



In the matter of:

Complaint No. 07/2024

M/S Kailash Chand (LR College), Village Jabli, (Kyar) P.O. Oachghat,
Tehsil and District Solan -173223 (H.P).

– Complainant

Vs

1. The Executive Director (Pers.), HPSEBL, Vidyut Bhawan, Shimla-171004.
2. The Sr. Executive Engineer, Electrical Division HPSEBL, Solan, Distt. Solan (HP)-173212.
3. The Assistant Engineer, Elect. Sub-Division-III, HPSEBL, Solan Distt. Solan-173212 (HP).

- Respondents

1. Complaint No. 07/2024 (Registered on 15/10/2024)
2. (Orders reserved on 09/12/2024, Issued on 11/12/2024)

Counsel for:

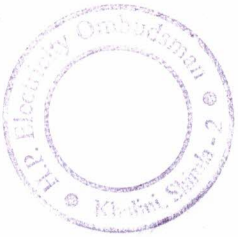
The Complainant: -Sh. O. C. Sharma, Advocate

The Respondents: -Sh. Rajesh Kashyap, Advocate

-Er. Surinder Singh, Assistant Engineer, ESD No-III Solan.

-Er. Kuldeep Singh, JE, ESD No-III Solan.

-Sh. Jnender Singh, Sr. Astt.



CORAM

Er. Deepak Uppal

HP Electricity Ombudsman

Deepak Uppal



Order

1. M/S Kailash Chand (LR College), Village Jabli, (Kyar) P.O. Oachghat, Tehsil and District Solan -173223 (H.P) is a Commercial Supply (CS-Two part) Consumer bearing Consumer ID 100009003601 have filed an application under Regulations 28(1)(b) read with Regulation 33(1)(e) and Regulation 28(1)(c), received & registered on 15/10/2024, against the final Orders dated 24/09/2024 passed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1413/202310/32. As per record copy of the Complaint had also been sent by post on 14/10/2024 by the Complainant to the Respondents.
2. The complainant had also filed an Application for Interim directions regarding restraining the Respondent from realizing & recovering as well as disconnection of electricity supply during the pendency of complaint.
3. In terms of powers conferred under the provisions of Regulation 36 read with Regulation 33 (2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, prayer granted after listening both the parties during admission hearing on dt.22/10/2024.
4. The Complainant submitted proof of having deposited 50% of the disputed amount with the Respondents as required under the provisions of Regulation 33 (1) (g) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 which was also confirmed among the parties on dt. 22/10/2024.
5. Accordingly, the Respondent Board was directed to submit reply on or before 12/11/2024 with a copy of reply to the Complainant and rejoinder if any, be submitted by the Complainant immediately thereafter the submission of the reply by the Respondents.



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6. The Respondent Board submitted reply on dt. 18/11/2024 in the court room in compliance to this court's order dt.22/10/2024. Subsequently, the Complainant to submit rejoinder if any within weeks' time thereafter. Accordingly, the matter was listed for final arguments on 09/12/2024.
7. Case called, the matter was heard on 09/12/2024. The Complainant submitted rejoinder through e-mail on dt.02.12.2024 as well as hard copy in the court room and the same were taken on record. The counsel for Respondents and concerned Assistant Engineer accompanied by relevant staff appeared in the Court room along with the record in compliance to this court order dt.18/11/2024 and the final arguments were conducted.
8. The deliberations made by the Assistant Engineer and staff representing Respondent Board and participation in discussions were appreciable. Both Ld. Counsel for Respondent Board and the Complainant advanced their arguments to the brim and after hearing both the parties at length, the arguments were concluded and order reserved.

A-Brief Facts of the Case:

1. M/S Kailash Chand (LR College), Village Jabli, (Kyar) P.O. Oachghat, Tehsil and District Solan -173223 (H.P) is a Commercial Supply (CS-Two part) Consumer bearing Consumer ID 100009003601.
2. Complainant had earlier filed complaint No 1413/1/23/09 before CGRF wherein- order dt 05.09.2023 was passed and as per record, the Respondent Board in compliance to Order dt. 05.09.2023 of CGRF, raised demand of Rs. 35,57,630/- along with surcharge of Rs.4,85,908/- through demand notice dt.22/09/2023 strictly inconsonance with the MRI data supported with tampered status comprising Y-Phase missing for 2405 days and B-Phase missing for 1382 days as submitted by the Respondents.



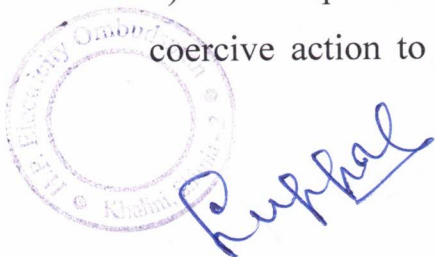


3. The Complainant however refuted the above demand and contented the act of Respondents as erroneous and contrary to the spirit of order dt. 05.09.2023 passed by Ld. CGRF and again filed Complainant No. 1413/202310/32 before CGRF contending that the demand dt.22/09/2023 raised is not in conformity to the MRI data whereas Ld. CGRF after diligent adjudication passed order dt. 24.09.2024 and sustained the said demand, however, the surcharge so levied was set aside by the Forum.
4. The detailed facts of the case stand placed under the heading “**The Complainant’s Submission**”, hence for the sake of brevity, the same are confined to the relevant one and not reiterated.

B-The Complainant’s Submission:

BRIEF FACTS OF THE CASE:

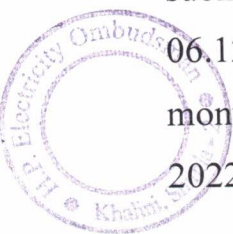
1. 1.) The complainant submits that they filed a complaint No. 1413/202310/32 before the Ld. Forum and claimed therein the reliefs as under:
2. a) The complainant submits that an order declaring the alleged overhauling of account of complainant/consumer for entire period commencing from March 2016 to October 2022 for Rs. 35,57,630/- w.e.f. March 2016 to October 2022, demand notice dated 22.09.2023 for Rs. 25,88,651/- + surcharge to the tune of Rs. 4,85,908/- totaling to Rs. 30,74,556/-, bill dated 16.09.2023 for arrears of Rs. 32,26,723.11 paise, notice dated 01.10.2023 for Rs. 32,76,344/- and bill dated 17.10.2023 for arrears of Rs. 32,72,670.49 paise as wrong, illegal, arbitrary, unjustified and against the directions issued by this Ld. Forum in terms of order dated 05.09.2023 passed in complaint No. 1413/1/23/09 and the aforesaid demands may be quashed and set-aside by this Ld. Forum.
3. b) The complainant submits that an order directing the respondents not to take any coercive action to disconnect the essential electricity supply of the complainant





consumer qua the aforesaid demands for disconnection of electricity supply of the complainant consumer till the pendency of the complaint.

4. 2.) The complainant submits that descriptive details of facts leading to filing of the present representation are that the complainant consumer has been provided connected load of 98 KW with a contract demand of 54 KVA having consumer ID No. 100009003601 for running the educational institute. The respondents have installed energy meter having serial No. 6645714, make L&T for registering and recording the consumption of energy and maximum demand.
5. 3.) The complainant submits that the respondent No. 3 herein issued letter dated 06.12.2022 to the complainant consumer and thereby requested for deposit of unbilled amount to the tune of Rs. 43,01,696/- and also annexed therewith a calculation sheet vide the copies of the same collectively annexed herewith as **Annexure C-1**. In the above stated notice the respondent No. 3 herein has stated that the energy consumption is recorded through energy meter having serial No. 6645714, make L&T unit Sr. No. 6295, make Floral Electrical Pvt. Ltd. It is further averred in the said notice that in view the phase missing, the check metering equipment (CT/PT) are installed on dated 11.09.2022 to 11.10.2022 to check the accuracy of existing meter. The check meter No. Q0594275 make secure meters alongwith CT/PT unit Sr. No. VTS/JAN/0/3/2020/381, make Vishal Transporters and Switch Gears has been installed on dated 11.09.2022 and the original meter is found 87.06 percent slow. The respondent No. 3 herein also enclosed the copy of check meter and phase missing and MRI data alongwith the said demand notice. It is most respectfully submitted that the aforesaid demand relates to the period March, 2015 to October, 2022 for Rs. 43,01,696/-. It is further submitted that the respondent No. 3 enclosed with the alleged demand notice dated 06.12.2022 the MRI data/tamper report upto 15.06.2018 only and that too for some months and no complete MRI data/tamper report w.e.f. March, 2015 to October, 2022 has been supplied to the complainant consumer demonstrating the occurrence

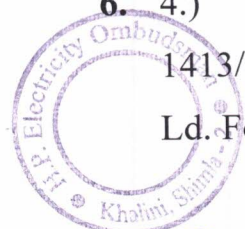


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of “Y” phase failure. The actual slowness of meter w.e.f. March, 2015 to October, 2022 can only be ascertained and established on the basis of event wise tamper status. The respondent No. 3 herein also supplied the month wise calculation sheet on flat basis for the period March, 2015 to October, 2022 for alleged demand of Rs. 43,01,936/- alongwith the demand notice dated 06.12.2022 which is absolutely procedurally erroneous and unsustainable. The bare perusal of the overhauling of account of the complainant consumer and load survey report annexed with demand notice dated 06.12.2022 would amply go to show that the respondents have raised the demand of Rs. 43,01,936/- on account of “Y” phase failure on flat basis whereas the calculation should have been based on event wise tamper status occurred in the month starting from March, 2015 onwards. It is pertinent to mention here that in case the tamper report as supplied to the complainant consumer is perused strictly then it would demonstrate that there was no occurrence of tamper i.e. “Y” phase missing throughout a month commencing from March, 2015 to October, 2022 and the same remained for few hours in a particular month. The “Y” phase failure was for some limited time during a particular month starting from March, 2015 onwards and as such, the alleged unbilled amount should have been confined by the respondents to occurrence of “Y” phase missing. The respondents raised monthly energy bill dated 18.01.2023 and apart from the current energy charges, the respondents demanded an amount of Rs. 43,01,935/- under the head Sundry by levying surcharge on earlier demand of 43,01,696/-. The respondents further issued demand notice dated 01.02.2023 and demanded therein Rs. 43,64,660/- after levy of surcharge on the earlier demand. The copy of bill dated 18.01.2023 and notice dated 01.02.2023 have been annexed herewith as **Annexure C-2 and C-3** respectively.

