



HIMACHAL PRADESH ELECTRICITY

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com OMBUDSMAN

SHARMA SADAN, BEHIND KEONTAL COMPLEX, SHIMLA-171002

In the matter of:

Complaint No. 05/2025

M/s Divyadhan Consultants Pvt. Ltd., Village Kalyanpur, P.O & Tehsil
Baddi173205 (H.P)

– Complainant

Vs

1. The Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
2. The Assistant Executive Engineer, Elect. Sub-Divn., HPSEBL Baddi-173205 (H.P)
3. The Sr. Executive Engineer, Electrical Division, HPSEBL, Baddi-173205 (H.P)

-Respondent

Complaint No. 05/2025 (Registered on 12/03/2025)

(Orders reserved on 07/04/2025, Issued on 05/05/2025)

Counsel for:

The Complainant: -Sh. Manik Seith, Advocate

-Sh. Rakesh Bansal, Authorized Representative

The Respondents: -Sh. Rajesh Kashyap, Advocate

- Er. Sourav, Dhiman, ESD, Baddi

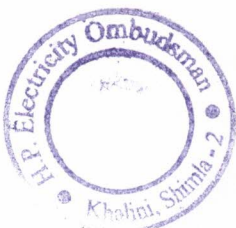
QUORUM

Er. Deepak Uppal

HP Electricity Ombudsman

Order

1. The case was registered and received on 12/03/25, filed under Regulation 28(1)(b), of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the final Order dated 28.02.25 passed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint 1454/202404/06.





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2. The complainant had also filed an Application under Regulation 36(1) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 with prayers to stay the directions issued by CGRF under para-42 of its order dt. 28.02.25 in the instant matter.
3. Case called; the matter was heard for admissions on 18/03/2025. After listening to both the parties, the matter was admitted to the extent of initiation of proceedings and the above prayers sought under Regulation 36(1) were granted subject to the outcome of the detailed discussions during final arguments.
4. The Respondent Board was directed to submit reply on or before 29/03/2025 with a copy of reply to the Complainant and Rejoinder, if any, by the Complainant immediately thereafter the submission of the reply by the Respondent Board.
5. Sh. Manik Seith, the Id. Counsel for Complainant addressed some deliberations on Regulation 26(2)(a)(b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and apprised austerity of application which were appreciable.
6. The case was listed for final arguments on dt. 07/04/2025. The Respondent Board submitted reply on dt. 29/03/2025 in compliance to this court's order dt. 18/03/2025 and subsequently the Complainant submitted Rejoinder-cum written arguments along with certain documents in the court room on dt. 07/04/2025 which were taken on record.
7. Ld. Counsel for Respondent Board and Authorized Representative for the Complainant advanced their arguments to the brim. The deliberations made by the Assistant Engineer and participation in discussions during final





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arguments on dt.07/04/2025 were appreciable. After hearing both the parties at length, the arguments were concluded and order reserved.

A-Brief Facts of the Case:

1. M/s Divyadhan Consultants Pvt. Ltd. bearing Consumer ID 100012002946 is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL.
2. It is observed from the contents of submissions that the Complainant is primarily distraught of Respondents being silent on the issue of rebate from 26.10.2019 to 25.10.2022 as available to new industries in accordance with Tariff Order passed by the Hon'ble HPERC for the Financial Year FY2019-20.
3. The detailed analytical facts of the case stand placed under the heading "**B-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:

PROLOGUE/ BACKGROUND:

The Complainant submits that Divyadhan Consultants Pvt. Ltd., is filing the said complaint through Sh. Desh Raj, authorized representative of the firm, who has been authorized vide resolution to sign, institute, verify swear affidavits, suits, complaints, appeal and other proceedings to protect the interest of Divyadhan Consultants Pvt. Ltd. and to engage counsel(s)/Advocate (s)/ representatives (s). The complainant firm is filing the said complaint under Regulation Nos. 28(1)(b) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013 as the complainant is not satisfied by the orders dated 28.02.2025 passed by the Ld. Forum. The company is a consumer under the Electricity Act, 2003 i.e.





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Section 2 sub-Section 15 and the respondents are distribution licensee under Section 2 sub-section 17 of the Electricity Act, 2003. The complainant company is also a consumer under Section 3 (d) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. The respondents/non-applicants have failed to adhere to the provisions of tariff orders notified from time to time by the Himachal Pradesh Electricity Regulatory Commission under the Electricity Act, 2003 and have stopped allowing any further the legitimate rebate on energy charges for the period notified in the tariff orders. The complainant approached the Consumer Grievances Redressal Forum of HPSEBL, for redressal of his grievance, who, in the end of the proceeding dismissed the complaint without any relief to the complainant.

1. Facts of the Case

Date	Event	Annexure
26.10.2019	The complainant set up a new unit and commenced production w.e.f. 26.10.2019. The power load of 958 KW/ 550 kVA was first sanctioned in the month of September, 2017. The contract demand was later increased to 950 kVA in the month of July 2019.	C1
26.10.2019	The complainant received commencement of production (CoP) after consent to operate was granted by the Pollution Control Board. The complainant thereafter became eligible for rebate available to new	C2



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	units as was notified in the tariff for FY 2019-20. The relevant provision of the LIPS tariff read as below: <i>“c. For new industries coming into production after 01.07.2019 the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years.”</i> The date of commencement of production was verified as 26.10.2019 vide the letter issued by the Deputy Director of Industries, SWCA Baddi, vide his letter dated 17.12.2019. The complainant became eligible for 15% rebate for a period of 3 years ending 25.10.2022.	
01.04.2024	The complainant wrote a letter to the respondents that the rebate was given to him was not as per tariff orders and hence sought overhauling of his account. The complainant also attached his own calculations as per which a refund of Rs. 39,68,302.06 was calculated. The complainant also demanded interest on excess charges levied by the the respondents as per	C3





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	clause 5.7.3 of the Supply Code, 2009.	
17.04.2024	The complainant did not receive any reply to his letter, neither denying nor accepting the claim of the complainant and the complainant thus preferred the filing of grievance before the CGRF, Shimla.	
28.02.2025	The CGRF dismissed the complaint without ordering any relief to the complainant.	

2. Grievance details:

- 2.1 The Complainant submits that they approached the Ld. Forum with a grievance regarding non-adjustment of rebates applicable to new industries under the provisions of the relevant tariff orders, particularly the Tariff for the year 2019-20. The respondents had already allowed in the past bills such rebate available to the new industries, but the period for which the rebate was given and the rate of rebates were incorrect. The complainant prayed to the CGRF to allow the rebate computed by the complainant @ 15% as per tariff order for FY 19-20 for the period 26.10.2019 upto 25.10.2022 for a period of three years. The respondents had only allowed the rebate for 26 months and also at an incorrect rate of 10% as per tariff order for a different period. The complainant also prayed for the corresponding relief in the electricity duty as per the billing pattern adopted and approved by the Commercial wing of the respondents, which levies electricity duty on





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energy charges net of rebate. The complainant also prayed for interest in terms of clause 5.7.3 of the Electricity Supply Code, 2009, for the period of delay in allowing the appropriate rebate. The Ld. Forum turned down the grievance of the complainant by dismissing the same and also issuing additional directions to the respondents for recovering the already allowed rebate to the complainant alongwith interest as per 5.7.3 of the Supply Code, 2009, which is a provision applicable only in the cases of refunds arising out of excess recovery from the consumers but not vice versa. Aggrieved by the orders passed by the Ld. Forum, the complainant is filing this representation to this Hon'ble Appellate Authority.

3. Grounds/ Contentions of the Complainant:

The Complainant submits that feeling aggrieved and dissatisfied by the impugned orders passed by the Consumer Grievances Redressal Forum, the petitioner is left with no other option/ remedy but to file the present representation on the following grounds:

- 3.1** That the orders passed by the Ld. CGRF are bad in law and deserve to be quashed as the Ld. Forum has exceeded its jurisdiction by passing "further" directions in terms of Paragraph 42 of the impugned order. Perusal of the Scheme of the HPERC (CGRF & Ombudsman) Regulations 2013, would show that the same is a self-contained code. Under the same, the power of the CGRF to issue order towards "further" directions is contained in Regulation 26(2)(b) of the 2013 Regulations. However, the power to issue any further directions is given to the CGRF in only one instance- i.e. where the CGRF would be exercising its powers under Regulation 26(2) accepting the allegations made by the complainant in its complaint. However, in the





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present case, the CGRF rejected the contentions in the complaint and dismissed the complaint by exercising its power under Regulation 26(3) of the 2013 Regulations. It is submitted that, in case the CGRF has dismissed the complaint, there is no occasion nor any power/jurisdiction of the CGRF under the 2013 regulations to issue any further directions as so contained in Paragraph 42 of the impugned order. Therefore, for this reason and de hors the merits of this representation, the “further” directions is liable to be set aside.

- 3.2** That the orders passed by the Ld. CGRF are bad in law and deserve to be quashed and set aside as the Ld. Forum has incorrectly interpreted the meaning of clause 5.7.3 of the Supply Code, 2009 and in the Para 42 of the impugned order issued directions to recover interest as per 5.7.3 of the Supply Code, on the amount of rebate ordered to be recovered from the complainant. Clause 5.7.3 of the Supply Code is only a provision which is applicable in case of refund of excess billed amount by the licensee and is in no way applicable on the recoveries to be initiated from/against the consumers. It is submitted that the CGRF went against the express terms of the Clause 5.7.3, which is very clear and restricted in its applicability to a situation mentioned therein and that the same is in no way, relatable to the facts of the present case. Clause 5.7.3. is reproduced below for the perusal of the Hon’ble Ombudsman below:

“5.7.3 If on examination of a complaint, the licensee finds a bill to be erroneous, a revised bill will be issued to the consumer indicating a revised due date of payment, which will not be earlier than ten days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under para 5.7.1 is in excess of the revised bill, such excess amount will be





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refunded through adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such consumer simple interest on the excess amount @ 15 percent per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis from the date of payment till such time the excess amount is adjusted.

3.3 That the orders passed by the Ld. CGRF are bad in law and deserve to be quashed and set aside as the Consumer Grievances Redressal Forum (CGRF), failed to call and inspect the records of the respondents, which would have clearly reflected that it was already and accepted fact that the complainant's industry was a new industry. The State Government having granted permissions for setting up of a new industry after acquiring the physical assets of the previous occupier from the bank under SARFAESI and thereafter carrying out additional investments requires no interpretation by the Ld. Forum. The respondents on inspection of records had earlier allowed the rebate as applicable to the new industry as per provisions of the tariff orders for 26 months. The complainants' grievance was merely in terms of the rate of rebate and the period of rebate, which as per tariff was applicable for three years.

3.4 That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum has ignored the important facts to establish the status of the industry, particularly the essentiality certificate granted by the Govt of Himachal Pradesh specifically expressing the permission for setup of a new unit on the premises occupied by the complainant. The Ld. Forum also ignored several other documents produced before the Forum by the complainant such





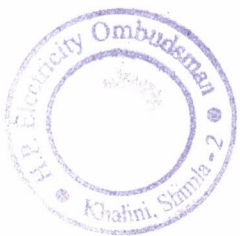
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as allotment of fresh GST registration, Income Tax account numbers and the Udyog Aadhaar Memorandum (UAM) (Annexure C10). The Udyog Aadhaar Memorandum specifically mentions the date of commencement of production as 26.10.2019. The Forum also disregarded the letters issued by the department of industries, which certified that the complainant has set up a new unit under the Industrial Investment Policy, 2019.

