

**CONSUMER GRIEVANCES REDRESSAL FORUM, SHIMLA**

**Complaint No 1426/2/08/019 – 1432/202409/31**

**M/s Claridge Moulded Fibre Limited**

**Vs**

**HP State Electricity Board (through Secretary) and Ors**

**BRIEF FACTS OF CASE–**

- (1) Complaint was originally filed in the year 2008 by M/s Claridge Moulded Fibre Limited, Village Malkumajra, P.O. Bhud, Tehsil Nalagarh, District Solan, HP. In the ibid original complaint filed before the Ld FRGC, HP State Electricity Board is the Respondent. At that time, the complaint was filed before the 'Forum for Redressal of Grievances of the Consumers' (or the FRGC) under the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 notified on 23.10.2003 by the HP Electricity Regulatory Commission (or the HPERC);
- (2) The ibid original complaint filed in the year 2008 was decided by the then Ld FRGC on 30.08.2011. The dispute in the complaint had arisen due to monetary demand of Rs 30,09,000/- raised as sundry by the Respondent in revised electricity bill dated 08.04.2004 (**Annexure P-33**) against Industrial Unit-1 bearing account number LS-5 which was further raised as arrear in bill dated 11.05.2004 (**Annexure P-38**). Vide **Annexure P-40** dated 24.05.2024, Respondent Assistant Engineer, Electrical Sub Division Nalagarh informed the Complainant that the demand of Rs 30,09,000/- had been pointed out by the Resident Audit Office (RAO) (**Annexure R-15**) wherein the two industrial units of the Complainant bearing account numbers LS-5 and LS-42, availing electricity supply under the Medium Supply (MS) Tariff category should have been treated as one unit and charged Tariff as LS-2 (for Large Supply Tariff category);

- (3) Pursuant to the ibid Order passed by the Ld FRGC on 30.08.2011, the Respondent Board filed CWP No 3704 of 2012 before the Hon'ble High Court of Himachal Pradesh and impugned the said Order passed by the Ld FRGC. Vide Judgement / Order passed on 11.11.2019, the Hon'ble Court set aside the said impugned Order passed by the Ld FRGC on 30.08.2011 and disposed of the said petition;
- (4) While setting aside the impugned Order passed by the Ld FRGC on 30.08.2011, the Hon'ble Court vide ibid Judgement / Order passed on 11.11.2019, remanded the matter back to the Forum with directions to adjudicate upon the complaint afresh after hearing the parties and by passing a reasoned and speaking order based upon the pleadings already on record. For the sake of convenience, the relevant extract of the Hon'ble Court's Order are reproduced hereinafter --

*“..... 6. This Writ Petition is accordingly disposed of by setting aside Annexure P-3 i.e. order dated 30.08.2011, passed by the Forum for redressal of grievances of Himachal Pradesh State Electricity Board Consumers. The matter is remanded back to the said Forum with the direction to adjudicate upon the complaint filed before it by the private respondent afresh after hearing all the parties and by passing a reasoned and speaking order. The order shall be passed on the basis of the pleadings which are already on record before the learned Forum.*

*7..... the petitioner-Board shall not force the respondent to pay any additional disputed sum during the pendency of the complaint before the learned Forum, nor the respondent shall press the petitioner-Board to release money which it has paid to the petitioner during the pendency of the complaint....”*

- (5) When the cause of action first arose to the Complainant in April 2004, at that time the Electricity Act, 2003 had already come into existence and under the provisions of this Act, the HP Electricity Regulatory Commission (HPERC) notified various Regulations. On 23.10.2003 the HPERC notified the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 (or the FRGC Regulations). The said original complaint was instituted under these Regulations;

