. | April 2020 | 25920 | 13858000 | 13858000 |
| 3. | May 2020 | 440 | 15800 | 15800 |
| 4. | June 2020 | 18840 | 5826000 | 5832000 |
| 5. | July 2020 | 18200 | 12062000 | 12060000 |
| 6. | August 2020 | 18320 | 12156000 | 12166000 |
| 7. | September 2020 | 29240 | 17094000 | 17088000 |

8. The Respondents specifically denied that the Complainant had applied for the energy rebate in terms of the tariff order issued by the ld HPERC.

9. The Respondents submit that the Complainant availed rebate on monthly energy charges on account of multiple expansions as per provisions contained in the tariff order from time to time. Further, that the Complainant availed excess credit on expansion rebates due to the fact that the Contract Demand enhancement of 11000 kVA done on dated 25/07/2020 cannot be treated as expansion as the same has been clarified by the Hon'ble HPERC in its clarificatory order dated 25/11/2021. The expansion rebate which was given inadvertently by the Respondents was withdrawn as same was not applicable in terms of

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the tariff order and having taking into consideration the clarification issued by the Hon'ble HPERC wherein it was made clear that the Complainant in the aforesaid facts and circumstances is not entitled to any rebate for alleged expansion as it cannot be treated as expansion. Had the firm increased its load beyond 29475 kVA CD in that event it would have been treated as expansion. At the cost of repetition, they submit that once the Hon'ble HPERC has clarified in its no uncertain terms regarding the entitlement of the expansion rebate to the Complainant vide its order dated 25/11/2021, there is no such ground for entertaining the present Complaint by this ld Forum as such the Complaint is liable to be dismissed. The ld Forum has rightly appreciated the fact that word 'expansion' implies physical increase of factors such as size, number, importance, industry increasing and decreasing capital manpower etc. it is rightly held by the ld Forum that the while expansion in industry is a physical outcome, the Contract Demand is a contractual obligation. Further, that since the clarificatory order issued by the Hon'ble Commission, who is the author of the tariff order, specifically dealt with the issue of expansion of the Complainant industry, and the Respondents acted upon in terms of it, there is no further scope for any kind of interference of this ld Ombudsman, as such the Complainant/ representation is liable to be dismissed.

10. The Respondents submit that the Complainant availed excess credit on expansion rebate from August, 2020 to May, 2022 on the Contract Demand enhancement of 11000 kVA which the Hon'ble HPERC has clarified that it cannot be treated as expansion in its clarification letter No.25/11/2021, the Complainant was issued a notice demanding Rs. 7,76,10,713/- on dated 07/06/2022 for the period 08/2020 to 12/2021 as pointed out by the Internal Audit party. Later on, on dated 29/08/022, a new notice of recovery was served to the Complainant in which recovery of excess rebate amounting to Rs. 9,20,10,325/- for the period 08/2020 to 08/2022 which supersedes the earlier notice served to the Complainant. Further, that when Respondents sought clarification from the Hon'ble HPERC qua the specific issue of the multiple expansion of the Complainant, and on 25/11/2021 Hon'ble HPERC has pleased to issue detailed and crystal clear clarification, the excess rebate which was extended to the Complainant up to June, 2022 was stopped and Respondents have served demand notice dated 07/06/2022 for the recovery of the excess rebate.

11. The Respondents submit that the expansion rebate of the Complainant was not given in the billing months of June, 2022 after the notice was served to the Complainant. Also, that the rebate was not given to the Complainant in the months of July & August, 2022 as excess rebate was already given to the Complainant. The Complainant was given rebate on expansion except for the 11000-kVA Contract Demand from the billing month of September, 2022 as per the calculation according to the clarification given by HPERC.

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12. The Respondents submit that the ld. CGRF has rightfully disposed off the Complaint no. 1515/4/22/31 titled M/S JB Rolling Mills Ltd. Vs HPSEBL and has justified the recovery notice dated 07/06/2022 for an amount of Rs. 7,76,10,713/- and subsequent notice for Rs. 9,20,46,325/- issued in the month of December, 2022 in its final order dated 03/03/2023.

13. The Respondents submit that Ld. CGRF clearly stated in its Final Orders dated 03/03/2023 as follows:-

*"the Forum concluded that while expansion of industry is a physical outcome, the Contract Demand (kVA) is a contractual obligation. Thus the Contract Demand (kVA) or its increase or decrease does not imply expansion or contraction of Industry and it is to be applied in the context of expansions as provided in Tariff Order dated 06.06.2020 only for the limited purpose of calculating the proportionate increase in energy consumption so as to determine the applicable rebate. However, before this Contract Demand is applied, Expansion will still have to be verified and established in clear unambiguous terms by the Respondent HPSEBL to extend the benefits of ibid rebate;"*

14. Further, that in this present case, the Contract Demand Enhancement of 11000 kVA cannot be treated as expansion as the Complainant has merely reduced the Contract Demand on dated 06/05/2020 with existing Connected load of 29336.311 kW vide SJO and then restored the same 11000 kVA Contract Demand with existing Connected Load of 29336.311 kW on dated 25/07/2020 vide SJO.