- 3.5** That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum has ignored that fact that complainant applied for a new connection after the in-principal approval was accorded by the Single Window Clearance Agency of the State Government. Also, the incentives allowed as rebate in the tariff orders, which were allowed to the new as well as expanding industries were particularly to promote the electricity consumption in the state. There was no consumption of electricity at the premises of the complainant's industry for several years before the complainant purchased the property from a bank under the SARFAESI Act.
- 3.6** That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum failed to observe the fact that the complainant never applied for restoration of the earlier electricity connection that may have existed on the premises. In the application for electricity connection, it was clearly mentioned that the complainant applied for a new connection.
- 3.7** That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum failed to recognize the fact that the physical verification of the installations of the complainant were also carried out by the respondents No. 2, 3 and the Chief Electrical



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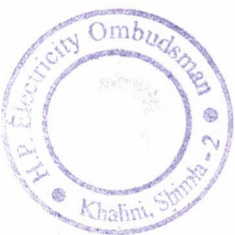


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Inspector after which the electricity connection was allowed to the complainant.

- 3.8** That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum failed to recognize the fact that the complainant after purchasing the property from the bank, carried out major investments to the tune of Rs. 10 crores, on the property in terms of plant and machinery, new and refurbished in order to start production in addition to the value of 6 crores paid to the auctioning bank. The said investments have been verified by the State Government agencies and certificates have been issued to the complainant making him eligible for all incentives applicable to the new industries.
- 3.9** That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum as similar rebate has been allowed by the respondents to several other industries in the state, which were set up by purchasing the sick/ dead units from financing banks under SARFAESI or IBC or NCLT. The complainant is also eligible for such rebate on the principle of equity. The tariff orders does not bar the rebates to new units resulting out of acquisitions, auction purchases etc.
- 3.10** That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum as the orders passed by the Forum are biased. The Ld. Forum being the part of internal redressal mechanism of the respondents have acted partially and has a bias towards the respondent who is their direct employer. The quorum of members which has passed the impugned orders are direct employees of the respondent Board and no independent member has signed the orders.





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3.11 That the orders passed by the Ld. Forum are bad in law and deserve to be quashed as the Ld. Forum has erred in understanding the methodology of the levy of electricity duty. It is normal consequential claim which as per billing modality adopted and approved by the respondents. The footnote on the bills state that the electricity duty is calculated on the energy charges net of rebate, if any

3 Prayer

In view of the above the complaint prays as below:

- a) To issue interim directions, staying the directions issued in Para 42 of the impugned order dated 28.02.2025.
- b) To quash and set aside the orders dated 28.02.2025 passed in Complaint No. 1454/202404/06 for the reasons stated in the representation;
- c) To issue directions to the respondents to allow rebate as per the grievance of the complainant.
- d) To direct the respondents to adjust electricity duty in the manner as already is being allowed by the Commercial Wing of the respondents to other consumers.
- e) To direct the respondents to overhaul and recalculate the past bills while providing for rebate on the basis of eligibility period of rebate;
- f) To direct the respondents to pay interest on the amount charged in excess and the amount that is refundable to the complainant, at simple interest @ 15% p.a. on daily basis, from the date of payment on the past amounts refunded with delay and the amount due for refund as per Sub-regulation 5.7.3 of the Supply Code, 2009 or the HPERC (CGRF and Ombudsman) Regulations, 2013 as may be considered appropriate in the present case;
- g) To direct the respondents to compensate the complainant towards cost of the complaint amounting to Rs. 2,00,000/-.
- h) To Call for the record of the case.



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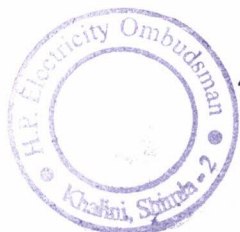
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- i) Any other or further orders which this Hon'ble Forum may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the complainant company and against the respondents/distribution licensees.

C- The Respondent's Submission:

I. PRELIMINARY SUBMISSIONS

1. The Respondent submits that the present representation, as filed by the complainant against the order dated 28.02.2025 passed by the Learned Consumer Grievances Redressal Forum (hereinafter referred to as "Ld. Forum"), is not maintainable in law and is devoid of any substantive merit. The complainant has failed to establish any valid ground for interference with the well-reasoned and detailed order passed by the Ld. Forum.
2. The Respondent submits that no cause of action, either in law or on facts, arises in favour of the complainant and against the answering respondents. The issue involved has already been duly adjudicated upon by the Ld. Forum after thorough examination of all material facts, documents, and applicable regulatory provisions.
3. The Respondent submits that the Ld. Forum, after considering the submissions of both parties, the relevant tariff orders issued by the Hon'ble Himachal Pradesh Electricity Regulatory Commission (HPERC), and the rules/regulations applicable in the matter, has rightly dismissed the complaint. The impugned order is based on sound reasoning, is legally sustainable, and warrants no interference by this Hon'ble Authority.
4. The Respondent submits that the complainant has failed to disclose material facts and has sought to rely on selective and misleading interpretations of the tariff order, especially with regard to the expression



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"new industry". This selective approach is a clear attempt to distort the actual legal and factual position and derive a benefit not lawfully due.

II. REPLY ON MERITS

1. The Respondent submits that the contents of the representation, to the extent they relate to matters of official record, are admitted. However, all other statements, inferences, and conclusions which are contrary to the official records or based on erroneous interpretation of the tariff orders are denied in toto.
2. The Respondent submits that the complainant had acquired an existing industrial unit, formerly owned by M/s Himalaya Fibres, through an auction conducted under the provisions of the SARFAESI Act on 31.03.2016. Pursuant to such acquisition, the complainant obtained necessary approval from the Department of Industries, Government of Himachal Pradesh, dated 24.05.2016, and subsequently applied to HPSEBL for issuance of a Power Availability Certificate (PAC) for a connected load of 958 kW and a contract demand of 950 kVA at 11 kV supply voltage. The said PAC was granted by the Superintending Engineer, Operation Circle, HPSEBL, Solan, vide communication dated 31.07.2017. Thereafter, the complainant applied for sanction of the same connected load (958 kW) but opted for a lower contract demand of 550 kVA at 11 kV, which was sanctioned by HPSEBL vide letter dated 21.09.2017. The supply was released in March 2018, and regular consumption of electricity commenced thereafter.
3. The Respondent submits that subsequently, the complainant applied for enhancement of contract demand from 550 kVA to 950 kVA, without any change in the already sanctioned connected load. This request was sanctioned by the Sr. Executive Engineer, Electrical Division, HPSEBL,





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Baddi, on 25.07.2019, and the enhanced demand was released in August 2019.

4. The Respondent submits that the complainant has erroneously claimed entitlement to concessional energy charges on the ground that it is a "new industry". As per the relevant clause in the tariff order issued by the Hon'ble HPERC:

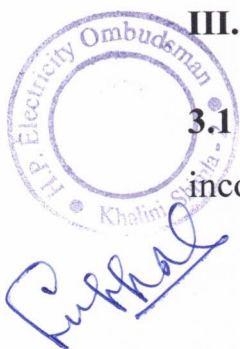
"For new industries coming into production after 01.07.2019, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years."

It is most respectfully submitted that the complainant does not fall within the ambit of this clause. The electricity connection was sanctioned and released in March 2018. Hence, the unit had already commenced production and was consuming electricity well before the cutoff date of 01.07.2019. Accordingly, the complainant is not eligible for the said rebate.

5. Furthermore, the Respondent submits that the complainant cannot claim to be a "new enterprise" under the prevailing Industrial Policy. The complainant has merely acquired an already existing industrial unit, which had earlier been in production, and cannot be equated with a new establishment set up afresh. The benefit of concessional tariff is specifically intended to incentivize new industrial units being established post the notified date and not those acquired through transfer or auction under the SARFAESI Act.

III. REPLY TO GROUNDS OF REPRESENTATION

- 3.1 The Respondent submits that the contents of this paragraph are denied as incorrect and misleading. The Ld. Forum has passed the impugned order after





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due appreciation of law and facts and strictly in accordance with the applicable HPERC Regulations.

3.2 The Respondent submits that the complainant has completely misconstrued the intent and scope of the term “new industry”. The matter is governed by specific tariff provisions and not by subjective interpretations or assumptions of the consumer. The complainant’s claim is misconceived and unsustainable.

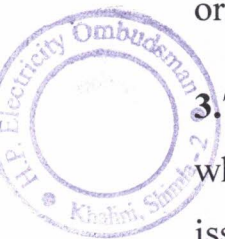
3.3 The Respondent submits that the order dated 28.02.2025 passed by the Ld. Forum has rightly addressed the issues involved, and the same deserves to be upheld.

3.4 The Respondent submits that the complainant has attempted to interpret the tariff provisions selectively and in a manner that is inconsistent with the legislative intent behind the concession for new industries. The certificate issued by the Department of Industries does not classify the complainant as a new industrial enterprise eligible for tariff concession.

3.5 The Respondent submits that even as per the complainant’s own submissions, the unit was purchased in March 2016 and the electricity supply was released in 2017-18. The tariff provision for concessional charges clearly applies only to industries coming into production after 01.07.2019, which is not the case here. Hence, the claim is entirely devoid of merit.

3.6 The Respondent submits that the complainant's contentions are self-contradictory and without foundation. The Ld. Forum has passed the impugned order with due diligence and in line with the applicable regulations.

3.7 to 3.11 The Respondent submits that the contents of these paragraphs are wholly denied. A bare reading of the impugned order shows that each and every issue raised by the complainant has been properly addressed. The order is



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reasoned, speaking, and passed in accordance with law, leaving no scope for judicial interference.

D-The Complainant's Submission through Rejoinder -cum- Written Arguments:

Rejoinder cum written submissions

Respectfully submitted:

1. The Complainant submits that he had approached the Hon'ble Forum for his grievance in respect of the less rebate given by the respondents in terms of value as well as in terms of period for which the complainant was eligible for rebate.
2. The Complainant submits that he had purchased a sick unit from Axis Bank under Section 13(4) of the SARFAESI Act in auction proceedings by way of liquidation. Before the secured creditor took over the premises, the premises belong to M/s Himalaya Fibers Private Limited which has nothing to do with the complainant. The Sale Certificate issued by the Bank is annexed at Annexure C12 with this rejoinder, as was also demanded by the Hon'ble Ombudsman vide its orders dated 18.03.2025. The said property was sold in terms of the conditions mentioned in the sale certificate.
3. The Complainant submits that the earlier occupier i.e. Himalaya Fibers Private Limited had shut down the industrial operation due to reasons not known to the complainant, but it is assumed that the closure occurred several years ago, before the purchase by the complainant. M/s Axis Bank being the secured creditor of M/s Himalaya Fibers Private Limited, by exercising the powers under Section 13(4) of the SARFAESI Act, sold the property to the complainant. After the same the complainant, in addition to the initial 6 crores invested on the factory, which was paid to the bank, further invested 10 crores approximately. As of today, the further investments have been



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made and the fixed investment of the company has crossed the level of about 20 crores.