- (6) On 23.01.2013, the HPERC repealed the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 and notified the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 under which the present Consumer Grievances Redressal Forum (or the CGRF) came into existence;
- (7) Before the *ibid* dispute was raised in original complaint filed before the Ld FRGC in the year 2008, the Complainant in the past had also preferred a complaint before the Hon'ble HP Electricity Regulatory Commission (or the HPERC), which was forwarded by the HPERC on 28.05.2004 (**Annexure P-39**) to the Chief Engineer (Commercial) of the Respondent HPSEB to settle the issue;
- (8) The Complainant had also preferred Petition No. 196/05 before the Hon'ble HPERC which was decided by Order dated 15.03.2008. In the Order (**Annexure P-57**) passed by the Ld HPERC, the petition was dismissed as withdrawn on jurisdictional fact, with liberty to the petitioner to pursue the matter before appropriate Forum / authority. Thereafter, the Complainant preferred complaint before the Ld FRGC;
- (9) In terms of the *ibid* Judgement / Orders passed by the Hon'ble Court on 11.11.2019, the Respondent on 24.09.2024 filed an Application before this Forum (CGRF) for hearing the complaint afresh.
- (10) Pertinent facts and events specific to the complaint filed before the Ld FRGC are brought out as follows:–
- (11) Two separate Agreements for Supply of Electricity were executed between the parties in the years 1986 (**Annexure P-7**) and 1996 (**Annexure P-17**). Office Orders by Respondent for sanction of load were issued in the years 1987 (**Annexure P-8**) and 1996 (**Annexure P-18**) and respective electricity connections were released to the Complainant in these years (**Annexure P-10 / Annexure P-21**);
- (12) The electricity connection released in the year 1987 was for Unit-I, bearing account No LS-5 and was sanctioned for connected load of

400 kW at 11 kV supply voltage. The Tariff category applicable was Medium Supply (or MS) for load less than 500 kW.

- (13) The electricity connection released in the year 1996 was for Unit-II, bearing account No LS-42 and was sanctioned for connected load of 325 kW at 11 kV supply voltage. The Tariff category applicable was Medium Supply (or MS);
- (14) On 08.04.2004, vide revised electricity bill (**Annexure P-38**) monetary demand as sundry for Rs 30,09,000/- was raised by the Respondent upon the Complainant for the period from April 1997 to April 2000;
- (15) Among other reasons, this demand was raised by the Respondent at the behest of an Audit Report / Audit observation (**Annexure R-15** in Hindi language) which observed that both the units of the Complainant were one, existing in same premises, in same building and that additional equipment, treatment plant, material store, furnace oil storage were being used as common. This was against the provisions of Sales Manual. As a result of treating these units separately against the provisions of Sales Manual, un-rightful benefit of Rs 30,08,923/= was given for the period from April 1997 to April 2000;
- (16) Another reason, as stated by the Respondent for it to raise the ibid monetary Demand was the HPSEB Sales Circular No 5/2001 dated 11.04.2001 (**Annexure R-2**) addressed to the field units by the Chief Engineer (Commercial) of the Respondent which was in terms of clubbing of loads of consumers. Therefore the loads of the two manufacturing Units of the Complainant were clubbed as being one not separate, having common utilities and facilities. Further in accordance with Instruction No. 180 of the Sales Manual (**Annexure R-7**) Respondent was empowered to raise the ibid monetary demand;
- (17) Consequently the Complainant disputed the said monetary demand of Rs 30,09,000/- raised as sundry in bill dated 08.04.2004 on grounds that the two units were physically separate having their own

independent and separate manufacturing process, that the Respondent is bound by ibid Agreements executed between parties which it cannot unilaterally withdraw, that the clubbing of loads of the two Units was never applied for by the Complainant, that the clubbing of loads cannot be done with retrospective effect, that the Board is not competent to order clubbing of load under section 22-B of the Indian Electricity Act, 1910 and that the monetary demand for Rs 30,09,000/- is hit by limitation under section 56(2) of the Electricity Act, 2003 / Article 113 of the Limitation Act. Being aggrieved by the monetary demand for Rs 30,09,000/- raised by way of sundry in revised electricity bill dated 08.04.2004 (**Annexure P-38**) for the period from April 1997 to April 2000, the Complainant preferred the instant complaint in the year 2008 and impugned therein the said sundry amount of Rs 30,09,000/-;