15. The Respondents submit that the Ld. CGRF has rightly treated the word Expansion as a physical parameter and not just merely Contract Demand Enhancement or Reduction as the definition of Contract Demand as per the Supply Code is as follows:-

*"contract demand" expressed in kVA units means the maximum demand contracted by the consumer in its agreement with the licensee and in absence of such contract, the contract demand shall be determined in accordance with the Tariff order.*

16. Hence, as per the Ld. CGRF decision mere increase or decrease of Contract Demand does not imply expansion or contraction of Industry and it is to be applied in the context of expansions as provided in Tariff Order dated 06.06.2020 only for the limited purpose of calculating the proportionate increase in energy consumption so as to determine the applicable rebate.

17. The Respondents specifically denied that ld CGRF returned to findings which are perverse, illegal, unjust and against the very spirit and intendment of tariff orders issued by the ld HPERC. As submitted in the para supra, the clarificatory order has been issued by the ld

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HPERC itself making things crystal clear and further ld Forum has appreciated all material facts while returning to the findings. Since excess rebate was given to the Complainant against the energy bill August 2020 to December, 2021.

18. The Respondents submit that the whole story of the alleged expansion is cooked one just to take undue advantage. Further, that when the Complainant reduced its Contract Demand permanently upto value of 18475 kVA to the Connected Load was 29336.31 kW and after two months when the Contract Demand was enhanced again to 29475 kVA the Connected Load was remained intact. Further, that as per the mandate of the tariff order issued by the ld HPERC, it is the quantum of energy consumption corresponding the proportionate increase in the Contract Demand. The kind attention of the ld Ombudsman is invited to the note appended, which has been reproduced by the ld Forum at para No 24 of its final order.

19. The Respondents submit that the contents in so far as they pertains to the interpretation of the HPERC in any case of difficulties in understanding the tariff order are concerned same are admitted rest of the averments are misleading one hence not admitted. Had the Complainant pursued its case as per clause V of part –I of the tariff order notified by the ld HPERC, the things would have been entirely different. It is the Complainant who initially filed Writ Petition before the Hon'ble High Court and further, pursued the matter before the ld CGRF. Now the Ld CGRF has since passed order, now at this stage, the jurisdiction of the CGRF is being questioned, which speaks volumes in itself. Respondents infact sought clarification from the ld Commission in terms of the clause V of part I of the tariff order, and the ambiguity in the interpretation of tariff has been clarified vide clarificatory order dated 25/11/2021 issued by the ld Commission and thereafter, Respondent acted accordingly. Further, that Respondents have no objection if the matter is referred to the Ld HPERC for seeking interpretation in terms of the clause V of Part I of the tariff order. However, the act and conduct of the Complainant is not fair enough in the entire episode and has acted as choric petitioner for the reasons best known to him.

20. The Respondents thus prayed that that the present Complaint being devoid of any merits may kindly be dismissed with cost in the interest of justice and equity.

**D – The Complainant's additional submissions through rejoinder:**

1. The Complainant have not submitted any rejoinder and instead argued his case on 06/05/2023, last date of hearing.

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**E – CGRF Order:**

1. 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 and the HP Electricity Supply Code, 2009 (or the Supply Code, 2009 or the Supply Code or the Code) including amendments thereto, the Relevant Tariff Order notified by the Ld HPERC on 06.06.2020, 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 analysing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

2. At the outset the Forum observes in the matter that, after the Order was reserved by the Forum, the Complainant, by way of a Miscellaneous Application, placed on record the letters dated 01.07.2020 and 30.03.2021 from Member Secretary, Department of Industries, Single Window Clearance Kala Amb, Sirmaur, addressed to the Complainant;

3. From examination of the Complaint, the Forum finds that Department of Industries is not a party in the instant Complaint and the ibid communications from the Industries Department are interse Complainant and the Member Secretary Industries Department, Kala Amb and not the Respondent. Further, these communications also conflict with the fact that the Complainant was already availing Contract Demand of 29445 kVA before the notification of the Tariff Order dated 06.06.2020, which was reduced to 18475 kVA on 06.05.2020 (Annexure C-7). Furthermore, as per the Tariff Order dated 06.06.2020 passed by the Ld HPERC, communications of such or similar nature have no-where been prescribed or made binding on the Respondent HPSEBL in order to determine industrial expansion and therefore the cause and context of these communications cannot also be ascertained from therein, by the Forum. The Forum therefore rejects the ibid Application;