4. The Complainant submits that the respondents sanctioned. The supply was released to the complainant sometime in March 2018. Thereafter the a **fresh electricity** connection in favour of the complainant as a new connection for 958 kW with 550 kVA of contract demand initially complainant increased the contract demand from 550 kVA to 950 kVA within the same connected load of 958 kW w.e.f. July 2019.
5. The Complainant submits that the Udyog Aadhaar Memorandum stating date of commencement of production as 26.10.2019 was issued to the complainant by the concerned department to establish the date of commencement of commercial production after the issuance of Consent to Operate by the State Pollution Control Board.
6. The Complainant submits that the Rebate on energy charges was first given in the bill dated 08.04.2019 @ rate of 10% of the energy charges. The respondents adjusted this rebate for a period of 27 monthly bills after which the rebate was stopped. The first such bill in which the rebate was allowed is attached at Annexure C13 of this rejoinder.
7. The Complainant submits that he approached the Ld. Forum after noticing the discrepancy in the period and the rate of rebate, which as per the complainant should have been 15% for 36 months. The complainant also prayed to the Forum for other consequential reliefs such as interest etc. on delayed refund.
8. The Complainant submits that the respondents suddenly changed tune in the reply filed before the Ld. Forum and stated on record that the complainant consumer is not a new enterprises as per Industrial Policy reason being that complainant consumer has purchased unit from M/s Himalaya Fibres under SARFAESI Act in 31.03.2016 (Page 36 of Representation).





HIMACHAL PRADESH ELECTRICITY

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com **OMBUDSMAN**
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9. The Complainant submits that the completion of the pleadings, the impugned order is passed by the Ld. CGRF wherein the following observations of the CGRF are important for the adjudication of the present appeal:

- A. The CGRF held in para 25 that the case can be decided on the factor that the complainant industry is a new one or not?
- B. Then at para 27, Ld. CGRF states that the word “New Industry” in the tariff order is not defined.
- C. In para 29, the CGRF states that there is a **purchase** by the complainant under **SARFAESI** Act
- D. In para 30, the Forum states that the case of the complainant is of a fresh electricity connection.
- E. In para 31, it states that the rebate is for **new industry** and not for **acquired industry**.
- F. In para 31 it further states that the “new industry” has to be established to avail the benefits of the rebate.
- G. Then in para 31, it concluded that the *complainant industry has earlier existed in the name of M/s Himalaya Fibers which was later taken over/ purchased by complainant through auction and thus, the industry is not a new one.*
- H. In para 32, the CGRF tries to make a difference between a new industry and a new connection/consumer and it held that new connection/consumer does not mean new industry. It further states that the acquired industry is not the new industry, and that the industry already existed before the acquisition, therefore complainant industry is not a new industry.



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HIMACHAL PRADESH ELECTRICITY

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

10. The complainant submits that he seeks to reply to the above in the following manner:

A. In reply to issue A, where CGRF posed a question of law in para 25 that the case can be decided on the factor that the complainant industry is a new one or not, the complaint submits that the issue regarding the complainant being a new industry was not disputed at all either by the complainant or by the HPSEBL in its reply. It is submitted that the HPSEBL has stated in its reply that the complainant is an “existing industrial consumer” and further that the complainant is “not a new consumer as per industrial policy”. It is submitted that the Ld. CGRF has exceeded its jurisdiction as the issue which was not even raised was sought to be adjudicated by the CGRF. It is submitted that there is no discussion in the entire impugned order as to the factum whether the complainant is an “existing industrial consumer” and whether that the complainant is “not new consumer as per industrial policy”. It is submitted that de hors the merits of the objection raised by HPSEBL, the issue which ought to have been adjudicated in terms of the pleadings were:

- i. Whether the complainant is an “existing industrial consumer” or not?
- ii. Whether the complainant is “not new consumer as per industrial policy” or not?

B. The Complainant submits that in reply to the “B”, it is submitted that the observations at para 27, Ld. CGRF states that the word “New Industry” in the tariff order is not defined, is correct. It is submitted that if the new industry is not defined, the CGRF could not have imputed its own notions of what new industry would or should be and



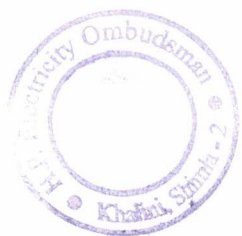


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SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002

how on the basis of its own definition, the complainant is not a new industry. It is submitted that the Ld. CGRF has not even discussed a case law or any definition of any dictionary or any circular of the HPSEBL or any rule/regulation made on this behalf by the HPERC. It is submitted that without even mentioning, least discussing, the Ld. CGRF could not have imputed its own definition of the new industry to deny the benefit of the same to the complainant, in light of the fact the complainant has set up a new industry after taking requisite permission from the HP Govt. and that the Govt. has recognized the complainant as a new industry. The complainant was issued essentiality certificate for transfer of land in his name vide Essentiality Certificate (Annexure C5 Page 46). The industry of the complainant came into commercial production w.e.f. 26.10.2019 as has been certified by the Udyam Registration certificate (C10 Page 56). The eligibility for incentives under the Industrial Policy is further endorsed by the Letter dated 17.12.2019 issued by the Single Window Clearance Agency, Baddi (Annexure C6-P48), in pursuance of which the respondents has already entertained the claim for incentives under the Industrial Policy. In addition to this, the complainant has no relation, whatsoever, with the earlier occupier, has a fresh registration with each of the departments, such as GST, Income Tax, Pollution Control Board. The SWCA also issued a letter dated 19.12.20219 placed at **Annexure C14** with this rejoinder, approving the eligibility for the complainant as a new unit to claim the concessional rate of electricity duty. For all purposes the State Government has recognized the eligibility of the complainant as a new industry.

C. The Complainant submits that regarding "C", the Ld. CGRF itself admits that in para 29, the CGRF states that there is a **purchase** by the



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Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com **OMBUDSMAN**
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complainant under **SARFAESI** Act. It is submitted that the sale/purchase can only happen by a secured creditor under SARFAESI Act in terms of S.13 of the Act. It is important to mention that the concept of “acquire”/” acquisition” is alien to Section 13 of the SARFAESI Act.

D. The Complainant submits that regarding “D”, the Ld. CGRF in para 30, accepts that the case of the complainant is of **a fresh electricity** connection. It is submitted that the “fresh Connection” would mean that the complaint has nothing to do with the erstwhile consumers. It is submitted and as is admitted that this is not a case of “change of name” or merger/amalgamation. The present case is a case of sale/purchase under S.13 of the SARFAESI Act, wherein the petitioner took necessary permission from the Govt. for setting up new industry and in terms of the said permission, applied for the fresh electricity connection to set up its new industry.

E. The Complainant submits that regarding E, F & G, it is submitted that the Ld. CGRF has misinterpreted and misconceived itself when it concludes that there is a difference between an acquired industry and a new industry. Firstly, it is submitted that the Ld. CGRF failed to appreciate as to how the complainant unit is an “Acquired industry”. Admittedly the secured creditor has sold the property to the complainant by virtue of S.13 of the SARFAESI Act. The concept of acquisition is completely alien to Section 13 of the SARFAESI Act Under the SARFAESI Act, there is a different proceeding for acquisition. It is submitted that the concept of merger, demerger, acquisition, sale, amalgamation, formation of a subsidiary etc. have different legal connotations and cannot be confused with one another. It is submitted that apart from the discussion on the misconceived





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Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com **OMBUDSMAN**
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assumption that the present case is a case of “Acquisition”, the CGRF did not discuss as to how the same is falling under the ambit of “Acquisition” under the SARFAESI Act. It is further submitted that on the basis of said assumption the CGRF concluded that *complainant industry has earlier existed in the name of M/s Himalaya Fibers which was later taken over/ purchased by complainant through auction and thus, the industry is not a new one*. It is submitted that the same is not even the case pleaded either by the complainant or by Respondent HPSEBL. It is submitted that there is no record also to justify the same. In the absence of any pleadings by either of the parties regarding above, the CGRF could not have adjudicated *sic* concluded that the *complainant industry has earlier existed in the name of M/s Himalaya Fibers which was later taken over/ purchased by complainant through auction and thus, the industry is not a new one*. It is submitted that the same is against the settled principles of basic law and therefore the impugned order is untenable.

F. The Complainant submits that regarding “H”, the CGRF in para 32 tries to make a difference between a new industry and a new connection/consumer and it held that new connection/consumer does not mean new industry. It further states that the acquired industry is not the new industry, and that the industry already existed before the acquisition, therefore complainant industry is not a new industry. It is submitted that the CGRF while making the above observations or conclusions has not even discussed a case law or any definition of any dictionary or any circular of the HPSEBL or any rule/regulation made on this behalf by the HPERC. It is further submitted that, even if for the sake of argument, it is accepted that new connection/consumer





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does not mean new industry in every case, the CGRF even failed to discuss how **the present case** is covered by the said principle or how, despite that fact that of new connection, the case of the complainant cannot be treated to be a case of new industry. It is submitted that just for the fact of assumption that the case of the complainant falls under “acquisition”, there is nothing on record as to why in the **present facts and circumstances of the case**, the case of the complainant will not be covered under the new industry.

11. The Complainant submits that it was an established and accepted fact that the complainant's industry was a new industry in terms of his entitlement for the rebate available to the new industry under the tariff. The respondents have also given the rebate for 27 months, without any protest or any communication of an error, if any in the past.
12. The Complainant submits that the respondents failed to understand that it was not them who came with a grievance before the Forum. In fact, they are not even entitled to put forth any grievance for the CGRF.
13. The Complainant submits that the CGRF further erred in exceeding its jurisdiction as has also been expressed in the representation in dealing with the situation. The HPERC (CGRF and Ombudsman) Regulations, 2013 species the scope and objective of the institutions such as CGRF and the Ombudsman as below:

“2. Objectives, Scope and application. - (1) Without prejudice to right which a consumer may have apart from the rights conferred upon him under section 42 of the Act, the said section 42 requires every distribution licensee to establish a Consumer Grievance Redressal Forum as per the guidelines of the State Commission and any consumer who is aggrieved by non-redressal of his grievance by the forum, may make a representation for the redressal of his grievance to



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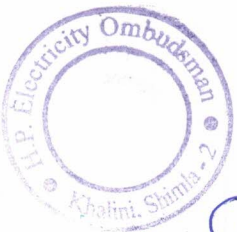
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an authority to be known as Ombudsman, to be appointed or designated by the State Commission, who is to settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission."

It is for the protection of consumer rights as is already stated in the objective. For all purposes, the word "grievance" refers to the consumer's grievance but not the grievance of the licensee. Regulation 26 further restricts the powers of the CGRF from going beyond rejecting the grievance. The Ld. CGRF erred in going beyond its powers while adjudicating on the grievance by issuing directions to recover amounts from the complainant, which has already been deliberated and argued before the Hon'ble Ombudsman during the last hearing.

14. The Complainant submits that the complainant in his grievance before the Forum has simply prayed for the following:

- "a). To direct the respondents to allow the rebate to the complainant upto the period of 25.10.2022 and refund the amount;*
- b) To direct the respondents to refund the electricity duty on refundable amount.*
- c) To direct the respondents to pay interest for delay in adjusting the amount of rebate and electricity duty from the time it was due upto the time of actual refund/ adjustment at the rate specified in clause 5.7.3 of the Supply Code, 2009;*
- c) Cost of the complaint amounting to ₹50,000/-.*
- d) Call for the record of the case.*
- e) Any other or further orders which this Hon'ble Forum may deem fit and proper, in the facts and circumstances of the case may*



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kindly be passed in favour of the complainant company and against the respondents/distribution licensees."