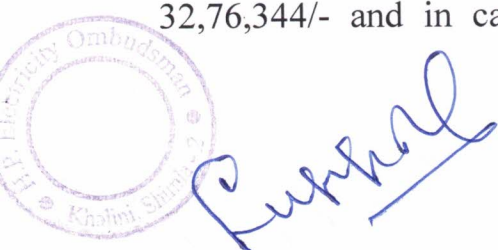
6. 4.) The complainant submits that the complainant consumer filed complaint No. 1413/1/23/09 and the same was registered on 11.09.2023 by this Ld. Forum. This Ld. Forum has been pleased to quash and set-aside the aforesaid Annexures C-1 to





C-3 i.e. dated 06.12.2022, 18.01.2023 and 01.02.2023 with the directions to overhaul the account of complainant only for the days the defective metering actually existed and from the date the defective metering first arose in March 2015 and upto the date the issue of defective metering existed in October 2022. The respondents have further been directed to support this overhauled account with MRI data for each day for which arrears are determined. In the Order dated 05.09.2023, it has also been made clear that no arrears shall be projected by the respondents to the complainant for the days for which such is not supported with the MRI data. The copy of order dated 05.09.2023 is annexed herewith as **Annexure C-4.**

7. 5.) The complainant submits that after passing of aforesaid Order dated 05.09.2023 by this Ld. Forum, the respondents issued revised notice dated 22.09.2023 to deposit unbilled amount to the tune of Rs. 35,57,630/- alongwith calculation sheet for revised overhauling of consumer account. The copy of calculation sheet is annexed herewith as **Annexure C-5.** The respondents in term of notice dated 22.09.2023 have demanded Rs. 25,88,651/- (35,57,630 – 1454887 + surcharge Rs. 4,85,908) within 15 days from the date of issuance of the said notice and otherwise same will be debited to the next monthly energy bill of the complainant. The copy of notice dated 22.09.2023 is annexed herewith as **Annexure C-6.**
8. 6.) The complainant submits that the respondents issued monthly energy bill dated 16.09.2023 and demanded therein an amount of Rs. 32,26,723.11 paise under the head arrears apart from the current energy charges. The copy of bill dated 16.09.2023 is annexed herewith as **Annexure C-7.**
9. 7.) The complainant submits that the respondents further issued demand notice dated 01.10.2023 to the complainant and thereby required deposit of Rs. 32,76,344/- and in case of default, threatened for disconnection of electricity



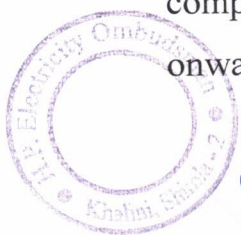


supply. The copy of demand notice dated 01.10.2023 is annexed herewith as **Annexure C-8.**

10. 8.) The complainant submits that the complainant consumer wrote letter dated 16.10.2023 to the respondents with reference to notice dated 22.09.2023 and thereby requested to recall and withdraw the demand notice dated 22.09.2023. The complainant consumer also requested the respondents for making fresh overhauling of account based on each days of period/duration of phase missing supported by MRI data of tamper status event and thereby to comply the order dated 11.09.2023 passed by this Ld. Forum. The complainant/consumer also apprised the respondents through letter dated 16.10.2023 that as per the MRI (tamper status event) supplied by the respondents along with letter dated 22.09.2023, the duration /timings of phase missing even which allegedly occurred in February 2016 to June 2018 remained for few minutes in a particular day and the same was not throughout continuous and whereas the alleged overhauling relates to the period March 2016 to October 2022 which is absolutely erroneous and unsustainable. The copy of letter dated 16.10.2023 is annexed herewith as **Annexure C-9.**

11. 9.) The complainant submits that the respondents have now raised monthly energy bill dated 17.10.2023 and have demanded therein Rs. 32,72,670.49 paise under the head arrears by levying unwarranted surcharge on 25,88,651/-. The copy of bill dated 17.10.2023 is annexed herewith as **Annexure C-10.**

12. 10.) The complainant submits that it is pertinent to mention here that as per the MRI data i.e. tamper status report supplied by the respondents, the durations/timings of phase missing events in a particular month remained for few hours since February 2016 to June 2018. There is no MRI data /tamper status report of 30 minutes intervals supplied by the respondents to the complainant/consumer which demonstrate the phase missing event since June 2018 onwards and as such, the overhauling of consumer account for alleged phase

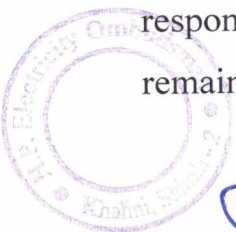


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missing since June 2018 to October 2022 is erroneous and unsustainable. The alleged overhauling of account of complainant/consumer for entire period commencing from March 2016 to October 2022 is absolutely erroneous, unjustified, arbitrary and as such, the overhauling of complainant consumer account for Rs. 35,57,630/- w.e.f. March 2016 to October 2022, demand notice dated 22.09.2023 for Rs. 25,88,651/- + surcharge to the tune of RS. 4,85,908/- totaling to RS. 30,74,556/-, bill dated 16.09.2023 for arrears of Rs. 32,26,723.11 paise, notice dated 01.10.2023 for Rs. 32,76,344/- and bill dated 17.10.2023 for arrears of Rs. 32,72,670.49 paise deserves to be quashed and set-aside by this Ld. Forum.

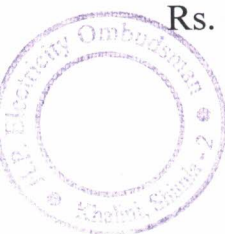
13. 11.) The complainant submits that the levy of surcharge on Rs. 25,88,651/- for Rs. 4,85,905/- and thereafter in subsequent bills by the respondents is arbitrary, wrong and unjustified. The respondents cannot levy any surcharge on any amount of overhauling of account of a consumer until or unless the same is held as good and payable by a consumer.
14. 12.) The complainant submits that the respondents have indulged in unfair trade practices by wrongly, illegally, unfairly and arbitrarily raising the demand aforesaid stated in the complaint despite the directions issued by this Ld. C.G.R.F. to overhaul the account strictly based on the MRI data for relevant period regarding the alleged phase missing.
15. 13.) The complainant submits that the complainant /representationist filed complaint before the Ld. CGRF based on fresh cause of action for laying challenge to the impugned demands of RS. 35,57,630/- and surcharge of Rs. 4,85,908/-.
16. 14.) The complainant submits that the respondents filed reply to the complaint No. 1413/202310/32 and raised therein objections qua maintainability of complaint and also denied the cause of action to file the complaint. On merits, the respondents averred in the reply that the voltage in Y-Phase in CT/PT unit remained missing for 1405 days and in B-Phase for 1382 days and also annexed





the tamper report as Annexure R-2. The respondents also made averments in the reply that the calculation for unbilled amount has been done on the basis of voltage missing totally based on MRI record. The copy of reply filed by the respondents before the Ld. Forum is annexed herewith as **Annexure C-11** and MRI tamper data annexed therewith is **Annexure C-12** herein.

17. 15.) The complainant submits that the complainant/representationist made contention before the Ld. CGRF that the MRI data of meter tamper status of Y-Phase and B-Phase missing, Annexure R-2, ex-facie does not demonstrate that the voltage in Y-phase and B-Phase was missing for 2405 days and 1382 days, respectively during the period March 2016 to October 2022. The complainant /representationist also submitted that 30 minutes intervals MRI data of meter tamper status, Annexure R-2, is indicative and suggestive of voltage failure/missing in Y-Phase and B-Phase only for 49 hours, 56 minutes during the period March 2016 to October 2022 and as such, the alleged calculation amounting to Rs. 35,57,630/- is absolutely erroneous, unjust, arbitrary and not sustainable procedurally.
18. 16.) The complainant submits that the Ld. CGRF framed 2 issues for determination which are reproduced as hereunder:
- a) **Issue No. 1:** Whether, the grievance raised in the instant complaint for wrong/erroneous overhauling of complainant's account for the period from March 2016 to March 2022, as alleged by the complainant, is settled once revised demand notice dated 22.09.2023 is served by the Respondent upon the complainant based on Forum's Orders dated 05.09.2023 or whether the instant complaint is one of non-implementation of the directions passed by the Forum on 05.09.2023 in complaint No. 1413/1/23/09;
- b) **Issue No. 2 :** Whether the Respondent is justified in adding surcharge amount of Rs. 4,85,905/- in the revised Demand Notice dated 22.09.2023.