4. In the matter on the eligibility of expansion rebate to the Complainant, the Respondent may have acted accordingly after receiving clarification dated 25.11.2021 (Annexure R-1) from the Ld HPERC Executive Director Tariff, HPERC. Thus the action of the Respondent HPSEBL in pursuance to Annexure R-1 cannot be held to be wrong However, the Forum in the present facts and circumstances is inclined to accept the contention of the Complainant that clarification given by Executive Director (Tariff) vide letter dated 25.11.2021 (Annexure R-1) is communication inter-se Chief Engineer (Commercial) HPSEBL and the Executive Director Tariff, HPERC. Thus it cannot be termed as a pronouncement of Order by the Ld HPERC and therefore the same has no binding force. The Forum holds that while this communication may be of relevance to the Respondent, it certainly cannot give effect to the Tariff Order notified under the relevant HPERC Tariff Regulations, for the purpose of conclusively determining this Complaint;

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5. In the instant Complaint, the Forum finds that the main issue arising for determination by the Forum is 'whether Complainant is entitled to expansion rebate pursuant to Tariff Order dated 06.06.2020 notified by the Ld HPERC on grounds that it had increased the Contract Demand (kVA) from time to time, or not';

6. The issue raised by the Complainant can be settled by merely determining the question of 'expansion' vis-à-vis the definition of Contract Demand given in the Supply Code, as shall be applied to the expansion rebate provided in the Tariff Order –

7. Consequently, before proceeding with the ibid issue that has come up for determination in the instant Complaint, Forum considers it necessary and expedient to refer to the definition of 'Contract Demand' given in the HP Electricity Supply Code, 2009 enacted by the HP Electricity Regulatory Commission (or the HPERC) and notified on 26th May, 2009 and also the relevant provisions with regard to expansion rebate in Tariff Order notified by the Ld HPERC on 06.06.2021. For the sake of clarity, relevant extracts of these are reproduced here-in-under:-

(A) Tariff Order dated 06.06.2020 (effective 01.06.2020) :
Quote
……
……
SCHEDULE - LARGE INDUSTRIAL POWER SUPPLY (LIPS)

1. Applicability This schedule is applicable to all other industrial power consumers with contract demand exceeding 100 kVA including the Information Technology industry (limited only to IT parks recognized by the State/Central Govt.) and not covered by schedule "IDWPS".

2. Character of Service: Applicable as per provisions under Part – II.

3. Two Part Tariff

a) Fixed Charge (Charges-1)

| Description | Fixed Charge (Rs/month) |
|---|---|
| EHT | Nil |
| HT-1 (Contract Demand up to and including 1MVA) | Nil |
| HT-2 (Contract Demand above 1 MVA) | Nil |

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b) Energy charge (Charges-2)

| Description | Energy Charge (Rs./kVAh) |
|---|---|
| EHT* | |
| 220 kV and above | 4.20 |
| 132 kV | 4.25 |
| 66 kV | 4.30 |
| HT-1* (Contract Demand up to and including 1MVA) | 4.60 |
| HT-2* (Contract Demand above 1 MVA) | 4.35 |
| | |

*Note:

a. For new industries coming into production after 01.06.2020, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of 3 years.

b. For existing industries which have undergone expansion in the FY 2018-19 onwards and/or shall be undergoing expansion in this financial year i.e. FY2020-21, energy charges shall be 10% lower than the approved energy charges corresponding to the respective category for a period of three years for quantum of energy consumption corresponding to proportionate increase in contract demand.

Provided that such expansion if undertaken during 1.07.2019 to 31.05.2020, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years for quantum of energy consumption corresponding to proportionate increase in contract demand.

......

......

Un-Quote

(B) HP Electricity Supply Code Notified on 26.05.2009 by the HPERC :

Quote

......

......

1.2.15 "contract demand" expressed in kVA units means the maximum demand contracted by the consumer in the agreement with the licensee and in absence of such contract, the contract demand shall be determined in accordance with the Tariff Order;

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......

......