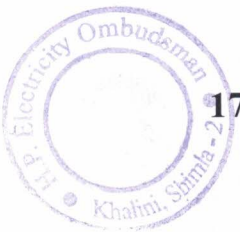
The adjudication by the Ld. Forum was only restricted to the extent of relief prayed for. At the worst, the Forum could have rejected all the prayers.

There was never a question before the Forum that the industry set up by the complainant was a new industry or not for the purpose of rebate.

15. The Complainant submits that there is not even such a reason to reject the rebate, that the previous occupier had already claimed such rebate already while they were in operation and that the complainant is seeking it again. It is not a case, where the complainant is claiming what has already been claimed by the previous occupier. The system of rebate was only introduced from FY 2018-19 onwards, while the previous occupier must have closed somewhere before 2013 as per our estimate. The fact, that a previous occupier existed has no bearing on the eligibility for rebate.

16. The Complainant submits that a *fresh investment* was made by the complainant on entire infrastructure including plant and machinery, old and new, and a new power connection was applied by the complainant. *The complainant never sought restoration of the previous power connection of the previous occupier* as in such cases the procedure for restoration of connection applies. The complainant started as a new consumer and was never a consumer before the starting of the industry with the electricity connection given to him.

17. The Complainant submits that the intent and objective of the tariffs for giving rebates to new or expanding industries is clearly beyond any doubt to promote the electricity consumption in the state. In the case of the



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

complainant a new connection was taken and the consumption was also added, which by all means was additional sales of the respondents and the objective of the rebate stands achieved.

18. The Complainant submits that the respondents are simply trying to confuse the basic issue in order to cover their own shortcomings and they have also been successful in misleading the Ld. Forum. In fact, there is no reason that the rebate can be denied to the complainant, as it is also accepted on record by the respondents, when the rebate was given for 27 monthly bills.
19. The Complainant submits that it is not a part of the grievance to decide whether the complainant's industry is a new industry or not. Neither is this an issue before the Hon'ble Ombudsman, except for the purpose to strike off the relevant portion of the orders passed by the CGRF. Therefore, any observations/ comments made by the CGRF in respect of the status of the complainant's industry deserve to be struck off.
20. The Complainant submits that once it is an accepted fact by the respondents, the same cannot be reversed, the only principal matter that remains to be adjudicated before this Hon'ble Ombudsman is to the extent of the prayer in the original grievance put before the Forum, which only involves to ascertain the period for which rebate is to be given and the rate at which the rebate is to be given. Besides, this the consequential adjustments in terms of the electricity duty as well as interest and cost are prayed by the complainant.
21. The Complainant submits that what is relevant in the present case is that whether the complainant was given a new connection or not? Whether the electricity connection was a case of restoration of previous connection or not? The respondents have not denied that the complainant applied for a new connection. It is amply clear that the complainant applied for a new connection and the due process has been followed for grant of PAC and Load



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Sanction. The respondents are simply trying to confuse the issue before this forum to deprive the complainant from his legitimate claim.

22. The Complainant submits that the respondents have also failed on the principle of equity as such rebates have been provided to numerous other units in the state, which were set up by purchasing the sick units through SARFAESI or NCLT proceedings, which too are cases of same/ similar activity as the previous occupier. The State Government has also given eligibility to all such units as new units and all the incentives as available to the new units have been given to them.
23. The Complainant submits that the action of the respondents is coming in way of the objective of the Commission while introducing these rebates in tariff and is jeopardizing the restarting of dead sick units and the industrialization of the State.
24. The Complainant submits that the tariffs also nowhere put any bar on giving rebates to industries such as the complainant's industry which are set up after acquiring the dead, sick units.
25. The Complainant submits that it is also pertinent to mention that the complainant's activity and the premises were physically inspected when the test report for 958 kW was submitted. It was only thereafter, that the rebate was allowed to the complainant.
26. The Complainant submits that the Hon'ble Ombudsman may call for record from the respondents with respect to the previous connections that may have existed on the same priors prior to the occupancy of the complainant as the complainant does not have any information with respect to these. The complainant has already attached the sale agreement, which was directed by the Hon'ble Ombudsman in the interim orders dated 18.03.2025.
27. The Complainant submits that the contents of the reply unless admitted in the foregoing paras are denied.



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HIMACHAL PRADESH ELECTRICITY

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com OMBUDSMAN
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In view of above, it is prayed to this Hon'ble Ombudsman that due to reasons mentioned in the complaint and this rejoinder, relief as sought in the complaint be granted to the complainant in the interest of justice.

E-The Complainant's Additional Submission :

The Authorized Representative for the Complainant also submitted following Additional Submissions during final arguments on dt. 07/04/2025 in the court room which were taken on record for further reference.

1. The Complainant submits that the Complainant was issued Essentiality Certificate issued by the concerned department i.e. the industries department, (P46 of representation) which clearly says "*for the purpose of setting up industrial enterprise for.....*", which would obviously mean setting up of a new enterprise. The word setting up implies that something new is being set up. It is further stated in the same document in Para 3 "*for setting industrial enterprise for the manufacturing of Recycled Staple Fibre.*"
2. The Complainant submits that further on Page 45 of the representation it was been mentioned twice that the "*for the purpose of setting up of industrial unit.....*" and thereafter again it is mentioned that "*for the purpose of setting up of industrial unit through Sale Certificate*".
3. The Complainant submits that it was also known to the concerned department i.e. the Industries department that the industry was being set up through Sale Certificate and it was permitted to the complainant for setting up his industry.
4. The Complainant submits that under the ""Rules Regarding Grant of Incentives, Concessions and Facilities for Investment Promotion in Himachal Pradesh -2019" the definition of the New Enterprise is as under:
"XXX. "New Enterprise" means an Industrial / Service Enterprise located within the State which commences commercial production / operation on or after the Appointed Date and registered/ acknowledged/ taken on record by the concerned department."



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The Commencement of production has been taken on record by the concerned department i.e. the industries department on 26.10.2019 as per Udyog Adhaar Memorandum and other correspondence issued with regard to setting up of the unit.

5. That it is crystal clear and that there is nothing that comes in way of the complainant being categorized/ termed as a new industrial enterprise.
6. That these submissions be taken as additional submissions to the written submissions and rejoinder earlier filed by the complainant.

F- The Complainant's written Arguments:

The Complainant submitted Rejoinder-cum-Written arguments along with Additional submissions, the same is considered as part and parcel of the written arguments for record purpose.

G- The Respondent's written Arguments:

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

H- The Arguments of both during proceedings :

The final arguments were conducted on 07/04/2025 and both the parties were given due opportunity to argue their contentions to the edge.

1. Both Id. Counsel & Authorised Representative for Complainant initiated arguments and emphasised to the full of their capacities in details on the following contentions:

- a. that the complainant had purchased a sick unit from Axis Bank under Section 13(4) of the SARFAESI Act in auction proceedings by way of liquidation. The Id. Counsel for Complainant also put light on the SARFAESI Act and relevant Sections governing the action of Complainant.



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- b. that Before the secured creditor took over the premises, the premises belonged to M/s Himalaya Fibers Private Limited which has nothing to do with the complainant.
- c. that the earlier occupier i.e. Himalaya Fibers Private Limited had shut down the industrial operation due to reasons not known to the complainant, but it is assumed that the closure occurred several years ago, before the purchase by the complainant.
- d. that M/s Axis Bank being the secured creditor of M/s Himalaya Fibers Private Limited, by exercising the powers under Section 13(4) of the SARFAESI Act, sold the property to the complainant
- e. that in addition to the initial 6 crores invested on the factory, which was paid to the bank, further invested 10 crores approximately.
- f. that the respondents sanctioned a **fresh electricity** connection in favour of the complainant as a new connection for 958 kW with 550 kVA of contract demand initially. The supply was released to the complainant sometime in March 2018. Thereafter the complainant increased the contract demand from 550 kVA to 950 kVA within the same connected load of 958 kW w.e.f. July 2019.
- g. that the Udyog Aadhaar Memorandum stating date of commencement of production as 26.10.2019 was issued to the complainant by the concerned department to establish the date of commencement of commercial production after the issuance of Consent to Operate by the State Pollution Control Board
- h. that the Rebate on energy charges was first given in the bill dated 08.04.2019 @ rate of 10% of the energy charges. The respondents



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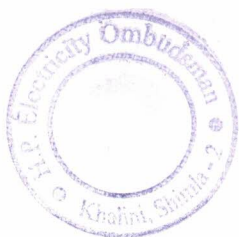
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adjusted this rebate for a period of 27 monthly bills after which the rebate was stopped.

- i. that w.r.t. the date of commercial commencement of production i.e 26/10/2019 in terms of provisions of the relevant Tariff Order as per the complainant should have been 15% for 36 months.

2. The Ld. counsel and Assistant Engineer present in the court room representing Respondents confined their arguments to the findings of ld. CGRF instant order dt.28.02.2025 and argued as under:

- a. that the complainant has failed to disclose material facts and has sought to rely on selective and misleading interpretations of the tariff order, especially with regard to the expression "new industry".
- b. that the complainant had acquired an existing industrial unit, formerly owned by M/s Himalaya Fibres, through an auction conducted under the provisions of the SARFAESI Act on 31.03.2016. Pursuant to such acquisition, the complainant obtained necessary approval from the Department of Industries, Government of Himachal Pradesh, dated 24.05.2016.
- c. that subsequently applied to HPSEBL for issuance of a Power Availability Certificate (PAC) for a connected load of 958 kW and a contract demand of 950 kVA at 11 kV supply voltage. The said PAC was granted by the Superintending Engineer, Operation Circle, HPSEBL, Solan, vide communication dated 31.07.2017.
- d. that thereafter, the complainant applied for sanction of the same connected load (958 kW) but opted for a lower contract demand of 550 kVA at 11 kV, which was sanctioned by HPSEBL vide letter dated 21.09.2017. The supply was



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Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com **OMBUDSMAN**
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released in March 2018, and regular consumption of electricity commenced thereafter.

- e. that the complainant applied for enhancement of contract demand from 550 kVA to 950 kVA, without any change in the already sanctioned connected load. This request was sanctioned by the Sr. Executive Engineer, Electrical Division, HPSEBL, Baddi, on 25.07.2019, and the enhanced demand was released in August 2019.
- f. that the electricity connection was sanctioned and released in March 2018. Hence, the unit had already commenced production and was consuming electricity well before the cutoff date of 01.07.2019. Accordingly, the complainant is not eligible for the said rebate.
- g. that the complainant cannot claim to be a "new enterprise" under the prevailing Industrial Policy. The complainant has merely acquired an already existing industrial unit, which had earlier been in production, and cannot be equated with a new establishment set up afresh.
- h. that the benefit of concessional tariff is specifically intended to incentivize new industrial units being established post the notified date and not those acquired through transfer or auction under the SARFAESI Act.
- i. that even as per the complainant's own submissions, the unit was purchased in March 2016 and the electricity supply was released in 2017-18. The tariff provision for concessional charges clearly applies only to industries coming into production after 01.07.2019, which is not the case here. Hence, the claim is entirely devoid of merit.