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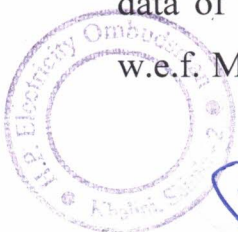


19. 17.) The complainant submits that the Ld. CGRF returned its findings on issue No. 1 and thereby upheld the demand of Rs. 35,57,630/- raised through Annexure R-6, by the respondents and concluded that the complainant is liable to pay the same after adjusting the amount already paid. The Ld. CGRF also observed in its impugned order dated 24.09.2024 that there is no fault in the assumption adopted by the respondents based on Annexure R-2, for working out short assessment in the past. The Ld. CGRF also granted liberty to the complainant to raise its grievances of non-implementation of Forum's Order dated 05.09.2023 before the appropriate authority under the said Regulations 28 and 33 of HPERC (CGRF and Ombudsman Regulations) 2013.
20. 18.) The complainant submits that the Ld. CGRF returned its finding under issue No. 2 that the surcharge of Rs. 4,85,908/- is not recoverable by the respondents from the complainant and thereby partly allowed the complaint filed by the complainant. The copy of order dated 24.09.2024 passed by the Ld. CGRF Shimla is annexed herewith as **Annexure C-13**.
21. 19.) The complainant submits that the complainant /representationist feeling aggrieved and dissatisfied with the order dated 24.09.2024 passed in complaint No. 1413/202310/32 by the Ld. CGRF for non-redressal of its grievances in a proper and judicious manner qua the demand of Rs. 35,57,630/- raised through demand notice dated 22.09.2023, Annexure C-6, AND non-compliance of Order dated 05.09.2023 passed in complaint No. 1413/1/23/09 by the Licensee in letter and spirit, file the present representation before this Ld. Authority on the following amongst other grounds:
22. A) The complainant submits that the Order dated 24.09.2024 passed in complaint No. 1413/202310/32 by the Ld. CGRF for holding the demand of Rs. 35,57,630/- raised through demand notice dated 22.09.2023 (Annexure C-6) for voltage failure/missing in Y-Phase and B-Phase for 2405 days and 1382 days, respectively as recoverable is perverse, erroneous, unsustainable and based on



complete misreading of Tamper Report of the meter /MRI data, Annexure R-2 (Annexure C-12 herein). The Ld. Forum below has failed to appreciate that the Tamper report/MRI Data, Annexure R-2, is not indicative and suggestive of the fact that the voltage in Y-Phase and B-Phase remained missing throughout w.e.f. March 2016 to October 2022. The bare perusal of Tamper report/MRI data, Annexure R-2 (Annexure C-12 herein), would demonstrate that the occurrence of voltage failure /missing in Y-Phase and B-Phase remained for very few timings in a particular day and thereafter the same recovered. In case the Tamper report/MRI data of the meter is carefully perused the occurrence of voltage failure/missing in Y-Phase and B-Phase remained for 49 hours, 56 minutes during the period March 2016 to October 2022. The total timings and duration of voltage failure/missing in Y-Phase and B-Phase remained for 49 hours, 56 minutes as per the Annexure R-2 (Annexure C-12 herein) and the calculation sheet for the same is being annexed herewith as **Annexure C-14**. The Ld. CGRF below failed to appreciate that the demand for Rs. 35,57,630/- raised through Annexure C-6 on account of Voltage failure/missing in Y-Phase and B-Phase for 2405 days and 1382 days, respectively is not substantiated by the Tamper report/MRI data of 30 minutes intervals and the conclusion arrived at for holding the same as recoverable in order dated 24.09.2024 is erroneous, wrong and unsustainable and as such, the findings on issue No. 1 deserve to be reversed and set-aside by this Ld. Authority.

- 23. B)** The complainant submits that the Ld. CGRF has fallen in error by placing undue reliance or credence on the MRI data /tamper report, Annexure R-2 (Annexure C-12 herein) allegedly depicting Y-phase voltage missing/failure for 2405 days – 23 hours – 20 minutes and B-Phase voltage failure/missing for 1382 days – 34 minutes. The Ld. CGRF has turned oblivious of the fact that the respondents have not placed on the record of the case complete tamper report/MRI data of voltage failure/missing in Y-Phase and B-Phase of 30 minutes intervals w.e.f. March 2016 to October 2022 substantiating the fact that the alleged voltage





failure/missing in Y-Phase and B-Phase remained for 2405 days, 23 hours and 20 minutes and 1382 days and 34 minutes, respectively. The findings in Order dated 24.09.2024 by the Ld. CGRF for holding the demand of Rs. 35,57,630/- as payable is palpably erroneous, unjust, unreasoned, unsustainable in law and procedure, without application of mind and as such, the order dated 24.09.2024 deserves to be reversed and set-aside by this Ld. Authority by way of redressal of the grievances of the complainant in an effective and judicious manner.

24. C) The complainant submits that the Order dated 24.09.2024 passed by the Ld. CGRF below holding the demand of Rs. 35,57,630/- raised through Annexure C-6 as recoverable on account of alleged voltage failure/missing in Y-phase and B-Phase for 2405 days and 1382 days is misconceived and based on wrong assumptions. The Ld. Forum observed in its order that there is vacuum of actual metering data and less recording of consumption and further that the calculation of amount of Rs. 35,57,630/- is based on assumptions adopted by the respondents. It is pertinent to submit here that the meter installed in the premises of the complainant/representationist is having features for recording the tamper events of voltage failure/missing in all the 3 phases and the data can easily be retrieved through MRI. The voltage failure events of Y-phase and B-phase cannot be inferred on assumptions and presumptions and the same has to be established and proved from the MRI data retrieved from the meter. The Ld. Forum has wrongly and erroneously upheld the demand of respondent for Rs. 35,57,630/- as has been raised on assumption and as such, on this ground also the order dated 24.09.2024 deserves to be quashed, reversed and set-aside by this Ld. Authority.
25. D) The complainant submits that the Order dated 24.09.2024 passed by the Ld. Forum below is not a reasoned and judicious one and the same deserves to be quashed and set-aside by this Ld. Authority.

26. E) The complainant submits that the respondents have failed to implement the order dated 05.09.2023 passed in complaint No. 1413/823/09 titled as Kailash



Chand versus HPSEBL and others in letter and spirit. The Ld. Forum has set-aside the monetary demand of Rs. 43,01,696/- raised through demand notice dated 06.12.2022, bill dated 18.01.2023 and notice dated 01.02.2023 as was earlier raised on account of Y-Phase and B-Phase missing during the period February 2015 to October 2022 with direction to the respondents to raise a fresh demand notice to complainant within 15 days from the Order along with revised overhauled account for each days of the period for March 2015 to October 2022 and duly supported by MRI data for each day. The Ld. CGRF has also directed the respondents that no arrears shall be projected by the respondents to the complainant for the days for which such is not supported with the MRI data. The respondents have failed to make compliance of order dated 05.09.2023 in letter and spirit and have projected the demand of Rs. 35,57,630/- through demand notice dated 22.09.2023 on assumption for alleged voltage failure/missing in Y-Phase and B-Phase and not supported with MRI data, which is violative of directions issued by the Ld. CGRF. The said acts of the respondents constitute willful violation of Rules and Regulations made by the HPERC and consequently the respondents deserve to be dealt with under Section 142 of The Electricity Act and this Ld. Authority is requested to refer the matter to the Ld. HPERC for proceeding against the respondents in accordance with law under Section 142 of the Electricity Act.

27. 20) The complainant submits that there is no representation by the complainant/representationist in respect of the same grievances, pending in any proceedings before any Court or Tribunal or Arbitrator or any other authority.
28. 21) The complainant submits that the present representation is within the statutory period of limitation.