Un-Quote

8. From bare perusal of ibid provision of Tariff Order on 'expansion in existing industry', it becomes clear that expansion by an Industry has to be undertaken in FY 2018-19 (ie 01.04.2018 onwards) or later, for being eligible for expansion rebate for 3 years in terms of HPERC Tariff Order dated 06.06.2020. The ibid rebate for expansion is then to be determined or calculated at specified rate on approved energy charges for the energy consumption corresponding to proportionate increase in Contract Demand (in kVA);

9. From the ibid definition of Contract Demand (in kVA) it becomes clear that Contract Demand is a demand contracted or agreed between the consumer and the licensee. In the practical application of the Contract Demand (kVA) and in accordance with the Tariff Orders, the actual Maximum Demand (in kVA) recorded on the meter for the purpose of billing the consumer, is evaluated vis-à-vis this Contract Demand (kVA);

10. Therefore, Contract Demand (in kVA) when read in conjunction with the provision of rebate on expansion given in the Tariff Order dated 06.06.2020, it further becomes clear that Contract Demand is to be applied only to determine or calculate the proportionate increase in energy consumption after the condition of expansion in FY 2018-19 or after, has been met;

11. The Forum further finds that the ibid Tariff Order dated 06.06.2020 does not define the word or expression 'expansion' and neither does it provide for its treatment. It is a known fact that the word 'expansion' implies physical increase of factors such as size, number, importance etc. What constitutes expansion in industry, like whether industries merging/splitting or industries undergoing increase/decrease in production or industries increasing/decreasing capital/manpower with or without increase in capacity or the point of start/end of infusion of capital or some yardstick by the Respondent's technical parameters/standards, has not been laid out in the Tariff Order to assess the fact, quantum and effective time of expansion;

12. In view of foregoing discussion, the Forum concludes that while expansion of industry is a physical outcome, the Contract Demand (kVA) is a contractual obligation. Thus the Contract Demand (kVA) or its increase or decrease does not imply expansion or contraction of Industry and it is to be applied in the context of expansions as provided in Tariff Order dated 06.06.2020 only for the limited purpose of calculating the proportionate increase in energy consumption so as to determine the applicable rebate. However, before this Contract Demand is applied, Expansion will still have to be verified

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and established in clear unambiguous terms by the Respondent HPSEBL to extend the benefits of ibid rebate;

13. From examination of the Complaint, the Forum finds that the Complainant has not proven the requisite expansion duly verified by the Respondent who has to give effect to the Tariff Order notified by the Ld HPERC. The Complainant has largely based its contention of expansion on the assumption and argument of increase or decrease of Contract Demand (in kVA). This assumption and argument of Complainant is flawed and is neither in tune with the extant provisions of the Regulations nor the Tariff Order dated 06.06.2020. Thus, the Forum is constrained to reject the assumption and argument of the Complainant that increase or decrease of Contract Demand (in kVA) implies expansion or contraction of industry. As discussed by the Forum in paras supra, such assumption and argument of the Complainant is neither tenable nor valid;

14. In view of foregoing observations, the Forum also does not find merit in the argument of the Complainant that because the Complainant has increased its Contract Demand (in kVA) from time to time, therefore this is expansion and therefore Complainant is eligible for expansion rebate as allowed to industries in the ibid HPERC Tariff Order dated 06.06.2020. The Forum is thus constrained to also reject this argument as well as not being tenable. It is reiterated that Contract Demand is of contractual nature and is to be applied only to determine the eligible rebate based on increase in energy consumption proportionate to the said Contract Demand (in kVA);

15. In view of the observations made here-in-above, the Forum does not find merit in the Complaint. There are no plausible reasons or grounds that have been made out by the Complainant, to enable this Forum to interfere with the action of the Respondent to raise monetary demands by way of impugned Notice dated 07.06.2022 (Annexure C-16 / Annexure R-4), impugned electricity Bill dated 25.06.2022 (Annexure C-19) and impugned electricity Bill 12.07.2022 (Annexure C-20) and the future electricity bills with or without rebate as specified in the Tariff Order dated 06.06.2020 notified by the Ld HP Electricity Regulatory Commission;

16. Thus the ibid impugned Notice (Annexure C-16/ Annexure R-4), impugned electricity Bill dated 25.06.2022 (Annexure C-19) and impugned electricity Bill 12.07.2022 (Annexure C-20) and the impugned future bills raised by the Respondent HPSEBL are accordingly upheld.

17. On aforesaid terms, the instant Complaint filed by M/s JB Rolling Mills Ltd is decided on merits, in favour of the Respondents HPSEBL and against the Complainant and is accordingly dismissed.

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## F – Analysis of the Complaint:

1. The case file bearing Complaint No. 1515/4/22/31, dated 30/11/2022, orders on which were passed on 03/03/2023 by the Consumer Grievance Redressal Forum at Kasumpti have also been requisitioned and gone through.

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

3. The submissions made by both the parties have also been incorporated in this order in order to have composite view of the entire case.