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3. The authorized representative for Complainant at last also prayed for the payment of interest on the excess amount billed to him as per provisions as well as subsequent rebate on Electricity Duty.
4. The arguments advanced by both the parties were appreciable and after listening to the arguments advanced by both the parties on their consensus and exchange of arguments at length, the arguments were concluded and order reserved.

I- Order dt. 28/02/2025 of Consumer Grievance Redressal Forum :

ORDER

1. (19) Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 (or the CGRF Regulations), HP Electricity Supply Code, 2009 and amendments thereto, various Tariff Order passed by the Ld HPERC and record as facts along with pleadings of the parties. In the matter, during the course of final hearing in the matter, Forum had sought Sale Certificate from the Complainant and the Complainant's consumer record from the Respondent. Accordingly, Complainant submitted the Certificate dated 04.05.2016 and Respondent submitted the relevant consumer record, which are taken on record. Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
2. (20) At the outset Forum finds that while the Complainant / Authorized Representative for Complainant has stated on record that the Respondent has contravened the provisions of Tariff Order in respect of rebate available to existing units on expansion, it has in the same breath



Signature



HIMACHAL PRADESH ELECTRICITY

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built and filed the instant complaint for allowing rebate available to new units. Forum also finds that the Complainant has referred to **Annexure C1, Annexure C2** as some documents dated 26.10.2019, however, Forum has instead found two bills attached dated 17.01.2020 and 10.07.2021 in their place. The Forum also could not find the letter dated 16.04.2024 mentioned as **Annexure C8** in the complaint. In the Rejoinder Annexure C8 is further stated to enclose some other document. Forum observes that the Complainant / Authorized Representative for Complainant have filed the complaint in a shoddy manner. Forum further observes that it is for the Complainant to correctly present and effectively prove its case;

3. (21) During the course of hearing in the matter, Forum observes that the Complainant informed that its case was regarding rebate for new industries and had accordingly argued the matter. Forum therefore proceeds to determine the matter for rebates as may be available to new industries --
4. (22) Before the Forum delves into the issue of rebate raised by the instant Complainant who is a Large Industrial Power Supply consumers (LIPS), it is imperative to reproduce for sake of clarity the provisions of rebates contained under Schedule – ‘Large Industrial Power Supply (LIPS)’ in Tariff Order passed on 29.06.2019 for FY 2019-20 by the Ld HPERC, which has also been relied upon by the Complainant -

- (a) **Tariff Order passed on 29.06.2019 by the Ld HPERC for FY 2019-20 (applicable w.e.f 01.07.2019 to 31.05.2020) --**

Quote

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3. Two part Tariff

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b) Energy charge (Charges-2)

.....

.....

*Note:

a. For existing industrial consumers, a rebate of 15% on energy charges shall be applicable for additional power consumption beyond the level of FY 2018-19

b. For new industries which have come into production between 1.04.2018 to 30.06.2019, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of 3 years

c. For new industries coming into production after 01.07.2019 the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years

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c) Demand Charge (Charges-3)

.....

.....

4. Peak load charges (PLC)

.....

.....

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5. (23) Now coming to the Complainant's entitlement for rebate applicable for 'New Industries' with regard to Tariff Order passed by the Ld HPERC for FY 2019-20 —

6. (24) In the matter, briefly its Complainant's contention by way of arguments that it is entitled to rebate as applicable for new industries in accordance with Tariff Order for FY 2019-20 passed by the Ld HPERC. Amongst its various arguments is that it had purchased the Industry through auction from bank and not from M/s Himalaya Fibres, that its electricity connection given by the Respondent is a new one, that fresh GST and Income Tax numbers have been allotted to it and that it





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commenced production since 26/10/2019 and therefore it qualifies as a new industry for the purpose of eligibility of rebate under the Tariff Order;

7. (25) Forum observes that the instant matter can be decided by simply determining whether the Complainant's industry is a new one or not;
8. (26) Forum from perusal of the provisions of Tariff Order, reproduced in paras supra, passed by the Ld HPERC on 29.06.2019 for FY 2019-20, finds that rebates are allowed for 'new industries' which came into production between 01.04.2018 to 30.06.2019 or after 01.07.2019. Here the Complainant has stated that it came into production from 26.10.2019 which is not disputed by the Respondent;
9. (27) Forum from examination of the Tariff Order passed by the Ld HPERC finds that the expression 'New Industry' has not been defined;
- 10.(28) Respondent has contended that Complainant's Industry is not a new enterprise which was purchased in March 2016 under the SARFAESI Act;
- 11.(29) Forum from examination of record at **Annexure C3** / Rejoinder **Annexure C6**, finds that there was sale of assets of M/s Himalaya Fibres which were taken over after purchase in auction by the Complainant;
- 12.(30) Thereafter, as observed from record, Forum finds that the Complainant applied for fresh electricity connection in the year 2017 which was released by the Respondent in March 2018;
- 13.(31) Forum observes that in the Tariff Order for FY 2019-20, the rebate is clearly against new industries and not for an acquired industry. The Complainant's industry was acquired from a bank under auction sale.



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Complainant has no-where denied that the industry was not earlier in the name of M/s Himalaya Fibres. Further, Complainant's Industry may have come into production on 26.10.2019 however, merely the fact of its coming into production cannot categorize or qualify the Complainant's Industry to be a new one. Only once it is established that a consumer's Industry is a new one then the condition of production date as specified in the Tariff Order shall come into consideration. The fact of the New Industry shall have to be established to avail rebates admissible to new industries. Untenable arguments by the Complainant accompanied with irrelevant record certainly does not establish Complainant's Industry as a new one. Thus on the basis of record and foregoing discussion, Forum holds that the Complainant's Industry had earlier existed in the name of M/s Himalaya Fibres which was later taken over / purchased by the Complainant through an auction and thus the Industry is not a new one;

- 14.(32) Further, in context of the electricity sector, distinction exists between a new connection/consumer and a new industry. Whereas a new Industry results into a new connection/consumer, however converse may not be true. Thus, a new electricity connection availed by a consumer qualifies it to be a new consumer of the Respondent and certainly not a New Industry. Here, Complainant may have availed a new connection and become a new consumer of the Respondent however, such cannot entitle it to assume the status of new industry. The acquired industry may be a new one for the Complainant, however in the given system the industry already existed before its acquisition by the Complainant and therefore the Complainant's Industry cannot be held to be a new one. The fact of the New Industry has to be established on record which the Complainant has failed to do. Similarly, other arguments given by the Complainant do not and cannot make the acquired industry to assume the status of a new industry;





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- 15.(33) Forum holds that the Complainant has founded its grievance on faulty premises and on untenable arguments which the Forum rejects;
- 16.(34) Thus, on the anvil of the foregoing findings and discussions, Forum concludes and holds that because the Complainant's industry is not a new one thus it is not entitled to the rebate applicable to new industries as provided in the Tariff Order passed by the Ld HPERC. The issue raised by the Complainant with regard to its entitlement for rebate admissible to New Industries is accordingly rejected and disposed;
- 17.(35) On the issue of refund of Electricity Duty (ED) raised by the instant Complainant, Forum is inclined to specifically look into the facet of the Electricity Duty –
- 18.(36) Forum, from bare perusal the HP Electricity (Duty) Act, 2009 finds that Electricity Duty (ED) is a levy by the Government. This is collected by the Respondent on behalf of the Government on actual consumption of electricity made by consumer or supply of electricity by the licensee in accordance with the HP Electricity (Duty) Act, 2009. No-where in the Tariff Orders passed by the Ld HPERC has the rebate on expansion or excess consumption, been considered to have the net effect of reduction in actual consumption or on reduction of ED. Other-wise also, such a proposition would be absurd for the simple reason that actual consumption remains actual and not nominal and also because the Electricity Duty is the specific domain of the Government as well as property of the government and not the Respondent's or the HPERC's. This Electricity Duty while being applicable on electricity consumption or supply is simply to be calculated on energy charges. Further, the Complainant has no-where shown that it has not consumed the electricity which has been billed to it. Thus any monetary rebate cannot have any effect what-so-ever on reduction of Electricity Duty nor can these entitle the Complainant for its refund;



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19.(37) In view of foregoing, Forum holds that while the Electricity Duty is the specific domain of the Government however, the Complainant is still not at all eligible for any refund of Electricity Duty by the Respondent that may have arisen from rebates being claimed by it or rebates that may have been passed on to the Complainant by the Respondent or allowed by the HPERC. The arguments and contentions raised by the Complainant for refund of Electricity Duty is thus also rejected and accordingly disposed.

20. (38) On the contention of Complainant raised for the payment of Interest on the admissible rebate to it in accordance with code 5.7.3 of the HP Electricity Supply Code, 2009, Forum holds that once it is established in paras supra that the Complainant's industry is not a new one and that it is accordingly not entitled for the said rebate as admissible to New Industries, then the contention raised by the Complainant with regard to refund of Interest on rebate clearly does not hold;



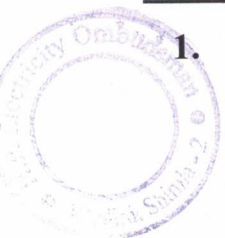
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21. (39) Otherwise also, Forum is constrained to observe that ibid code 5.7.3 is in terms of wrong billing and that the mere non-inclusion of rebate by the Respondent in a bill does not make the bill to become erroneous. This rebate is separate and it may be a case that such rebate is paid separately by the Respondent after ascertaining whether the industry is a new one or not. Still further, Forum from examination of Tariff Orders passed by the Ld HPERC and Code / Regulations notified by the HPERC, observes that no provision has been made therein with regard to payment of Interest on the said rebate;
22. (40) In view of foregoing discussion, Forum holds and concludes that the Complainant is clearly not eligible for any Interest in the instant matter. Thus, the contention raised by the Complainant with regard to refund of Interest on rebate is also rejected by the Forum and is accordingly disposed.
23. (41) In view of foregoing discussion, Forum finds and holds that there is no contravention of Tariff Orders by the Respondent;
- 24.(42) Forum further finds that the Respondent in its submissions has admitted to wrongly paying rebate admissible for new industries. Any rebate for new industries which may have wrongly been given in the past by the Respondent to the Complainant is thus recoverable. Respondent is accordingly directed to recover the same along with Interest in accordance with code 5.7.3 of the HP Electricity Supply Code, 2009;

J-Analysis of the Complaint:

1. The case file bearing Complaint No. 1454/202404/06 and orders passed on dated 28/02/2025 by the Id. Consumer Grievance Redressal Forum Kasumpti, Shimla-171009 have been requisitioned and gone through.