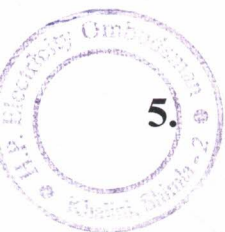
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C- The Respondent's Submission:

Preliminary Submission: -

1. The Respondent Submits that the representation as preferred by the complainant is not maintainable in the eyes of the Law, hence liable to be dismissed. As the present representation is based on conjectures and surmises.
2. The Respondent Submits that the relief sought by the complainant is not tenable in law, as the Ld. Forum below has correctly passed the order dated 24.9.2024 after thoroughly examining the case records. Ld. Forum's decision is based on a thorough review of arguments presented by both the parties, on the pleadings of the parties and the Ld. Forum has categorically appreciated the applicable provisions of the H.P Electricity Supply Code, 2009 in the impugned order thus there is no such infirmity or illegality in the order passed by the Ld. Forum thus the representation is liable to be dismissed.
3. The Respondent Submits that HPSEBL is a deemed Distribution Licensee under Electricity Act, 2003 for supply of electricity to consumers in Himachal Pradesh. The requisite charges for supply of electricity to the consumers is being charged from the consumers based on Regulations notified by Himachal Pradesh Electricity Regulatory Commission pursuant to the powers conferred on it under the various Section of Electricity Act, 2003.
4. The Respondent Submits that the demand notice for the missing phase is fully substantiated by the data received from the system, where human interference is negligible. The tampered data report and other relevant materials, which are appended to this reply as Annexure R-1 (Colly), demonstrate that the learned Forum below has come to an inescapable conclusion that the demand is both legal and valid. Accordingly, the complainant is liable to honor the demand.
5. The Respondent Submits that the demand raised against M/s Kailash Chand (L.R. College) is statutory, and failure to pay will lead to disconnection of electricity supply. The demand is not illegal or contrary to the law. The supplementary



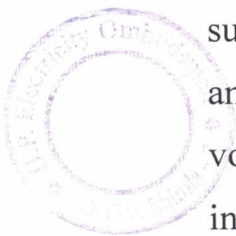
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demand was issued after detecting a bona fide error, based on actual consumption. The distribution licensee has the right to recover past dues, as upheld by the Hon'ble Supreme Court in *Assistant Engineer (D1) Ajmer Vidyut Nigam Limited vs. Rahamutullah* (2020) 4 SCC 650 and *M/S Prem Cottex vs. Haryana Viji Vitaran Nigam Ltd.* (2021). The Court ruled that mistakes in billing, once detected, can be corrected, and the consumer is obligated to pay the dues. Section 56 does not protect a consumer from such legitimate claims. Therefore, the representation is without merit, as per the settled legal position.

Reply on Merits: -

1. The Respondent Submits that the content of Para No.1 is matter of record, hence anything contrary to the record is specifically denied. It is further submitted that as submission made in Parasupra the Ld. Forum below has correctly passed the order dated 24.9.2024 after thoroughly examining the case records, pleading of the parties and applicable provisions of The Electricity Supply Code 2009. Therefore, the order of Ld. Forum below warrants no interference of this Hon'ble Court.
2. The Respondent Submits that the content of Para No.2 is matter of record, hence anything contrary to the record is specifically denied.
3. The Respondent Submits that the content of Para no. 3 of needs is matter of record hence needs no reply.
4. The Respondent Submits that the content of Para No.4 is matter of record, hence anything contrary to the record is specifically denied. It is further submitted that the account of the consumer is overhauled as per MRI data and is being proved very clearly, before the Ld. Forum below that the voltage in Y-Phase in the CT/PT unit remained missing for 2405 days and in B-phase for 1392 days. Therefore, the contention of the complainant is

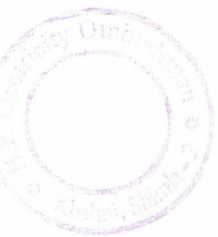


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not sustainable.

5. The Respondent Submits that the content of Para No.5 is admitted being matter of record hence needs no reply.
6. The Respondent Submits that the content of Para No.6 is admitted being matter of record, hence needs no reply.
7. The Respondent Submits that the content of Para No.7 is matter of record, hence anything contrary to the record is specifically denied. It is humbly submitted before this Ld. Forum that the demand raised through various bills from consumer M/s Kailash Chand (L.R. College), have been issue strictly in accordance with the provisions Electricity Supply Code, 2009, Tariff Orders of HPSEBL as well as other prevailing Rules/Regulations It is submitted that the electricity dues are statutory in nature and consumer cannot evade from making payment of same. It is specifically denied that the Id. forum has passed wrong order without appreciation of the provisions of the Schedule of Tariff and HP Electricity Supply Code, 2009. However, as discussed in preceding paras, the order is strictly in conformity with the tariff provisions and the supply Code, 2009 as such there is no scope for the any kind of the interference of this Hon'ble Court in this matter.
8. The Respondent Submits that the content of Para No.8 is matter of record, hence anything contrary to the record is specifically denied. It is further submitted that as alleged by the complainant that the Y-phase failure was for some limited time and the same was not throughout continuous, it is eloquent in the Tamper report of 12/2022 as annexed herewith that Y-phase was missing completely for 2405 days and B-Phase was missing completely for 1382 days and same has not restored. The above facts clearly indicate that the complainant consumer has tried to suppress this material fact from Ld. Ombudsman.



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9. The Respondent Submits that the content of Para No.9 is admitted being matter of record hence needs no reply.
10. The Respondent Submits that the content of Para No. 10 is wrong, incorrect and hence denied. It is vehemently denied that the durations/timings of phase missing events in a particular month remained for few hours since February 2016 to June 2018 as alleged by the complainant. It is further added that the overhauling of consumer account for alleged phase missing since June 2018 to October 2022 is perfectly permissible and it is clearly proved by the tamper report of 12/2022 annexed above. The overhauling of account for March 2016 to 2022 for 35, 57,630/- and has been served revised demand notice as per the order passed by the Hon'ble Forum is completely correct and calculated on the basis of tamper record.
11. The Respondent Submits that the content of Paragraph No. 10 is incorrect and is therefore denied. It is further submitted that the consumer's allegation regarding the respondent imposing a surcharge of Rs. 4, 85,905/- on the outstanding unbilled amount is baseless. The surcharge is applied automatically at the rate of 1.5% per month as per the tariff schedule, when the consumer fails to pay the energy bill. Additionally, the tamper report confirms that the consumer is liable to pay the unbilled amount due to phase missing.
12. The Respondent Submits that the content of Para No. 12 is wrong, incorrect and hence denied. It is humbly submitted that the account of the consumer is overhauled as the directions/orders and compliance of the orders passed by the Ld. Forum Below.
13. The Respondent Submits that the content of Para No. 13 is matter of record hence needs no reply.



14. The Respondent Submits that the content of Para No 13 is matter of record, hence anything contrary to the record is specifically denied.
15. The Respondent Submits that the content of Para No. 15 is wrong, incorrect and hence denied. It is further submitted that there is no error or infirmity in the orders passed by the Ld. Consumer Grievance Redressal Forum.
16. The Respondent Submits that the content of Para No. 16 is matter of record, hence anything contrary to the record is specifically denied.
17. The Respondent Submits that the content of Para No. 17 is matter of record, hence anything contrary to the record is specifically denied.
18. The Respondent Submits that the content of Para No. 18 is matter of record, hence anything contrary to the record is specifically denied.
19. The Respondent Submits that the content of Paragraph No. 19 and sub-paragraphs (A) to (E) are incorrect and are hereby denied. It is further submitted that, in addition to the submissions made in Para supra, the order passed by the Learned Consumer Grievance Redressal Forum on 24.09.2024 is in accordance with well-established legal principles. Therefore, the representation filed by the complainant is without merit and should be dismissed. In view of the above submissions, it is respectfully stated the demands raised by the respondent are lawful, and the consumer is obligated to make payment of the same. Further, since the demands are statutory in nature, failure by the consumer to settle the dues will result in the enforcement of the statutory provision for disconnection of the electricity supply. The electricity charges in question are statutory dues, and the consumer cannot avoid the obligation to pay them.
20. The Respondent Submits that the content Para No. 20 is formal in nature hence needs no reply.



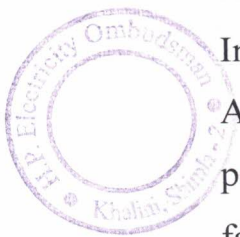


21. The Respondent Submits that the Content of Para No.21 being matter of record hence needs no reply.
22. The Respondent Submits that the content of Para No.22 being matter of record hence needs no reply.
23. The Respondent most respectfully prayed that the complaint filed by the petitioner being devoid of merits may kindly be dismissed in the interest of law and justice.

D-The Complainant's Additional Submission through Rejoinder:.

REPLY TO THE PRELIMINARY SUBMISSIONS:

1. (Paras 1 to 5) The Complainant submits that the contents of Paras 1 to 5 of the preliminary submissions are wrong hence vehemently denied. The representation for laying challenge to the Order dated 24.09.2024 passed by Ld. CGRF is maintainable as the said Order has been passed by the Ld. CGRF on assumptions for holding the demand of Rs. 35,57,630/- as good despite the observations of the Ld. CGRF that there is vacuum of actual metering data and less recording of consumption. The representation of the consumer is tenable in law as there is infirmity and illegality in the Order passed by the Ld. CGRF. The Ld. CGRF has not appreciated that the respondents have not placed on the record a complete meter tamper data of "Y" phase and "B" phase missing of 30 minutes intervals commencing from March 2015 to October 2022. In case the meter tamper data, Annexure C-12, is perused the same would definitely demonstrate that the phase missing incident remained for 49 hours and 56 minutes during the period March 2016 to October 2022. In case the grounds of the present representation are perused by this Ld. Authority, then it would transpire that the Order of Ld. CGRF is erroneous, perverse and without application of mind. The respondents have miserably failed to justify the demand of Rs. 35,57,630/- and resultantly Order dated



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24.09.2024 of the Ld. CGRF is not a judicious one. The representation of the consumer involves merits.