4. The Complainant have filed this appeal under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

5. The Complainant is having 47336 kW of Connected Load and 47475 kVA of Contract Demand on 132 kV at present. Earlier M/S Aditya and present Company applied for clubbing of the loads on 03/10/2012 which was allowed on 18/11/2014. No objection was also granted by the Department of Industries. Metering facility was also provided at single point in the name of the Complainant.

6. The Respondent Board also allowed clubbing of both the load vide orders dated 03/03/2017 with Connected Load of 24475 kW and original sanctioned Contract Demand of 18675 kVA at 132 kV supply Voltage.

7. A separate case of treating Contract Demand as 22675 kVA instead of 18675 kVA with additional Contract Demand of 4000 kVA, issued by the Assistant Engineer Kala Amb was dismissed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1515/3/17/052 on 08/05/2018. The Complainant filed a CWP No. 1136/2019 at HP High Court which is still pending. Since, this issue is not the bone of contention, the same is not being discussed/ take cognizance of.

8. Another additional Contract Demand of 1800 kVA was released vide SJO dated 15/05/2018 and another additional Contract Demand of 5000 kVA was also released vide SJO dated 17/11/2018. The Complainant contention is that during country wide lockdown, he reduced his Contract Demand permanently by 11000 kVA which was allowed on 06/05/2020. His final Contract Demand was 18475 kVA for which he had also executed the A&A Form.

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9. In the meantime, the Hon'ble Commission issued Tariff Order dated 06/06/2020, effective from 01/06/2020, wherein expansion rebate was introduced first time. The Hon'ble Commission had allowed 15% rebate in energy charges for the Industries with expansion.

10. After easing of restriction under Covid-19 Pandemic, the Complainant applied for PAC for additional Contract Demand of 11000 kVA which was sanctioned on 22/07/2020 and the load was also sanctioned on 23/07/2020 with execution of A&A form. His Contract Demand was restored at 29475 kVA.

11. The Complainant made further expansions with additional CDs of 6000 kVA, 2000 kVA, 5000 kVA and another 5000kVA released Vide SJOs on 13/10/2020, 01/01/2021, 14/12/2021 and 05/04/2022 respectively. Since these expansions are not bone of contention, the same is not being discussed further.

12. The Respondents allowed expansion rebate after issue of the Tariff Order effective from 01/06/2020 till May 2022 after the Complainant applied for same and endorsed copies of the communication from Member Secretary, Single Window Clearance, Depatt of Industry at Kala Amb.

13. After the audit observations, the Respondent Board discontinued the expansion rebate and issued a demand dated 07/06/2022 for Rs 7,76,10,713/- initially which was revised on 08/06/2022 to Rs 6,10,72,283/-.

14. The Complainant then approached the HP High Court vide CWP 4275/2022 which was dismissed as withdrawn on 16/08/2022 with liberty to avail alternate remedy. In the energy bill dated 25/06/2022, the expansion rebate was not allowed and in the energy bill dated 12/07/2022, the initial demand of Rs 7,76,10,713/- instead of revised demand of Rs 6,10,72,283/- was added as the Sundry debit.

15. The Complainant disputed the energy bill dated 12/07/2022 on 14/07/2022 and finally the case was filed by him at Consumer Grievance Redressal Forum at Kasumpti admitted on 30/11/2022. The Forum below dismissed the contention of the Complainant vide orders dated 03/03/2023. Hence the present appeal.

16. Now let us examine the provisions for expansion rebate in the Tariff Order dated 06/06/2020, effective from 01/06/2020. The provisions states"

*"For existing Industries which have undergone expansion in the FY 2018-19 onwards and/ or shall be undergoing expansion in the financial year i.e. FY 2020-2021, energy charges shall be 10% lower than the approved charges corresponding to the respective category*



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*for a period of three years for quantum of energy consumption corresponding to proportionate increase in Contract Demand.*

*Provided that such expansion **if undertaken during 01/07/2019 to 31/05/2020, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years for quantum of energy consumption corresponding to proportionate increase in Contract Demand.**"*

17. Now let us examine the status of Contract Demand of the Complainant as on 01/06/2020. As on 01/06/2020, the sanctioned Contract Demand of the Complainant was 18475 kVA. The Complainant applied for extension in Contract Demand on 22/05/2020 through PAC for 11000 kVA which was sanctioned on 22/07/2020 and subsequently, the load was also sanctioned with additional Contract Demand of 11000 kVA on 23/07/2020.