Signature



2. In the interest of justice, the relevant extract of said order of CGRF has been reproduced under the heading “I” of this order to arrive at legitimate conclusion.
3. The submissions made by the Complainant, reply submitted by the Respondents, Rejoinders-cum-Written arguments and Additional Submissions made by the Complainant have been incorporated in entirety to have composite view of the entire case.
4. The documents annexed and placed on record; arguments offered by both the parties have also been gone through in depth.
5. The appropriate Acts, Supply Codes, Tariff Orders have been referred to for clarity. The relevant extracts of the concerned Tariff Orders have not been recapped for the sake of brevity as the same stand placed under **para- 22(a)** of CGRF order dt. 28.02.2025 under the heading “I” above.
6. M/s Divyadhan Consultants Pvt. Ltd. bearing Consumer ID 100012002946 is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL.
7. It is observed that the Complainant is primarily distraught of Respondents being silent on the issue of rebate from 26.10.2019 to 25.10.2022 as available to new industries in accordance with Tariff Order passed by the Hon’ble HPERC for the Financial Year FY2019-20.
8. The complainant’s contentions have been dealt in details under the heading ‘H’ i.e. **“the Arguments of Both During proceedings”** and hence, for the sake of brevity, not repeated, however, the relief sought is replicated as under to assess the extent of legitimate claim asserted while doing findings on the issues:
 - a. To issue interim directions, staying the directions issued in Para 42 of the impugned order dated 28.02.2025.
 - b. To quash and set aside the orders dated 28.02.2025 passed in Complaint No. 1454/202404/06 for the reasons stated in the representation;



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- c. To issue directions to the respondents to allow rebate as per the grievance of the complainant.
 - d. To direct the respondents to adjust electricity duty in the manner as already is being allowed by the Commercial Wing of the respondents to other consumers.
 - e. To direct the respondents to overhaul and recalculate the past bills while providing for rebate on the basis of eligibility period of rebate;
 - f. To direct the respondents to pay interest on the amount charged in excess and the amount that is refundable to the complainant, at simple interest @ 15% p.a. on daily basis, from the date of payment on the past amounts refunded with delay and the amount due for refund as per Sub-regulation 5.7.3 of the Supply Code, 2009 or the HPERC (CGRF and Ombudsman) Regulations, 2013 as may be considered appropriate in the present case;
9. The Respondent on the other hand have confined their reply and arguments to the extent of order dt.28.02.2025 of Id. CGRF and prayed for upholding the same. However, the detailed arguments held stand placed under the heading **H' i.e. "the Arguments of Both During proceedings"**, hence not repeated.
10. The contentions of the Complainant detailed under the heading **-B**, response of the Respondent Board detailed under the heading **-C** and final arguments conducted at length by both & placed under the heading **-H**, 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 as each case is having its own merit and statute except in exclusive cases.

K-Issues in Hand:

Issue No-1:

Whether the instant Representation is maintainable?



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Issue No-2:

Whether the Industry in question is New one or renovation /modernization of the existing unit?

Issue No-3:

Whether the Complainant is eligible to avail rebate under the cover of 'New Industry' in terms of prevalent provisions, as contended?

Issue No.4:

Whether the amount of 10% rebate erroneously payed by the Respondent Board is liable to be recovered along with Interest in accordance with the code 5.7.3 from the date/month such amount was released?

Issue No. 5:

Is it a healthy proposition to recover rebate for new industries if any which might have wrongly been given in the past in terms of findings under para-42 of CGRF order dt.28.02.2025 by the Respondent to the Complainant?

Issue No-6:

Whether the Complainant is entitled to avail the payment of interest in case of refund as contended?

Issue No-7:

Whether the Complainant is entitled to avail refund of electricity duty charged on refundable overcharged amount of expansion rebate?

L-Findings on the Issues:

Issue No-1:

1. While going through the reply submitted by the Respondents, it has been observed that in a very vague manners it has been mentioned that the representation is not maintainable in law and is devoid of any substantive merit.



The complainant has failed to establish any valid ground for interference with the well-reasoned and detailed order passed by the Ld. Forum.

2. This authority asserts in the interest of justice that unless the Representation filed, falls beyond the jurisdiction of this authority which could be pronounced at the very outset as non-maintainable or unless adjudicated, this authority feels judicious to honor the 'Hierarchy of Adjudication System' and proceeds.
3. However, no such averments were cited even during arguments by the Respondents which could have substantiated their contentions 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 in terms of Regulation 33(3), the relevant extract of which is read as "*Provided further that no representation shall be rejected in respect of sub-clauses (a),(b),(c) unless the Complainant has been given an opportunity of being heard*", warrants contentions to be heard which cannot be judged unless an opportunity of being heard is given in terms of said provisions and might carry reasonable arguments in the interest of justice. So, in due cognizance to the above provisions and subject to the outcome of the proceedings, the Complaint is held maintainable only for initiation of proceedings /adjudications of grievances in the public interest.

This closes the findings on issue-1

Issue No-2:

1. After scrutiny of the contentions of the Complainant through the submissions, Rejoinder, Additional Submissions, Arguments by all concerned, the reply submitted by the Respondents of this order, it has been



observed that the focus of the contentions of the Complainant was that the Industry in question was set up as a “New Industry” with commencement of production w.e.f. 26/10/2019 as per the Registration Certificate placed at page-56 of the Representation. Both Id. Counsel and Authorized Representative for Complainant apprised the Court in details and argued to the best of their capacities.

2. In the interest of justice, this authority feels necessary to delve, whether the instant Industry is New or a set-up of existing assets after modernization and so-called refurbishment etc. as this very question is pivotal of all contentions asserted and unless arrived at legitimate consensus, the decision shall remain futile in terms of all prevalent provisions.
3. Before getting into the depth, it becomes necessary at the very outset to reiterate averments placed under para 3.8 of the representation which says ‘invested Rs. 10 crores, on the property in terms of plant and machinery and refurbished in order to start production’. Here the word “**refurbished**” itself is sufficient to arrive at consensus which means ‘**renovation**’. This Authority fails to understand that when there is going to establish a new set-up to be known as ‘**New Industry**’ as contended, then the word renovation does not carry any force except for civil works.
4. After examining the letter dt. 06/12/2016 placed at **page-45** of the Representation, from Special Secretary (Revenue) to the Govt. of Himachal Pradesh to M/s Divyadhan Consultants Pvt. Ltd., the very relevant extract being essential to touch the roots of the issue, is reproduced as under:

*“-----the Government has granted permission in favour of M/s Divyadhan Consultants Pvt. Ltd. to **purchase land alongwith unit** comprised in khasra No. 755,758,761,762,763,764,765,756,759,760 measuring 12-07 Bigha situated at Mouza Kalyanpur, Tehsil Baddi, District Solan, H.P. for the purpose of setting up of industrial unit through Sale Certificate on the following conditions-----”*



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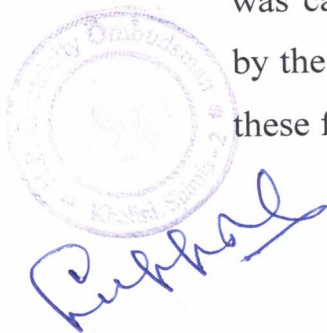
The above information satisfies modalities to the extent that the purchase of land was including a 'unit' which was existing long back at that point of time prior to the execution of sale deed.

5. Next, after scrutiny of the "**Essentiality Certificate**" placed at **page-46** of the representation, the following vital essence were extracted and is replicated as under:

- a. *"-----M/s Divyadhan Consultants Pvt. Ltd. for the purpose of setting up industrial enterprise for manufacturing of **Recycled Polyester Stappled Fibre of post consumed PET Bottle** with proposed investment of Rs. 650 lakhs (which includes the cost of P&M of Rs. 195.00 lakh) and proposed employment to 124 persons. -----"*
- b. *"-----The land earlier was purchased by M/s Himalaya Fibres after obtaining permission u/s 118 of HPT&LRA, 1972 vide Rev. Department letter No. Rev. B.F(10-459/2003 dated 23.12.2003 on the basis of 'Essential Certificate' issued vide this office letter No. Ind. Dev.F.(14) EC-683/2003 for setting up industrial enterprise for the manufacturing of **Recycled Staple Fiber**. -----"*

6. The analysis of above relevant extract of **Essentiality Certificate** envisages that basically both the industries were vested with manufacturing of same type of goods and the above investment explicitly points with affirm assertion that it was for setting up additional machinery for upgradation and **refurbishment** (restoration) with ultimate aim of modernization. Hence, the word set-up does not give meaning of establishing new industry in the instant case rather gives meaning of upgradation, modernization and renovation.

7. However, this Authority is surprised as to why when during arguments it was categorically asked regarding type of goods were being manufactured by the old enterprise, the Authorized representative showed unawareness on these facts whereas the same were transparently available in the **Essentiality**





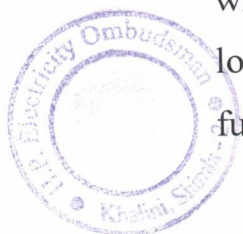
Certificate placed at page-46. Also, nowhere in the representation it was mentioned regarding the type of goods being manufactured in the new establishment in comparison with the old one which on analysis are almost found to be of the same type as that of earlier one. Hence, the arguments on this instance do not carry any substance which may provide sufficient material to assert contentions as a new setup/ New Industry. Hence, the arguments of the Complainant are not tenable in the instant case.

8. However, either of the parties are at liberty to approach Hon'ble Commission in exercise of Regulation-39 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, in case the directions of this authority on this issue do not appeal to the parties.

This closes the findings on issue-2

Issue No-3:

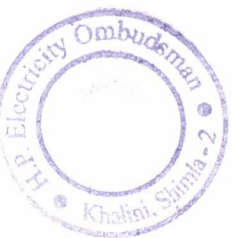
1. After resorting to the conclusive findings under **Issue-2** on the status attained by the new set up which legitimately does not attribute to set up of New Industry, this authority feels nourished to proceed further to find out sanctity behind contentions of availing rebate. This authority is quite clear about the findings that the Complainant is eligible to avail rebate only if the setup of industry is designated as "**New Industry**" which could not establish its convincing stand in terms of findings under **Issue-2** above.
2. It has been observed from the documents placed on record that the industrial connection was released as a fresh connection in the name of Complainant with new A/C number somewhere in March, 2018 with 958 kW connected load & 550 kVA of contract demand released in the beginning which was further increased from 550 KVA to 950 KVA w.e.f. August, 19 to the extent





as was initially sanctioned but without increase in connected load of 958 KW.

3. Analysis reveals that the Respondent released the rebate @10% for 26 months and availed by the Complainant which reflected in the bill of 08/04/2019 whereas after getting the date of commencement of production as 26/10/2019 as per Registration Certificate, the Complainant thought admissibility for 15% as applicable in case of new industries came up after 1.07.2019 in terms of prevalent Tariff Order dt. 29.06.2019 for FY-2019-20.
4. After examining the intricacy in depth this authority draws considered opinion that prior to the date 26/10/2019 of so-called date of commencement of production, the 10% rebate wrongly released by the Respondents and availed by the Complainant for about 26 months does not provide any base if we consider the date of production prior to 26/10/2019 as a trial run. Also, it has been conceived from the record that when the date of so-called commencement of production appeared, the status of connected load remained same as it was when the connection was released on somewhere in the month of March, 2018.
5. From above, this authority without any prejudice conceives that if for the time being we consider production prior to 26/10/2019 as a production under trial run, the status of production in terms of connected load both prior to and after the date 26/10/2019(**commencement of production**) remained same except for enhancement of contract demand to facilitate availing more capacity afterwards.
6. It is also transparent from the record that new connection was released in the name of new consumer with new A/C Number allotted. But since, the findings under **Issue-2** could not establish its status of set up as a “**New Industry**”, the above averments as discussed whether in terms of date of production or date of release of connection etc. do not provide any meaning/

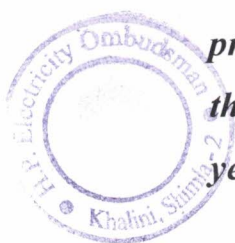




entitlement for availing rebate as a New Industry as contended by the Complainant.