**COMPLAINANT –**

- (18) That the Unit-I was approved by the State level Industrial Projects Approval and Review Authority (IPARA), GoHP, on 28.07.1986 (**Annexure P-6**);
- (19) That the Unit-II was approved by the IPARA on 27.03.1996 (**Annexure P-14**);
- (20) That Agreement for Supply of Electricity for Unit-I was executed between the Complainant and Respondent in the year 1986 (**Annexure P-7**). Electricity connections for 400 kW connected load at 11 kV supply voltage was released to the Complainant in the year 1987 (**Annexure P-10**) and Tariff applicable was Medium Supply (MS);
- (21) That Agreement for Supply of Electricity for Unit-II was executed between the Complainant and Respondent in the year 1996 (**Annexure P-17**). Electricity connection for 325 kW connected load at 11 kV was released to the Complainant in the year 1996 (**Annexure P-21**) and Tariff applicable was Medium Supply (MS);

- (22) That the installations of the ibid two units were inspected by the Chief Electrical Inspector, GoHP. For Unit-I the same is at **Annexure P-11;**
- (23) That the premises of Unit-I and Unit-II of the Complainant Company are physically separate, duly partitioned with separate entry, with separate manufacturing processes, with separate Transformer, transmission lines, separate metering, separate circuit for appliances and with no possibility that electric connection for one Unit can be used for running plant and machinery of other;
- (24) That the said Unit-I and Unit-II of the Complainant Company were being billed separately under MS category of Tariff as was applicable to both the Units during the period from April 1997 to April 2000 and all the energy bills stands duly paid by the complainant company and that there is no default in payment and no outstanding dues;
- (25) That the Complainant never applied for clubbing of load of Unit-1 and Unit-II. At the time of release of electric connection for Unit-1 and Unit-II, both the premises have been duly inspected by the Chief Electrical Inspector, Govt. of HP. Shimla;
- (26) That the Respondent Board is legally bound by the Agreements duly executed;
- (27) That the Respondent is now estopped from taking the plea of clubbing of load and changing the tariff category of Complainant from MS to LS-II which is on higher side;
- (28) That the Respondent Board is also not competent in view of provisions contained under section 22-B of the Indian Electricity Act, 1910 (as was in force prior to the Act of 2003) to club the loads of Unit-I and Unit-II of the complainant company;
- (29) That apart from aforesaid, the Respondent Board is not competent to order the clubbing of loads with retrospective effect and the order of the State Government under section 22-B of the Indian Electricity Act, 1910 for clubbing of load which can only be prospective;

- (30) That the Senior Executive Engineer (Comm), Operation Circle, Solan in its investigation / findings in letter dated 09.07.2004 (**Annexure P-44**) is taking contrary views to justify the ibid demand;
- (31) That on 22.04.2004 (**Annexure P-34**) the Complainant objected to the ibid monetary demand raised as sundry and also wrote letters **Annexure P-35, Annexure P-36, Annexure P-37**. Vide Respondent letters dated 24.05.2004 (**Annexure P-41**) and 25.05.2004 (**Annexure P-42**) reply was given;
- (32) That the Respondent is estopped from demanding the alleged sundry arrears amount for Rs 30,09,000/- as no clubbing of loads can be made to change the tariff category of Complainant;
- (33) That the recovery/demand of the ibid sundry amount has now become time barred in view of the provisions of section 56(2) of the Electricity Act, 2003 and is also time barred under Article 113 of the Limitation Act and thus not recoverable.
- (34) Complainant has prayed for Order by Forum to the effect that the impugned demand of Rs 30,09,000/- raised as sundry in revised bill dated 08.04.2004 (**Annexure P-34**) and as arrear in bill dated 11.05.2004 (**Annexure P-38**) and in letter dated 10.05.2005 (**Annexure P-50A**) is wrong, illegal, arbitrary, unjustified, time barred and not payable by the Complainant.