18. Now let us examine the other measures taken by the Complainant for treating the additional load of 11000 kVA as expansion. The Member Secretary, Single Window Clearance of Industry department at Kala Amb vide communication dated 01/07/2020 have approved expansion/ addition of second phase of implementation of expansion proposal for 11000 kVA and 8000 kVA with investment of Rs 542.94 Cr. and some other fixed assets of Rs 13.23 Cr. The factory was also said to be visited by the Industry Department on 24/05/2020 for new plant/ machinery for expansion on account of expansion/ addition and found in production.

19. The Complainant also informed the Respondent No. 3 on 04/07/2020 regarding such expansion/ addition alongwith copies of the above communications from Member Secretary after which the rebate of 15% was allowed by the Respondents in the energy bills of the Complainant as per Tariff Orders dated 06/06/2020.

20. It is true that permanent reduction in Contract Demand and then increase in Contract Demand can't be termed as expansion but the communication of Member Secretary, Single Window Clearance of Industry department at Kala Amb dated 01/07/2020 speaks otherwise. An investment of Rs 542.94 Cr has also been recognized by them for period 01/04/2017 to 24/05/2020 and the so-called expansion/ addition done by the Complainant have also been found to be in production as on 24/05/2020.

21. In technical terms, as on 01/06/2020 when the expansion rebate was made effective in Tariff Order issued by the Commission, the Complainant's load was 18475 kVA and he applied addition of load to the tune of 11000 kVA through PAC which was sanctioned on 22/07/2020 and load was also sanctioned on 23/07/2020. His expansion/ addition was recognized w.e. from 24/05/2020 when the Member Secretary, Single Window Clearance, Deptt of Industry at Kala Amb visited the premises of the Complainant and recognized

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that his increased load is in production. Since his load was extended before 31/05/2020, the Complainant was eligible for expansion rebate of 15% as per Tariff Orders which was subsequently recognized by the Respondents and allowed in the energy bills till May 2022.

22. From the above discussions it is quite clear that the Complainant undertook the expansion through expansion/ addition of Plant/ machinery and with additional Contract Demand of 11000 kVA, which was found to be in production on 24/05/2020 by the Department of Industry vide communication dated 01/07/2020 which was subsequently sanction vide PAC dated 22/07/2020 and load was also sanction on dated 23/07/2020.

23. There is no question to deny the authority of the Member Secretary Single Window Clearance at Kala Amb and also to deny that as on 24/05/2020, the said additional plant/ machinery was in production. There is also no doubt about verification of such claim of expansion/ addition of plant and machinery done by a competent authority of the Govt of HP authorized for the purpose under the Industrial Policy under which such rebate has been allowed by the Hon'ble Commission in its Tariff Order dated 06/06/2020.

24. The Tariff order provisions speaks of "..... *for a period of 3 years for quantum of energy consumption* ***corresponding to proportionate increase in Contract Demand***". There is no doubt that expansion/ addition of Plant/ Machinery done by the Complainant under expansion program, approved by the Department of Industry, with corresponding increase in Contract Demand of 11000 kVA falls under the provisions of the Tariff Orders dated 06/06/2020 for the purpose of expansion rebate.

25. Now let us examine the contentions of both the parties. First, the contention of the Complainant is that the Consumer Grievance Redressal Forum at Kasumpti have not considered the communication of valid authority of the Govt of HP i.e. Department of Industry.

26. From the scrutiny of orders, it is clear that they have dismissed these communications stating that the said department is not party to the case and they will not take cognizance of such communication. In fact, they have questioned the authority of the Govt of HP's authorized department for verification of such claim of expansion under Industrial Policy which is quite surprising. The said action of the Forum below denying to recognize the communications from the concerned deptt of Industrial Policy is not as per standard procedure and the same have been rejected on flimsy grounds.

27. Another contention of the Complainant is that the interpretation of Tariff Orders made by the Consumer Grievance Redressal Forum at Kasumpti is beyond their jurisdiction. From the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on

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03/03/2023, it is clear that they have interpreted the provisions of Tariff Order dated 06/06/2020 to their suitability by ignoring the expansion/ addition communicated by Department of Industry through approved investment for Expansion/ addition as well as addition in Contract Demand by 11000 kVA. This action of the Forum below is also not in line with established law and procedure.

28. In fact, the Chief Engineer (Commercial) also made a specific communication of the present case to the Executive Director (Tariff) on 18/11/2021 to which the Executive Director (Tariff) vide communication dated 25/11/2021 made some clarifications. Before going in to the contents of clarification provided by the Executive Director (Tariff), let us examine the authority under which such clarification has been provided.