7. After listening to the arguments in details and referring to the relevant Tariff Order (**reproduced in CGRF order under heading “I” of this order**), it is observed that the Complainant first availed rebate of 10% from the date of release of connection for 26 months wrongly considered as deemed admissible, based on apprehensions considering set up as a ‘**New Industry**’ in terms of para (b) of the Tariff order for FY 2019-20 passed on 29.06.2019 applicable w.e.f. 01.07.2019 to 31.05.2020 which reads as “ *For new industries which have come into production between 01.04.2018 to 30.06.2019, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of 3 years*” and at that point of time the question of availing benefits from the viable date of “**Commercial Production**” no-where appeared as it is assumed that the Registration Certificate authorising commercial production (w.e.f. 26.10.2019) was not available on the record at that time. Had the same been available, the Complainant could have definitely stopped rebate which was wrongly being given by the Respondents. But no such correspondence was placed on record except the instant Representation which was first dealt by the Id. CGRF, thereafter before this court as per prevalent Regulations.

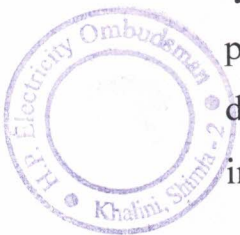
8. This is a matter of concern and this authority deduces, that after the Registration Certificate was issued with date of ‘**Commencement of Production**’ as 26.10.2019, the Complainant as legitimate right considered himself admissible for availing 15% rebate in terms of para-3(b) of the said order dt 29.06.2019 which is read as “*new industries coming into production after 01.07.2019 the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years.*”



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9. The Id. Counsel for Complainant argued threadbare to convince that in consonance with the '**Registration Certificate**' and industrial policy, the date of commencement of production in their case is 26.10.2019 and argued at length that in view of their admissibility for 15% rebate from the date of commercial commencement of production, the earlier given rebate of 10% be adjusted and differential be allowed in terms of prevalent provisions of the said Tariff order.
10. On this issue, this authority is convinced with the meticulous findings of Id. CGRF under para-32 of its order dt. 28.02.2025 which reads as *"Thus, a new electricity connection availed by a consumer qualifies it to be a new consumer of the Respondent and certainly not a New Industry. Here, Complainant may have availed a new connection and become a new consumer of the Respondent however, such cannot entitle it to assume the status of new industry"*.
11. After resorting to the detailed analysis and findings, this authority draws considered opinion that the instant case in later stage could be suitable under the cover of 'Existing Industry' undergone expansion subject to validation by the competent authority to the rank of Chief Electrical Inspector, but as on now, could not establish as a setup of 'New Industry'.
12. On forgoing discussions read with findings under Issue-2, this authority lands to affirmative judgement that since the set-up process of said industry does not fall within the ambit of **New Industry**, the set-up can be considered as "**Refurbished**" and "**Upgraded**" engaged in production of almost similar type of goods as that of old unit. Hence, not admissible for availing privileges of so called "**New Industry**". The contentions of the Complainant do not sustain in the instant case in view of the status acquired after investment.



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13. In view of above analysis, and agreeing to the explicit findings of Id. CGRF under para-22 to 32 of its order dt.28.02.2025, this authority concludes and holds that the Complainant in the instant case does not qualify admissibility criteria to avail rebate under the scope of ‘**New Industry**’, neither from the date of release of connection nor from the date 26.10.2019 of ‘Commencement of Production’. The rebate in terms of findings under para-42 of the Id. CGRF said order, the very relevant part of which reads as “*Forum further finds that the Respondent in its submissions has admitted to wrongly paying rebate admissible for new industries*” **warrants recovery** from the Complainant in the instant case.

This closes the findings under issue-3

Issue No.-4:

1. The Complainant under para-3.2 of Representation contends that in the instant case the Id. Forum under **para-42** has directed the Respondents to recover interest as per Clause 5.7.3 of the Supply Code on the amount of rebate ordered to be recovered from the Complainant. He further contended that the Id. Forum has erred in dealing with Clause 5.7.3 as the same is applicable only in case of refund of excess billed amount interest to the consumer by the licensee.
2. Scrutiny of para-42 of the order dt. 28.02.2025 of the Forum reveals that the Id. CGRF has directed Respondents as contended, the relevant extract is reproduced for clarity and reference:

“(42) ----- Any rebate for new industries which may have wrongly been given in the past by the Respondent to the Complainant is thus recoverable. Respondent is accordingly directed to recover the same along with Interest in accordance with code 5.7.3 of the HP Electricity Supply Code, 2009;”

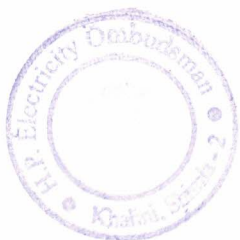




3. Further analysis of the documents placed on record reveals that the Complainant in his submissions contended that the Respondents had given rebate @10% for 26 months.
4. On scrutiny, it is observed that the Id. CGRF in its findings under para-42 has categorically mentioned that the Respondent in its submissions has admitted to wrongly paying rebate admissible for new industries, the very specific part of the para-42 for the sake of clarity and reference reads as *"Forum further finds that the Respondent in its submissions has admitted to wrongly paying rebate admissible for new industries"*.
5. The above findings put this authority on the edge to first delve the inherent characteristics of clause 5.7.3 to assess whether the said clause allows imposition of interest to Complainant in the instant case. To arrive at judicious platform in the interest of justice, the very specific part of the relevant extract of clause 5.7.3 of supply code 2009 is reproduced as under:

*"-----if the amount paid by the consumer is in excess of the revised bill, such excess amount will **be refunded through** adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such consumer interest on the excess amount-----
-----"*

6. It is pertinent to mention here that the consumer is liable to pay interest in terms of clause 6.1.11.1 in case of unauthorised use of electricity and concealment or tampering, which is not the case here.
7. After digging the complexity in the said clause, a considered opinion is drawn that the said clause mandates licensee to pay interest to the consumer towards the amount which remains as an excess amount with the licensee and nowhere it provides provisions for recovering interest from the





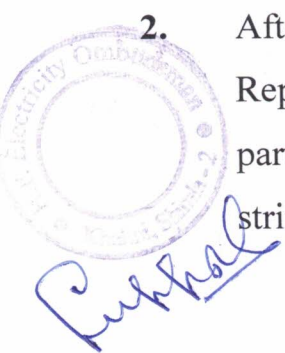
consumer. It is also observed that the said clause has only unidirectional mandate i.e to pay interest to consumer on account of excess amount assessed as paid to licensee, not bidirectional mandate i.e to recover interest from the consumer, otherwise.

8. This authority after referring to the submissions of the Complainant, reply of the Respondent, arguments advanced and specific findings (**as reproduced above**) of Id. CGRF under para-42 concludes and holds that in the instant case, no doubt, the Respondent is liable to recover the amount in terms of findings under **Issue-3** above and in compliance to the order of Id. CGRF which construes bonafide mistake of the Respondents in consonance with the Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020, **but without interest in terms of above findings**. Hence, the Complainant is not liable to pay interest on the amount of rebate ordered to be recovered which was paid wrongly by the Respondent as admitted. Hence, the contention of the Complainant on Issue-4 is sustained.

This closes the findings on Issue-4

Issue No. 5:

1. The complainant contends in his prayers through an Application under Regulation 36(1) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 to issue interim directions for staying the directions issued in Para 42 of the CGRF order dated 28.02.2025 in the instant matter. The prayers were granted during admission hearing on dt. 18.03.2025 after listening to both the parties.
2. After going through the documents placed on record including Representations and additional submissions, arguments advanced between parties, in the interest of justice, this authority feels it viable to delve these stringent contentions of Complainant erupting out of findings under para-42 of





said order of the Forum which may otherwise invite irreparable litigations if not analyzed upto the roots.

3. Examining the austerity of para-42 of the order dt. 28.02.2025 of the Forum reveals that the Id. CGRF has directed Respondents as contended, the relevant extract needs to be reproduced for clarity and reference:

“(42) Forum further finds that the Respondent in its submissions has admitted to wrongly paying rebate admissible for new industries. Any rebate for new industries which may have wrongly been given in the past by the Respondent to the Complainant is thus recoverable. Respondent is accordingly directed to recover the same along with Interest in accordance with code 5.7.3 of the HP Electricity Supply Code, 2009;”

4. After listening to the pulsating contentions of the Complainant through the Id. Counsel & Authorized Representative and the supportive arguments advanced by the Id. Counsel & Assistant Engineer appeared in the court, this authority conceives some misconceptions on interpretations of clause 5.7.3 of the Supply Code under para-42 of the order dt.28.02.2025 of the Forum and asserts that the findings under Issue-4 above are sufficient to land at judicious platform in the public interest. As such in the opinion of this authority, the clause 5.7.3 does not provide any mandate to recover interest on the amount which is supposed to be wrongly charged from the Complainants except in the case of unauthorized usage of supply which is exclusively governed under different provisions of the supply code.

5. This authority further opines that every case is governed under its own statute and merits. In the past if rebate stands given by the Respondent Board, it must have been allowed with the due wisdom of group of officers, after assessing the entitlement & eligibility, who are supposed to be the competent authority deputed for the said purpose. Imparting such directions at this stage



for the past action construes outraging doubtful integrity of the officers on the action taken by them in the past within the ambit of the powers vested and **unless challenged on case to case basis**, it is not legitimate to give such directions for the past. In the interest of justice, it is asserted that when the provisions do not define clear mandate, then under these circumstances own interpretations based on apprehensions may sometimes lead to jeopardize conditions.

6. In view of above, after asserting convincing findings on the instant issue and visualizing the crux of the averments presented by both the parties during arguments, quashes the above highlighted part of para-42 of the order passed by the Id. CGRF (**reproduced above under para-3**) and the contention of the Complainant is upheld.

This closes the findings on the Issue No.-5

Issue No.-6

1. While going through the contentions of the Complainant it has been observed that the Complainant sought relief in terms of interest on the excess amount proposed to be refunded / billed to him.
2. This authority is of the considered opinion that unless in the instant case the status of New industry, expansion /installation is recognized by the Respondent Board subject to the completion of all codal formalities, the Complainant does not become entitle for such rebate/refund as well as its consequential benefits i.e interest etc.
3. After resorting to findings under **Issue-2**, it has been held meticulously that in the instant case the Complainant does not qualify the status to be considered as '**New Industry**'. Hence not tenable for such rebate/refund as well as subsequent interest in terms of clause 5.7.3 of the supply code.