2. ON MERITS:

3. (Para 1). The Complainant submits that the contents of para No. 1 of the reply on merits do not call for rejoinder so far as there is no specific denial of the same. Rest of the contents of para to the contrary are wrong hence vehemently denied.
4. (Para 2 and 3) The Complainant submits that the contents of para No. 2 and 3 of the reply on merits do not call for rejoinder.
5. (Para 4) The Complainant submits that the contents of para No. 4 of the reply do not call for rejoinder so far there is no specific denial of the contents of corresponding para no. 4 of the representation. Rest of the contents of para No. 4 of the reply, as represented, are wrong hence vehemently denied. The respondents have not placed on the records of the complaint the complete meter tampered data of 30 minutes intervals w.e.f. March 2016 to October 2022, which would demonstrate and establish the alleged "Y" phase missing for 2405 days and "B" Phase for 1382 days. The Order of the Ld. CGRF is based on assumptions and presumptions and is not sustainable in law.
6. (Paras 6 and 7) The Complainant submits that the contents of para No. 6 and 7 of the reply on merits do not call for rejoinder so far as the same do not specifically deny the contents of corresponding paras 6 and 7 of the representation. Rest of the contents of para No. 6 and 7 reply, as represented, are wrong hence vehemently denied and those of corresponding paras 6 and 7 of the representation are reiterated herein.
7. (Para 8) The Complainant submits that respondent para No. 8 of the reply, it is submitted that the respondents have not placed on the record 30 minutes interval data of phase failure of "Y" and "B" in order to establish and prove



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that the said phases remained missing throughout for 2405 and 1382, respectively.

8. (Para 9) The Complainant submits that the contents of para No. 9 of the reply do not call for rejoinder.
9. (Para 10) The Complainant submits that the contents of para No. 10 of the reply, on merits, as represented, are wrong, misconceived and hence vehemently denied. The contents of those of para 10 of the representation are reproduced and reiterated here. The overhauling of consumer account since June 2018 to October 2022 is not permissible for alleged phase missing, more particularly, when the same is not supported by meter tampered data of phase missing of 30 minutes intervals.
10. (Para 11) The Complainant submits that the contents of para No. 11 of the reply, on merits, are misconceived, wrong hence vehemently denied and those of corresponding para 11 of representation are reasserted and reaffirmed here. The acts of the respondents in imposing surcharge of Rs. 4,85,905/- is illegal and unjustified and the demand of the same has rightly been quashed by the Ld. CGRF.
11. (Para 12) The Complainant submits that the contents of para No. 12 of the reply, on merits, are wrong hence vehemently denied and those of corresponding para No. 12 of the representation are reaffirmed and reiterated here.
12. (Para 13 and 14) The Complainant submits that the contents of paras No. 13 and 14 of the reply, on merits, do not call for rejoinder. However, the contents of corresponding paras No. 13 and 14 of the representation are reasserted and reiterated here.
13. (Para 15.) The Complainant submits that the contents of para No. 15 of the reply, on merits, are wrong hence vehemently denied and those of

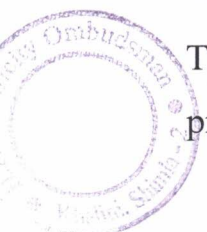


corresponding para 15 of the representation are reiterated and reasserted here.
The Order of the Ld. CGRF suffers from error and infirmities.

14. (Paras 16 to 18) The Complainant submits that the contents of paras No. 16 to 18 of the reply do not call for rejoinder. However, the contents of corresponding paras No. 16 to 18 of the representation are reasserted and reiterated here.
15. (Para 19. The Complainant submits that the contents of para No. 19 and sub paras A to E of the reply, are wrong hence vehemently denied and those of corresponding para 19 and sub-paras A to E of the representation are reiterated and reasserted here. It is most respectfully submitted tha the respondents have not made specific denial of para No. 19 and sub-paras A to E of representation and as such, the order dated 24.09.2024 of Ld. CGRF deserves to be quashed and set-aside so far as the demand of Rs. 35,57,630/- has been held payable by the Ld. CGRF. There are merits in the representation of the consumer and the same may be allowed in view of the grounds taken therein. The alleged demand of Rs. 35,57,630/- is unjustified, misconceived, arbitrary and the same cannot be termed as a statutory due by the respondents.
16. (Para 20 to 22) The Complainant submits that the contents of paras No. 20 to 22 of the reply, do not call for rejoinder.
17. The Complainant further submits prayers that the representation of the complainant consumer may kindly be allowed by granting the relief prayed for therein, in the interest of justice.

E- The Complainant's written Arguments:

The Complainant did not submit written arguments except rejoinder, instead preferred oral arguments.



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F- The Respondent's written Arguments:

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

G- The Arguments of both during proceedings :

The final arguments were conducted on 09/12/2024 and both the parties were given opportunity to argue their contentions to the edge.

1. The counsel for complainant initiated arguments and placed before the court the key points of grievances that the overhauling of the Complainant's account is not supported by MRI data inconsonance with the order dt.05.09.2023 passed by Ld.CGRF.
2. The Ld. Counsel for Complainant added during arguments that the Ld. CGRF after passing the order dt.24.09.2024 confined findings based upon the tamper data events considering Y-phase missing days as 2405 and B- phase missing days as 1382 and deliberated that the said MRI data/ Tamper status is erroneous one whereas the phase missing incident remained for 49 hours and 56 minutes during the period March 2016 to October 2022.
3. The Ld. Counsel for Complainant further advanced his arguments that the Ld. CGRF has on assumptions held the demand of Rs. 35,57,630/- as good despite the observations of the forum that there is vacuum of actual metering data and less recording of consumption.
4. Thereafter, the Officers representing Respondents, placed before this court the Tamper report of events comprising Y-phase missing days as 2405 and B-phase missing days as 1382 along with big bunch of MRI data.
5. After long arguments of all concerned including Ld. Counsels for both the parties, it was necessitated that in order to ascertain whether the Tamper Report is supported with the MRI data of respective events, some methodology was required to be adopted for legitimate settlement of unwarranted litigation. At last with due accord of both the parties arrived at consensus that let a divisional



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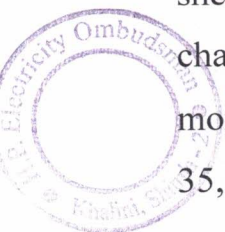


level committee with one member from Complainant side be constituted to validate the events and support of MRI data to offset the differences.

6. This court appreciated the arguments that paved a way to settlement. The arguments were concluded and order reserved.

H- Order dt. 24/09/2024 of Consumer Grievance Redressal Forum in Complaint No. 1413/202310/32:

1. (21) This Forum has examined the complaint No 1413/1/23/09 previously filed by the Complainant and gone through the final Orders passed by this Forum on 05.09.2023 (Annexure C4) in the said complaint;
2. (22) The Forum has also examined the relevant provisions of the Electricity Act, 2003, various Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the HPERC), relevant Complaint No 1413/202310/32 Regulations framed by the HPERC including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, HP Electricity Supply Code, 2009 notified by the HPERC, amendments thereto and record as facts along with pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and pleadings placed on record and arguments adduced by both the parties;
3. (23) Forum observes that the Complainant has laid challenge to revised Demand Notice dated 22.09.2023 (Annexure C6) raised by the Respondent pursuant to final Orders passed by this Forum on 05.09.2023 (Annexure C4). In the said Demand Notice the Respondent has demanded amount of Rs 35,57,630/= plus surcharge of Rs 4,85,908/=, total amounting to Rs 40,43,538/=. The calculation sheet / break-up of charges is at Annexure C5. The Complainant while raising challenge to the said Demand Notice (Annexure C6) has alleged that revised monetary demand for the period from March 2016 to October 2022 for Rs 35,57,630/= is wrong and against the directions of the Forum imparted in Order

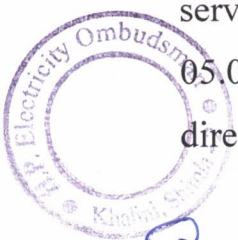


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dated 05.09.2023 (Annexure C4) in complaint number 1413/1/23/09. The Complainant has also laid challenge to the charging of a surcharge amount of Rs 4,85,908/= in the ibid demand;

4. (24) Complainant has contended that there is no MRI data / tamper status report supported by the Respondent to the complainant/consumer which may demonstrate the phase missing event since June 2018 onwards and thus the Demand Notice dated 22.09.2023 and the overhauling of consumer account for alleged phase missing since June 2018 to October 2022 is erroneous and unsustainable and that the alleged overhauling of account of consumer/complainant for Complaint No 1413/202310/32 entire period commencing from March 2016 to October 2022 is absolutely erroneous and that this is against the directions of the Forum passed in its Order dated 05.09.2023 (Annexure C4).
5. (25) Simply speaking one of the contentions of Complainant is that because the Demand Notice dated 22.09.2023 / overhauling of Complainant account is not supported with MRI data / tamper status for phase missing, thus it is erroneous in view of the directions passed by the Forum in its Order dated 05.09.2023 and seen from another angle then there is non-implementation of the final Orders passed by the Forum dated 05.09.2023 and the second contention is that of surcharge amount of Rs 4,85,908/= having wrongly been added in the Demand Notice stage;
6. (26) At the outset, to conclusively settle the matter, the Forum observes that the following issues shall require determination:- (a) Issue No -1: Whether, the grievance raised in the instant complaint for wrong/ erroneous overhauling of Complainant's account for the period from March 2016 to March 2022, as alleged by the Complainant, is settled once revised Demand Notice dated 22.09.2023 is served by the Respondent upon the Complainant based on Forum's Orders dated 05.09.2023 or whether the instant complaint is one of non-implementation of the directions passed by the Forum on 05.09.2023 in complaint number 1413/1/23/09;





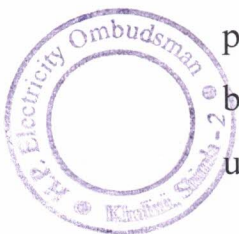
(b) Issue No -2: Whether the Respondent is justified in adding surcharge amount of Rs 4,85,905/- in the revised Demand Notice dated 22.09.2023.