29. The scrutiny of the communication reveals that the ED Tariff have issued this clarification without stating any authorization from the Commission. Further, this communication, in any terms, can't qualify as 'Executive Order" by the Commission or clarification by 'the Commission'. Any clarification, which doesn't have the sanctity of executive order by the Hon'ble Commission, can't have any locus standii in legal terms. Hence, the specific clarification provided by the ED Tariff, without any authority from the Hon'ble Commission, can't be considered as a clarification provided by the Commission.

30. Further, no petition for such clarification have been made by the Respondent Board and the Complainant was also not been made party to that. The specific clarification to this particular case provided by the ED Tariff also carries no authority and can't be considered as clarification provided by the Hon'ble Commission.

31. Another contention of the Complainant is that the legal aspect of the matter regarding audit para by local internal audit party is merely an expression of opinion and should not have been considered by the Respondents. In support he has quoted a judgement of Punjab and Haryana High Court CWP No. 10858/2000 M/S Kundan Mill Vs PSEB wherein they have observed that they don't find support from the observation made and liability can't be fastened on party merely on the basis of an audit note. This Appellate Forum agree with the contention of the Complainant and observe that the case is very much relevant to the present case.

32. My considered opinion in this specific issue is also that, the Respondents had allowed the expansion rebate after considering the communication from the Complainant which included the communication of the Deptt of Industry, GoHP with details of investment as well as increase in Contract Demand to the extent of 11000 kVA and 8000 kVA. Further, that the observation of the audit should have first been verified by the Respondent No. 3 vis-à-vis the facts before it while allowing the expansion rebate, before issuing the

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demand notice for recovery and stopping the expansion rebate provided by themselves earlier.

33. The document attached is calculation sheet by audit para but it doesn't mention the time/ date of audit. The audit period was 08/2020 to 12/2021 and it appears that the Respondents have acted merely on the observation of the audit and have issued notice for demand immediately after receipt of audit para and no due diligence have appeared to be made to verify the contention of the audit. They simply issued demand based on the calculation sheet provided by the audit which must be part of attachment. They even ignored the verification done by the Department of Industry of such expansion/ addition with additional investment and additional Contract Demand of 11000 kVA which was in their record. This action of the Respondents is also not as per established practice.

34. The Respondents have largely supported the orders passed by the Forum below on 03/03/2023. They have further relied on the clarification dated 25/11/2021 provided by the ED (Tariff) in this particular case. They have although placed some arguments in respect of contentions made by the Complainant in his appeal/ arguments. Let us examine those now.

35. The Respondents have solely depended upon the clarification provided by the ED (Tariff) vide letter dated 25/11/2021. As discussed above, since neither the clarification has been sought by the Chief Engineer (Commercial) through petition nor the Complainant was made party to same nor the clarification dated 25/11/2021 issued by the ED (Tariff) carried any authority and thus can't be considered as having been issued by the Commission through an executive order.

36. The Respondents have also contended that the clarification provided by the Commission is challengeable in the higher court and thus clearly applicable and based on which they have decided to withdraw the rebate. The fact is that they had withdrew the rebate based on the simple observation of the Audit alone and the clarification was sought much later. This argument placed by the Respondents is just an after thought and can't be considered.

37. Further, the Respondents have failed to understand that the clarificatory order (as mentioned in their submissions/ arguments) dated 25/11/2021 issued by the ED (Tariff) is not a clarificatory order issued by the Commission. It is simple clarification provided to the Chief Engineer (Commercial) on his letter and with no stretch of imagination can be considered as the clarificatory order by the Commission.

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38. Thus, any arguments in support of such clarification can't be considered for the sake of disallowing expansion rebate after ignoring the facts that the Deptt of Industry have made the Industrial Policy and such expansion rebate was allowed by the Commission in its



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Tariff Order dated 06/06/2020 based on that policy. Thus, communication from the Member Secretary, Single Window Clearance, Deptt of Industry at Kala Amb can't be simply ignored to disallow the expansion rebate to the Complainant.

39. Now let us examine the other submissions made by the Respondents. They have argued that they had accepted the audit report and objective enquiry has to be done. Report was accepted and action was followed objectively. In view of the observations made above, the audit observations have to be supported by the proper verification with due diligence for ascertaining the authenticity of the claim and only then the same has to be communicated to the Complainant which in this case is lacking.

40. The Respondents have quoted Section 97 of the Electricity Act, 2003 wherein the Commission in general delegates any member/ secretary, officer of the appropriate Commission with powers and functions under this Act. The Respondents have failed to understand that any communication/ order of the Commission have to be issued through its Secretary which is not the case here also since the communication have not been ussied by the authorized officer as per Conduct of Business Regulations. In case of absence of the Secretary, the power is in fact delegated to other officers/ EDs but the communication has to be issued in the name of Secretary only which is also not the case here. Thus, the clarification issued by ED Tariff can't be considered as the clarification provided by the Commission.