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4. In view of the above findings and arguments conducted, this authority draws unambiguous inferences that the amount of rebate stands paid for about 26 months as admitted to be paid wrongly by the Respondents and warrants recovery in terms of findings under **Issue-3** above.
5. However, while overhauling the accounts of the Complainant, in case the amount becomes eligible for refund, the Respondent Board shall refund the amount with interest considering as an excess/undue amount paid by the Complainant remained with the Respondent Board and in exercise of the following provisions construe qualifying entitlement to avail interest:

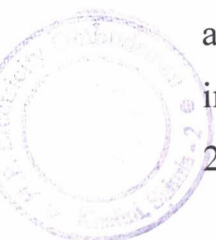
- a. Very specific part of the relevant extract of clause 5.7.3 of supply code 2009 is reproduced for analyzing applicability of the complainant for availing interest in the instant case if admissible which provides as under:

*"-----if the amount paid by the consumer is in excess of the revised bill, such excess amount will **be refunded through** adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such consumer interest on the excess amount-----"*

- b. Regulation 26a(ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman)

"-----to return to the complainant the undue charges paid by the complainant along with interest at the rate-----"

6. From the above analysis subject to admissibility, it is conceived that in analytical terms, for the claim of interest on refund sought, needs computation of interest in terms of clause 5.7.3 of Supply Code (2nd Amendment) dt. 31st July, 2018 @15% for the period till applicable read in conjunction with the


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Regulation 26a(ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) (Second Amendment) notified on 20th January, 2022 @12% for the period falling within the scope of amended Regulation 26a(ii) in terms of above provisions in due cognizance to the prospective effect of such amendments, not in isolation.

7. However, for the sake of clarity and in terms of findings under Issue-2 read with findings under Issue-3, it is asserted with considered opinion that subject to overhauling of the accounts, prima-facia to the above findings, the Complainant is not entitled for the interest in the instant case being not attaining the status of “New Industry” which becomes applicable only, if there is refund.

This closes the findings on issue -6.

Issue No-7:

1. The Complainant sought relief in terms of refund of electricity duty charged on refunded overcharged amount of rebate and emphasized that this pattern has been adopted by the Commercial Section of the Respondents as is displayed in Note 6 of the Electricity Bills.
2. After going through the CGRF order dt 28.02.25, referring to the documents placed on record, detailed arguments advanced on 07/04/2025, referring of relevant tariff orders, Himachal Pradesh Electricity Duty Act 2009 and Electricity Duty Rules 2010, this authority in due cognizance to the austerity of the issue, feels it necessary to reproduce relevant extracts of both Electricity Duty Act 2009 and Electricity Duty Rules 2010 for depiction of effective consensus and justice:

A. THE HIMACHAL PRADESH ELECTRICITY (DUTY) ACT, 2009

*“2. (c) **“consumption”** in relation to electricity means electrical consumption per Kilowatt/KVA recorded as KWh or KVAh. by a licensee or consumer;*

3. Levy of electricity duty on consumption or supply of energy. — (1)
There shall be levied and paid to the State Government on the energy,



generated from any source, consumed by the Board, any licensee, electricity trader or generating company or **supplied by the Board**, such licensee, trader or company to the consumer, a duty to be called the electricity duty, in the following manner, namely: -

(v) industrial consumers, —

(a) small industrial consumers - @ 9%,

(b) medium and large industrial consumers - @ 13%,

(3) **For the purpose of computing the electricity duty, the consumption shown by the meter, starting after the first meter reading date, after the issuance of the notification under subsection (1) of section 3 shall be considered.**

(2) It shall be the duty of the Board or the licensee consuming or **supplying electricity for consumption** to pay or collect the electricity duty from all the consumers in its area of consumption or supply in such form and pay the same to the State Government quarterly or in such manner, as may be prescribed.

4. Collection and payment of electricity duty. —

(1) The State Government shall have the first charge on the electricity duty and **neither the Board nor any licensee shall, without the previous sanction of the State Government, utilize this duty to reimburse itself for any amount, which the State Government may owe to the Board or the licensee/ or any other agency.**

(2) It shall be the duty of the Board or the licensee consuming or supplying electricity for consumption to pay or collect the electricity duty from all the consumers in its area of consumption or supply in such form and pay the same to the State Government quarterly or in such manner, as may be prescribed.

8. Recovery of duty. —

(1) Any electricity duty due under this Act, or penalty imposed under section 7, **which remains unpaid, whether by a consumer to the Board or to the distributing licensee, or by the Board or the distributing licensee to the State Government, shall be recoverable as an arrears of land revenue or by deduction from the amounts payable by the State Government to the Board or the distributing licensee or such consumer.**

11. Power to exempt from payment of electricity duty. —

(1) The State Government may, in public interest, by notification in the **Official Gazette, exempt any licensee, consumer or person from the payment of the whole or part of the electricity duty for such period and subject to such conditions as may be specified in such notification.**

B. THE HIMACHAL PRADESH ELECTRICITY (DUTY) RULES, 2010

Chapter-III



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10. Refund of excess duty. -

*If duty has been paid in excess of what is payable under the Act by the consumer or occupier of Diesel Generating Plant, **the Chief Electrical Inspector shall authorize the refund of the excess duty so paid to the consumers concerned.***

Chapter-V

14. Settlement of disputes and appeal thereof. -

*(1) In the case of a dispute between **the Board or the licensee and the consumer** regarding the liability of the consumer for the payment of the duty **or exemption there from**, the Chief Electrical Inspector shall decide the matter. An appeal against the order of the Chief Electrical Inspector shall lie within 3 months from the date of service of said order to the Principal Secretary, Multipurpose Projects and Power to the State Government.*

3. Let us examine the contentions of Complainant in line with above relevant extracts of provisions in miniscule manners. This authority conceives that the complainant has misconception on implementation of above provisions and overlooked the spirit of above mandates and is trying to fetch meaning of the relevant Act & Rules of his own benefit only by referring to the provisions in isolation, not in conjunction. In view of this lapse of understanding on the part of Complainant, this authority deduces the following crux from the above directives:

- a. It is mirror clear from above provisions of Electricity Duty Act 2009 under **Section-3 on “Levy of electricity duty on consumption or supply of energy”** that the Electricity Duty is levied on consumption of energy and for the purpose of computation of the electricity duty, the consumption **shown by the meter, starting after the first meter reading date is taken.** This is clearly an indicative that for levy of Electricity Duty, the Govt. is concerned with actual consumption of energy irrespective of rebate on energy given by any agency except Govt. It also provides transparent meaning that the energy taken for computation of Electricity Duty is the reading taken starting after the first reading date as per above provisions which is independent of all kinds of





rebates announced by any agency, except Govt. Hence, the contention of the Complainant in the absence of any such directives / orders / notification issued by the Government in terms of section “**11. Power to exempt from payment of electricity duty**”, is not tenable in the instant case and construes as remained unpaid towards Govt.& in terms of Section 8(1) of Electricity Duty Act 2009 under “**Recovery of duty**” warrants recovery at concerned ends if allowed without notification of Govt.

- b. That in terms of above provisions of Electricity Duty Act 2009 read with relevant extracts of **clause 10 “Refund of excess duty” of Electricity (Duty) Rules 2010**, it is amply clear without doubt that if duty has been paid in excess of what is payable under the Act by the consumer, **the Chief Electrical Inspector shall authorize the refund of the excess duty so paid to the consumers concerned**. Thus, the said contention does not establish its viability in the instant case.
- c. In this context this authority also agrees with the findings of Ld. CGRF under para-36 of the said order dt. 28/02/25 which for the sake of reference, the very relevant part is reiterated as under:
- “No-where in the Tariff Orders passed by the Ld. HPERC has the rebate on expansion or excess consumption, been considered to have the net effect of reduction in actual consumption or on reduction of ED”*
- d. This authority feels alarming on the contentions of the Complainant under para-3(d) of Representation on relief sought which reads as “*To direct the respondents to adjust electricity duty in the manner as already is being allowed by the Commercial Wing of the respondents to other consumers*”, whereas this authority is convinced without any doubt that when Electricity Duty Act 2009 and Electricity Duty Rules 2010 are read in conjunction, the very transparent meaning originates that it is only the domain of Government to allow rebate/refund on Electricity





Duty and affirms that in case, earlier such rebate stands granted contrary to the above provisions without any order/notification issued by the Government in accordance with Section 11(1) of Electricity Duty Rules 2010 **“Power to exempt from payment of electricity duty ”** warrants recovery in terms of Section 8(1) of Electricity Duty Act 2009 under **“Recovery of duty** as reproduced above.

4. After delving above statutory provisions of both Electricity Duty Act 2009 & Electricity (Duty) Rules 2010, being prerogative of the Government, asserts that the Issue No-4 appears to be dispute between the Complainant & Licensee and qualifies the mandate of clause 14 of Himachal Pradesh Electricity Duty Rules 2010 for raising the dispute, the specific part of the said clause is recapped as ***“(1) In the case of a dispute between the Board or the licensee and the consumer regarding the liability of the consumer for the payment of the duty or exemption there from, the Chief Electrical Inspector shall decide the matter.”***
5. This authority feels it pertinent to mention here that in all of its respective Tariff orders, the Hon'ble Commission has categorically mentioned in **“General Conditions of Tariff and Schedule of Tariff”** under para-B which is replicated for the sake of reference as under:

“B. The rates mentioned in this Schedule of Tariff are exclusive of electricity duty, taxes and other charges already levied or as may be levied by the Government of Himachal Pradesh from time to time.”

6. In view of forgoing findings, this authority draws considered opinion that settlement on this account (**which appears to be dispute between the Complainant & Licensee**) does not fall in the jurisdiction of this authority and the Complainant can avail alternate remedy of competent court of law in terms of **clause-14. “Settlement of disputes and appeal thereof.”** of



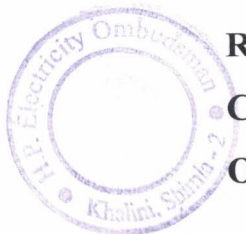


Himachal Pradesh Electricity Duty Rules 2010 which provides for both “Adjudicatory Authority” and “Appellate Authority” for settlement of Electricity Duty related disputes. Hence, the contention on this account does not hold good.

This closes the findings on issue -7

M-Order:

1. The order passed by the Consumer Grievance Redressal Forum (CGRF) at Kasumpti Shimla on dated 28.02.2025 in Complaint No. 1454/202404/06 is upheld except for the specific part of para-42(highlighted) which is quashed in terms of findings under Issue-5.
2. The Respondent Board is directed:
 - a. to recover the 10% rebate from the Complainant for 26 months admitted to be wrongly released by the Respondents, in terms of findings under Issue-3.
 - b. Not to charge any interest on recovery of above rebate in terms of findings under issue-4.
3. In case of any refund, if admissible shall be paid along with interest, in consonance with the clause 5.7.3 of Supply Code (2nd Amendment) dt. 31st July, 2018 to the extent applicable read with Regulation 26 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) (Second Amendment) notified on 20th January,2022 in line with findings under Issue-6 within 15 days from the date of issue of this order to avert intervention of Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the



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Commission under the provisions of the Electricity Act, 2003 and brunt on individuals in case of non-compliance.

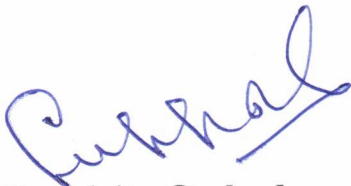
4. Stay imposed in respect of Para-42 of the CGRF order dated 28.02.2025 in the instant matter under the Regulation 36(1) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, is kept sustained to the extent of highlighted part of para-42 in terms of findings under Issue-5 and shall be subject to challenge by individual on case to case basis if any, for the past.
5. The Respondent Board is at liberty to adjust in the ensuing bills in terms of prevalent provisions.
6. No cost to litigation.
7. In terms of above findings, the Complaint filed by M/s Divyadhan Consultants Pvt. Ltd., Village Kalyanpur, P.O & Tehsil Baddi-173205 (H.P) is hereby disposed of.
8. 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: 05/05/2025

Shimla




Electricity Ombudsman