7. (27) The Forum now proceeds to determine each of the Issues framed supra:-
Complaint No 1413/202310/32

8. (28) Issue No -1: At the outset, in the matter of grievance raised and relief sought by the Complainant for declaring the alleged overhauling of account of complainant/consumer for the entire period from March 2016 to October 2022 for Rs 35,57,630/= and bill dated 16.10.2023 as wrong, illegal, arbitrary, unjustified and against the directions given by the Forum in terms of Order dated 05.09.2023 passed in complaint number 1413/1/23/09, Forum observes that the Complainant on one hand has alleged erroneous/ wrong overhauling of its account not supported with MRI data / tamper status and on the other hand Complainant has alleged non-implementation of the directions given to the Respondent in the ibid final Orders passed by the Forum on 05.09.2023 (Annexure C4);

9. (29) In an earlier filed complaint, No 1413/1/23/09 by the same Complainant, Forum from examination of final Order passed by the Forum on 05.09.2023 (Annexure C4) finds that the Forum while disposing of the ibid complaint had partially allowed the complaint and had inter-alia held as follows: –

- a. Quote (46) Issue No 3: Once the Issues No 1 and 2 framed supra stand decided, Forum further observes from record that while the Complainant has stated that the monetary demand raised by the Respondent HPSEBL is wrong, illegal, unjustified, arbitrary and against the provisions of HP Electricity Supply Code, 2009, and prayed before this Forum for directions to the Respondent to make the revised calculations of alleged less recorded consumption of energy for the period March, 2015 onwards, if permissible or warranted on the basis of Meter Reading Instrument (or MRI) based event-wise-tamper status of existing meter, it has in fact accepted the underlying metering error but has disputed the flat basis of calculation of the

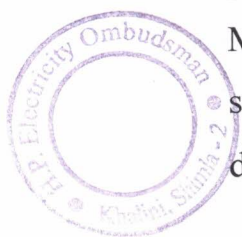


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consequential monetary demand. The directions sought by the Complainant are simply that the monetary demand be based upon the MRI data and may not be determined on flat basis;

- b. (47) The Forum now proceeds to look into the aspect as raised by the Complainant of any flat basis of overhauling of account by the Respondent in wake of the established defective metering—
- c. (48) Even at the time of arguments in the matter, the Complainant was not averse to any monetary demand due to metering error but had opposed the raising of a monetary demand on flat basis by the Respondent without it considering the actual duration or Complaint No 1413/202310/32 actual period of existence of the metering error in the period from March 2015 to October 2022.
- d. (49) In the instant case 'Y' phase is alleged to be missing from March 2015 to October 2022 and 'B' Phase missing from Jan 2019 to October 2022;
- e. (50) After examining the MRI record, the Forum prima-facie observes that the overhauling of Complainant account (Annexure C1 / Annexure C5 Colly) due to defective metering has not been done strictly in conformation with the MRI data, if applied, for the entire period of defective metering from March 2015 to October 2022. For instance –
- f. (51) Firstly, the MRI data placed on record, is found by the Forum to not be for each day of the period from March 2015 to October 2022 for which the overhauling of Complainant account is done by the Respondent;
- g. (52) Secondly, the 'Tamper Reports' of the MRI data placed on record by Respondent are found by the Forum to only depict voltage failure events of phases for certain durations on certain days during the said period from March 2015 to October 2022. The case of the Respondent can only be supported, when these reports depict the phase voltage failures for all the days of the period of defective metering from March 2015 to October 2022;





- h. (53) Thirdly, the Forum does not find the MRI data to continuously depict phase failure from the original date in March 2015 to October 2022. This is observed by the Forum to not exist continuously but to exist continually during this period;
- i. (54) Fourthly, the condition when only 'Y' phase is observed by the Forum to be continuously missing is from January 2017. Similarly, the condition, when both 'Y' and 'B' phases are observed to be missing continuously, is only from August 2020;
- j. (55) Therefore, in the instant complaint, it becomes amply clear that the Respondent has adopted a flat basis for overhauling the account of the Complainant due to defective metering in the past. Accordingly, the Forum is in agreement with the contention of the Complainant on this count and holds that because the Respondent has relied upon the MRI data to evidence defective metering and to consequentially raise a monetary claim against the Complainant, thus a flat basis cannot be adopted by the Respondent to estimate the differential consumption due to defective metering in the past and to overhaul the account of the Complainant. The estimation of differential consumption not previously billed due to metering error and the consequential overhauling of Complainant account has thus to be done by the Respondent strictly in accordance with the MRI data for each day of the period from March 2015 to October 2022 and accordingly the Complainant is entitled to a correct overhauled account. Issue No 3 is accordingly decided in favor of the Complainant and against the Respondent;
- k. (56) In view of foregoing discussion, the Respondent No 3 is directed to correct the impugned monetary demand dated 06.12.2022 (Annexure- C5 Colly), further raised as sundry in bill dated 18.01.2023 (Annexure C-6) and further raised through demand dated 01.02.2023 (Annexure C-7) respectively, by overhauling the account of arrears of the Complainant only



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for the days the defective metering actually existed and from the date the defective metering first arose in March 2015 and up to the date the issue of defective metering existed in October 2022. The Respondent is further directed to support this overhauled account with the MRI data for each day for which arrears are determined by the Respondent. It is made clear that no arrears shall be projected by the Respondent to the Complainant for the days for which such is not supported with the MRI data;

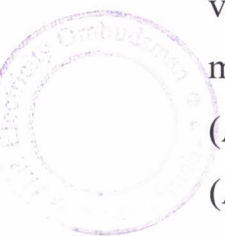
1. (57) The Respondent No 2 is further directed to validate the ibid corrected monetary demand / overhauled account framed by the Respondent No 3. Thereafter, the Respondent is directed to raise a fresh Demand Notice to the Complainant within a period of 15 days from this Order, along with revised overhauled account for each day of the period from March 2015 to October 2022 and duly supported by MRI data for each day. The Complainant shall pay this revised monetary demand within a period of 15 days from the date of issue of the ibid fresh Demand Notice; Complaint No 1413/202310/32
- m. (58) In view of foregoing, no illegality is observed by the Forum in the monetary demand raised by the Respondent. The Forum however, holds the impugned monetary demand for 43,01,696/- raised by the Respondent vide demand notice on 06.12.2022 (Annexure- C5 Colly), vide sundry in bill on 18.01.2023 (Annexure C-6) and vide demand notice on 01.02.2023 (Annexure C-7), to have been 'determined incorrectly' and accordingly sets these aside with directions to the Respondent to correctly determine the same and raise fresh / revised demand notice as Ordered in paras supra. On aforesaid terms, the complaint is partially allowed and is disposed accordingly.

10. Un-Quote; (30) Forum also finds from examination of the complaint number 1413/1/23/09 filed by the same complainant that the ibid Orders dated



05.09.2024 were passed by the Forum in terms of the relief that was sought by the Complainant;

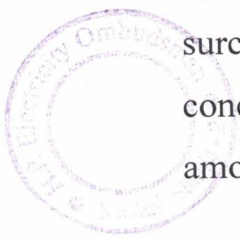
11. (31) Forum finds that the relief sought in the instant complaint by the same Complainant for erroneous overhauling is clearly one which requires the Forum to re-visit, re-examine and re-address the issue of overhauling of Complainant consumers account which has already been done by the Forum in its Orders passed on 05.09.2024 (Annexure C4). Matter of overhauling of Complainant account for the period March 2015 to October 2022 between the same parties, has already been dealt and deliberated in detail by the Forum in its said Orders and sufficient directions passed. The period of dispute in the instant complaint is from March 2016 to October 2022 which the Forum finds to be well within the period of dispute of previously settled grievance which was from March 2015 to October 2022. This fact becomes evident on examination of the pleadings in complaint number 1413/1/23/09 vis-à-vis the instant complaint filed by the same Complainant and also from the Forum's Order dated 05.09.2023;
12. (32) On the alleged erroneous/ wrong overhauling of its account not supported with MRI data / tamper status Forum on examining the Complaint No 1413/202310/32 complaint and Reply filed by the Respondent, observes that there exists MRI data / Tamper Report to support the revised monetary demand raised by the Respondent on 22.09.2023 (Annexure C6). Annexure R2 which is a Tamper Report of the meter MRI (meter reading instrument) data which depicts that the 'Y' phase voltage failure is of 2405 days, 23 hours and 20 minutes (i.e approximately 6 years, 7 months and 6 days) and the 'B' phase voltage failure is of 1382 days and 34 minutes (i.e approximately 3 years, 9 months and 17 days. This fact is clearly evidenced by the said Report (Annexure R2). The Respondent has accordingly raised the revised demand (Annexure C6 / Annexure C7);