41. The Respondents have quoted another judgement Prem Cotex Vs Uttar Haryana Case No. 7335/2009 regarding supplementary demands are maintainable. The case is not relevant here since the due diligence have to be given first before issuing any supplementary demand. Any supplementary/ initial demand has to be based on certain parameters and can be issued only after due diligence which in fact is lacking in this case.

42. The Forum below have also relied on the clarification provided by the ED Tariff status of which have already been explained in above paras. They have also quoted the provisions of Tariff Order/ Schedule but twisted the same to their suitability.

43. The Forum below in their orders at para 31 have agreed that Complainant is eligible for expansion rebate as allowed to Industries in the ibid HPERC Tariff Order dated 06/06/2020 but finally denied the same in conclusion which is quite contradictory stand.

44. From the above discussions it is quite clear that the Consumer Grievance Redressal Forum at Kasumpti have passed orders without giving due diligence to communications from the Member Secretary, Single Window Clearance, Deptt of Industry and have made their own interpretation of the Tariff Order which is contrary to the technical facts of the case stated above.

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## G – Issues at hand:

1. **Issue No. 1:** Whether, the Complainant is eligible for expansion rebate in terms of provisions under Tariff Orders dated 01/06/2020 or not?

2. **Issue No. 2:** Whether the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 03/03/2023 in Complaint No. 1515/4/22/31, dated 30/11/2022 is in line with standard practice and as per Tariff Orders/ Regulations/ Codes etc. or not?

## H – Findings on the issues:

**Issue No. 1**

1. As is evident from the analysis done above and documents and arguments made by parties on record, the Complainant is eligible for expansion rebate of 15% as per Tariff Order dated 06/06/2020 effective from 01/06/2020.

2. The expansion was made by the Complainant before 31/05/2020 for 11000 kVA and load was also enhanced through PAC dated 22/07/2020 sanctioned on 23/07/2020. This fact was also verified by the Member Secretary, Single Window Clearance, Deptt of Industry at Kala Amb on 24/05/2020 i.e. before 31/05/2020 with investment of Rs 542.94 Cr in expansion/ addition in Plant and Machinery with additional Rs 13.23 Cr on other fixed assets. The Complainant's load was also found in production.

**Issue No. 2:**

1. As is evident from the analysis done above and the documents on record, the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 03/03/2023 in Complaint No. 1515/4/22/31, dated 30/11/2022 is not in line with standard practice/ Tariff Orders/ Regulations/ codes.

2. The Forum below have rejected the communication from the Member Secretary, Single Window Clearance, Deptt of Industry at Kala Amb on flimsy grounds and have interpreted the Tariff Orders to their suitability. They have also ignored the investment of Rs 542.94 Cr on Plant and Machinery plus Rs 13.23 Cr on fixed assets verified by the authorized officer of the Deptt of Industry, GoHP.

3. They have also ignored the verification done by the Member Secretary, Single Window Clearance, Deptt of Industry at Kala Amb on 24/05/2020 that the extended load of 11000 kVA was found to be in production.

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## I – Order

1. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 03/03/2023 in Complaint No. 1515/4/22/31, dated 30/11/2022 is hereby quashed and set aside.

2. The demand notice dated 07/06/2020 and 08/06/2020 for refund of expansion rebate granted to the Complainant till May 2022 are also hereby quashed and set aside.

3. The Complainant is entitled to the expansion rebate in their energy bills as allowed by the Respondents at the initial stage @ 15% on consumption of energy as per Tariff Orders dated 06/06/2020 effective from 01/06/2020.

4. The Respondents are directed to restore the expansion rebate to the Complainant as allowed initially w.e. from 01/06/2020 strictly in terms of Tariff Orders dated 06/06/2020 and refund the amount deposited by the Complainant during litigation at Consumer Grievance Redressal Forum at Kasumpti and this Appellate Forum through adjustment in energy bills on or before 15/06/2023 positively.

5. In case of delay in refund/ adjustment, the Complainant shall also be entitled to an interest @ 15 % in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009.

6. The Respondents are further directed to report compliance of the above directions within a period of 30 days from the date of issue of this order or latest by 15/06/2023 positively failing which the matter shall be reported to the Hon'ble Commission for violation of 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 Electricity Act, 2003.

7. The Complaint filed by M/S J. B. Rolling Mills Ltd., Vill Kheri, Trilokpur Road, Kala Amb, The Nahan, Distt Sirmour HP-173030 is hereby disposed off.

8. No cost to litigation

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Given under my hand and seal of this office.

Gupta 16/05/2023

Electricity Ombudsman