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13. (33) It thus becomes clear to the Forum that it cannot be said that the Respondent has not complied with the directions passed by the Forum in its Order dated 05.09.2023, though such compliance may not be exactly as was intended by the Forum. The Respondent has raised the monetary Demand on 22.09.2023 (Annexure C6) based on Annexure R2 which is in-fact the MRI data. It is undisputed that there was consumption of electricity by the Complainant during the disputed period. Pursuant to the fact that there was defective metering during the period of dispute and that during this period there existed vacuum of actual metering data and less recording of consumption, the Forum does not find fault in the assumption adopted by the Respondent based on Annexure R2, being MRI data, for working out short assessment in the past based on which monetary demand dated 22.09.2023 has been raised for the disputed period. Forum concludes that any monetary demand that may be raised for this period based on Annexure R2, being MRI data, as a reasonable assumption, cannot be rejected though this may be in variance to the directions passed by the Forum in its previous Order dated 05.09.2024. So as to prevent Complaint No 1413/202310/32 endless litigation in the matter on non-implementation of Orders passed by the Forum on 05.09.2023, the directions passed by the Forum in its Order dated 05.09.2023 stand modified to this extent that Annexure R2 can be relied upon by the Respondent to raise the corrected demand;
14. (34) In view of foregoing, no illegality is observed in the monetary demand dated 22.09.2023 (Annexure C6) raised by the Respondent which the Forum upholds for an amount of Rs 35,57,630/= only and this amount is excluding the surcharge part which shall be dealt in later part of this Order. Forum holds and concludes that the Complainant is liable to pay this amount after adjusting for amounts already paid;



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15. (35) However, seen from another angle, if it is the grievance of the Complainant of non-implementation of Forum's Orders dated 05.09.2023, Forum after perusal of the regulation 28 read with sub regulation 33(1) (e) of these Regulations, 2013, finds that Representation by consumer / Complainant for non-implementation of Orders passed by the Forum, does not lie with the Forum and thus it is not vested with authority under these Regulations to decide and pass Orders on the non-implementation of its final Order dated 05.09.2023 passed in complaint number 1413/1/23/09. The Complainant is at liberty to raise its grievance of non-implementation of Forum's Orders dated 05.09.2023 before the appropriate authority under the said sub-regulation 33(1)(f) of HPERC (CGRF and Ombudsman) Regulations, 2013, such not being maintainable before this Forum. Forum concludes that nothing further survives in the matter for determination by the Forum.
16. (36) On aforesaid terms, Issue No -1 is disposed. Complaint No 1413/202310/32
17. (37) Issue No -2: The only issue thus remaining for determination by this Forum, resolves down to determining whether the Respondent is justified in raising the surcharge in the Demand Notice dated 22.09.2023 (Annexure C6) for Rs 4,85,908/=;
18. (38) The ibid stated action of the Respondent to raise surcharge of Rs 4,85,908/= in Demand Notice dated 22.09.2023 pursuant to final Orders passed by this Forum on 05.09.2023, has led to a fresh cause of action for the Complainant;
19. (39) The Forum observes that the surcharge in question is the late payment surcharge (or the LPS). Forum, from perusal of Tariff Order passed by the Ld HPERC on 31.03.2023, finds the following definition of Late Payment Surcharge – "Late Payment Surcharge (LPS): Surcharge for late payment shall

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be levied at the rate of 1.5% per month or part thereof, on the outstanding amount excluding electricity duty / taxes for all the Consumer categories”

20. (40) On bare perusal of the ibid provision of Late Payment Surcharge (LPS), the Forum observes that the LPS is payable on the outstanding amount, implying thereby that LPS shall be chargeable by the distribution licensee in a subsequent bill for non-payment of an unpaid amount of current bill;
21. (41) The Forum observes that in the present matter, the revised Demand Notice was issued on 22.09.2023 (Annexure C6). Surprisingly this Demand Notice was raised by the Respondent only after the bill dated 16.09.2023 (Annexure C7) was issued. Forum is of the considered opinion that this methodology adopted by the Respondent is adverse of the usual practice in case of recovery of arrears, wherein firstly the Demand Notice is issued to the consumer allowing time to consumer to raise objection and allowing the consumer time to agitate the arrears or to make payment, followed by a bill with the arrear amount Complaint No 1413/202310/32 included, and only after its non-payment is the said LPS leviable in the subsequent bills;
22. (42) The action by the Respondent to include an additional amount over and above that which may become due pursuant to Orders passed by the Forum on 05.09.2023 is clearly violative of the process of natural justice. It does not give time to the consumer to agitate its grievance before an appropriate authority for the violation of its rights, while at the same time wrongly assuming words in the Forum's Order dated 05.09.2023 and giving effect to such words thus exposing the consumer to un-warranted threat of disconnection of its electricity supply. Such a practice cannot garner the support of this Forum;
23. (43) Further-more, this approach adopted by the Respondent has resulted in a fresh cause of action over an already settled matter on 05.09.2023. Late payment surcharge was not the case of the Respondent before this Forum in the original complaint No 1413/1/23/09 which was decided on 05.09.2023 and the



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Respondent could not have created a new cause of action after the decision was passed by the Forum on 05.09.2023. To have raised this surcharge after the specified days for payment in a subsequent Bill would be a different matter altogether. Accordingly, this action of the Respondent to include the Late payment Surcharge in Demand Notice dated 22.09.2023 and in Bill dated 16.09.2023 is set aside. The Respondent is stopped from recovering this at the stage of the Demand Notice dated 22.09.2023. This surcharge can be included in the bill to be raised and if not paid then recovered in subsequent bill.

24. (44) Issue No-2 is accordingly decided in favor of the Complainant and against the Respondent;
25. (45) In view of foregoing, the impugned monetary demand dated 22.09.2023 (Annexure C6) stands modified to the extent that arrears Complaint No 1413/202310/32 of Rs 35,57,630/= only is recoverable while surcharge amount of Rs 4,85,905/- included therein is not recoverable;
26. (46) Accordingly, the Respondent is directed to raise the amount of Rs 35,57,630/= only as arrears without the surcharge component in the next bill. The Complainant shall pay the complete bill in accordance with the dates specified therein. On non-payment of the bill, late payment surcharge amount shall automatically become recoverable on the part not paid if any, including the arrears part while at the same time giving the Respondent liberty to take further action in accordance with the extant laws.
27. On aforesaid terms, the complaint is partly allowed and is disposed accordingly.

I-Analysis of the Complaint:

1. The case file bearing Complaint No. 1413/202310/32 and order passed on dated 24/09/2024 by the Consumer Grievance Redressal Forum Kasumpti, Shimla-171009 have been requisitioned and gone through.





2. In the interest of justice, the relevant extract of said order of CGRF has been reproduced to arrive at legitimate conclusion.
3. The relevant extract of order dt.05.09.2023 mentioned in the above order dt.24.09.2024 of CGRF as prars 29(a (46) to (m (58)) have been referred to in depth to gather essence of justice.
4. The submissions made by both the parties, rejoinder submitted by the Complainant have also been incorporated in entirety in this order to have composite view of the entire case.
5. The documents annexed and placed on record, arguments made by both the parties have also been gone through.
6. The relevant Acts, Supply Codes, Tarif Orders have been referred to for the sake of clarity.
7. M/S Kailash Chand (LR College), Village Jabli, (Kyar) P.O. Oachghat, Tehsil and District Solan -173223 (H.P) is a Commercial Supply (CS-Two part) Consumer bearing Consumer ID 100009003601.
8. The contentions of both Complainant and Respondents including relief sought have not been repeated again and for the sake of reference, can be seen under para "B, C &D" of this order respectively.
9. The contentions of the Complainant detailed under para-B, response of Respondent Board detailed under para-C & Rejoinder under para-D and arguments conducted at length & placed at para-G of this order, gathers considered opinion to originate the following issues and for the sake of brevity, the detailed analysis has been done along with findings of the issues.

J-Issues in Hand:

Issue No-1:

Whether the instant representation is maintainable?





Issue No-2:

Whether the demand of Rs. 35,57,630/- raised for the entire period from March 2016 to October 2022 on account of voltage failure/missing in Y-Phase and B-Phase respectively is supported with MRI data / tamper status report?

K-Findings on the Issues:

Issue No-1:

1. While going through the reply submitted by the Respondents and arguments conducted, it has been observed that in a very vague manners it has been mentioned that the representation as preferred by the complainant is not maintainable in the eyes of the Law, as the present representation is based on conjectures and surmises.
2. Whereas the Complainant in the rejoinder asserts with affirmative averments that the representation for laying challenge to the Order dated 24.09.2024 passed by Ld. CGRF is maintainable as the said Order has been passed by the Ld. CGRF on assumptions for holding the demand of Rs. 35,57,630/- as good despite the observations of the forum that there is vacuum of actual metering data and less recording of consumption and further during arguments contesting vigorously that the overhauling of the Complainant's account is not supported by MRI data as mandated in order dt.05.09.2023 passed by Ld. CGRF, induces cause of action before this authority.
3. However, no such averments were cited even during arguments by the Respondents which could have substantiated their contentions based on surmises and drawn attention of this authority towards maintainability.
4. In view of above and exercising the provisions in terms of regulation 33(2,3) read with 36(2) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 where the Ombudsman is guided by the principle of natural law of justice, this





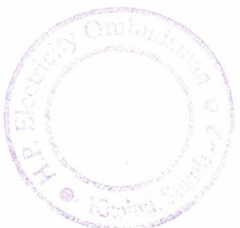
authority feels judicious to give opportunity of being heard to the contentions which are based on surmises as contended by the Respondents in the reply and may carry reasonable arguments in the interest of justice, the complaint is held maintainable for adjudications of grievances in the public interest to curb such litigation in future.

This closes the findings on issue-1

Issue No-2:

1. After referring to the documents placed on record, detailed arguments conducted on the contentions, this court asserts that the issue remained unsatisfactory right from the CGRF order dt.05.09.2023 onwards being overhauling not done in confirmatory with the directives of said order and thereafter order dt.24.09.2024 due to the contentions not supported by the MRI data/Tamper report status as contended by the Complainant time and again.
2. During the final arguments, it was observed without any doubt that the Complainant is not denying from making differential payment raised on account of missing events except for that the demand so raised should be well supported with the MRI data and tamper report used for the purpose of computation of differential amount.
3. In view of this persistent ambiguity, this authority feels it legitimate to examine the vital relevant points of the order dt. 05.09.2023 and there after Order dt. 24.09.2024 passed by the Ld. CGRF
 - a. On scrutiny of order dt.05.09.2023, it has been observed that the following paras of the said order needs to be reiterated in the interest of justice and to understand the essence of confrontation:

“(50) After examining the MRI record, the Forum prima-facie observes that the overhauling of Complainant account (Annexure C1 /



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Annexure C5 Colly) due to defective metering has not been done strictly in conformation with the MRI data, if applied, for the entire period of defective metering from March 2015 to October 2022. For instance –

(51) Firstly, the MRI data placed on record, is found by the Forum to not be for each day of the period from March 2015 to October 2022 for which the overhauling of Complainant account is done by the Respondent;

*(52) Secondly, the 'Tamper Reports' of the MRI data placed on record by Respondent are found by the Forum to only depict voltage failure events of phases for certain durations on certain days during the said period from March 2015 to October 2022. **The case of the Respondent can only be supported, when these reports depict the phase voltage failures for all the days of the period of defective metering from March 2015 to October 2022;***

(53) Thirdly, the Forum does not find the MRI data to continuously depict phase failure from the original date in March 2015 to October 2022. This is observed by the Forum to not exist continuously but to exist continually during this period;

(54) Fourthly, the condition when only 'Y' phase is observed by the Forum to be continuously missing is from January 2017. Similarly, the condition, when both 'Y' and 'B' phases are observed to be missing continuously, is only from August 2020;

(55) Therefore, in the instant complaint, it becomes amply clear that the Respondent has adopted a flat basis for overhauling the account of the Complainant due to defective metering in the past. Accordingly, the Forum is in agreement with the contention of the Complainant on this count and holds that because the Respondent has



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relied upon the MRI data to evidence defective metering and to consequentially raise a monetary claim against the Complainant, thus a flat basis cannot be adopted by the Respondent to estimate the differential consumption due to defective metering in the past and to overhaul the account of the Complainant.

- b. On further examination of the order dt. 24.09.2024 it is fetched that the Ld. CGRF after passing the order dt.24.09.2024 relied upon the tamper data events providing so called complete information of Y-phase missing days as 2405 and B- phase missing days as 1382 but the complainant showed his dissatisfaction that the MRI data/ Tamper status is erroneous one and the Ld. CGRF has also cited observations that there is vacuum of actual metering data and less recording of consumption. The Complainant also emphasized that in case the meter tamper data, Annexure C-12, is perused the same would definitely demonstrate that the phase missing incident remained for 49 hours and 56 minutes during the period March 2016 to October 2022, hence inconsistency prevailed.
4. This authority appreciates and agrees with the diligent analysis made by Ld. CGRF in order dt.05.09.2023. Further scrutiny reveals that there remained certain slips while complying to the said order dated 05.09.2023 by all concerned and resulted in filing of one more complainant No. 1413/202310/32 by the Complainant and order passed there after on dt. 24.09.2024 by CGRF.
5. While doing findings on the Issue-2, it is also observed that CGRF draws legitimate observations based on tampered data that there is vacuum of actual metering data and less recording of consumption of Y-phase missing days as 2405 and B- phase missing days as 1382 whereas the Complainant contends that the phase missing incident remained for 49 hours and 56 minutes during the period March 2016 to October 2022, hence inconsistency prevailed. In the interest of justice, this authority feels it prudent to sort out the differences for



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judicious settlement which may ultimately sustain the present demand note or otherwise.

3. After thorough examination of the contentions, conceiving the spirit of arguments and sticking to the appreciable in-depth analysis by the CGRF under para 50 to 54 above in the order dt.05.09.2023 and response to order dt.24.09.2024 and further in view of above intricacy involved while resorting to findings under **Issue-2**, it is conceded without any doubt that there is definitely some inconsistency in overhauling the accounts of the Complainant with reference to MRI data which has again given birth to this cause of action and in the interest of justice this authority feels to impart firm directions in the order under heading “**L- Order**” for legitimate settlement of contentions in monetary terms to avoid unwarranted litigation thereof.

This closes the findings on issue -2

L-Order:

1. The order passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti Shimla on dated 24.09.2024 in Complaint No. 1413/202310/32 is upheld partially.
2. The demand note dt.22/09/2023 amounting to Rs. 35,57,630/- raised by the Respondent Board is sustained in principle subject to the outcome of the following directives for legitimate settlement in monetary terms:
 - a. To constitute a committee on Division level with one representative from Complainant side must, to validate



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the missing events, for prudent settlement of ambiguity without prejudice.

- b. The committee shall only authenticate/validate the disputed events from the record in the presence of one member from complainant side and not adjudicate.
 - c. The committee shall validate the missing data of Y- phase for 2405 days and B phase for 1382 days with MRI data /Tamper report for the period March,2016 to October,2022 from Board's record as placed by the Respondent Board before this court for adjudications and subsequently, raised the said demand note dt.22/09/2023 thereof.
 - d. The committee shall follow validation methodology in line with the directions imparted by the Ld. CGRF under para 50 to 55 in its order dt.05.09.2023 as reiterated in the findings of Issue-2 of this order.
3. If after prudent validation, the committee finds that the missing events placed on record by the Respondents were correct and are supported by the MRI data for each day of phase voltage failure events, the demand notice dt. 22/09/2023 shall be considered upheld and the Complainant shall make the payments in terms of prevalent regulations and codes within 15 days from the date of intimation of the outcome of the said committee.





4. Or otherwise in case of adverse findings on validation, the demand notice dt. 22/09/2023 shall be considered quashed and the Respondent Board in compliance to the validations, shall issue fresh demand notice after overhauling the account of Complainant duly supported by MRI data/Tamper Report status in terms of prevalent provisions.
5. The Committee shall adhere to the same principle as guided by the Ld. Consumer Grievance Redressal Forum at Kasumpti in its order dt. 24.09.2024 under para (29). k (56) as mentioned under the heading “H” of this order and relevant part reiterated as under:

“It is made clear that no arrears shall be projected by the Respondent to the Complainant for the days for which such is not supported with the MRI data;”

6. The Committee to finalize the ambiguity within 15 days excluding holidays from the date of issue of this order to the satisfaction of the Complainant so as to avoid further onus on intervention of 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 and brunt on individuals in case of non-compliance.



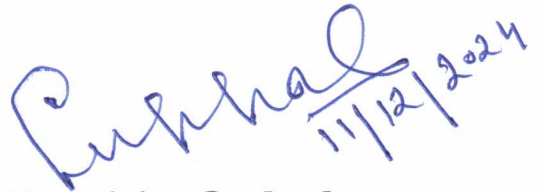


7. All stays imposed by this Authority under Regulation 36 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 shall be considered stand vacated immediately after the completion of findings of the committee on validation of status of missing events/MRI data in line with above directives.
8. The parties are at liberty to avail remedies as permissible under law.
9. No cost to litigation.
10. In terms of above findings, the Complaint filed by M/S Kailash Chand (LR College), Village Jabli, (Kyar) P.O. Oachghat, Tehsil and District Solan -173223 (H.P). is hereby disposed of.
11. The order is also placed at site and conveyed telephonically for the convenience of reference.

Given under my hand and seal of this office.

Dated: 11/12/2024

Shimla


11/12/2024
Electricity Ombudsman