**RESPONDENT –**

- (35) That there is alleged fraud on the IPARA, GoHP and the HPSEB by the Complainant. The Complainant misled the IPARA by not placing before it the land record and by securing the second connection for Unit-II from the HPSEB by using the land record of the 1<sup>st</sup> Unit. The Unit-II should have had separate registration of land to qualify as separate entity, in absence of which it is merely extension of 1<sup>st</sup> Unit. Both the Units are one with common land registration, common sales tax account, common facilities and utilities (**Annexure R-3**). The land record along with tatima used for

seeking electricity connection of Unit-I was also fraudulently used for Unit-II and are placed at **Annexure R-12**;

- (36) That the impugned demand of Rs 30,09,000/- has been pointed by Audit observation (**Annexure R-15** in Hindi language) which is by the Resident Audit Officers (RAO) of Auditor general (AG) and is fully applicable and thus monetary demand of Rs 30,09,000/- is justified legal and payable by the Complainant;
- (37) That Sales Circular No 5/2001 dated 11.04.2001 (**Annexure R-2**) addressed to the field units by the Chief Engineer (Commercial) of the Respondent, states that 2<sup>nd</sup> connection should not be released in one building/complex unless the same are legally or physically separate from each other;
- (38) That the Report of Sr Executive Engineer (Comm) (**Annexure R-14**), has clearly stated that both the units are housed in same hanger and that Unit-II is merely an extension of Unit-I and that the Chief Electrical Inspector's primary concern is safety;
- (39) That had the Units been treated as extension, the combined load would have been 725 kW qualifying to be treated as Large Supply with different and higher applicable tariff. Thus the demand of Rs 30,09,000/- for the period April 1997 to April 2000, is justified, legal, in accordance with Instruction No. 180 (**Annexure R-7**) of the Sales Manual and therefore payable by the Complainant;
- (40) That the monetary demand is for the period from April 1997 to April 2000 and thus does not come within the purview of Electricity Act, 2003, which came into effect in the year 2003;
- (41) That the Complainant cannot take the advantage benefit of the retrospective or prospective effect of the Electricity Act since this liability has accrued due to its own. mischief and omission;
- (42) In accordance with FRGC Order dated 23.04.2008, Complainant has deposited 25% of disputed amount equivalent to Rs 7,52,250/- ;
- (43) Respondent has prayed for dismissal of complaint and for declaring the monetary demand raised as sundry in revised bill dated

08.04.2004 (**Annexure P-34**) and as arrear in bill dated 11.05.2004 (**Annexure P-38**) as legal and payable by the Complainant.

**ORDER**

- (44) This Forum has examined the relevant provisions of the Electricity Act, 2003, The Electricity Act, 1910 and The Electricity (Supply Act), 1948, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 (or the FRGC Regulations) and the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 (or the CGRF Regulations) and amendments thereto, HPSEBL Sales Manual and record as facts along with pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
- (45) At the outset, Forum finds that during the period when the Agreements for supply of power were executed between the Complainant and the Respondent in the years 1986 and 1996 and when the electricity connections were released in the years 1987 and 1996 respectively and for the period from April 1997 to April 2000 for which the Respondent clubbed the loads of Unit-I and Unit-II of the Complainant and raised the monetary demand of Rs 30,09,000/-, the Electricity Act, 1910 and The Electricity (Supply Act), 1948 were in force. However, the monetary demand of Rs 30,09,000/- was raised for the first time on 08.04.2004 when the Electricity Act, 2003 had come into force repealing the earlier statutes. The HPERC notified the HP Electricity Supply Code, 2009 in the year 2009 and before this, the HPSEBL Sales Manual to the extent it was consistent with the Regulations framed by the HPERC, was being followed by the Respondent HPSEB;

- (46) Forum observes that the Complainant by way of its written submissions has dwelled upon the applicability of section 22-B of the Indian Electricity Act, 1910 and on section 56(2) of the Electricity Act, 2003 in the instant matter --
- (47) With regard to the arguments / submission made by the Complainant on the competency of the Respondent Board to club loads of the Complainant under the provisions of section 22-B of the Indian Electricity Act, 1910, this Forum from perusal of the statute observes that as a matter of fact the Board under sub-section 79 (j) of the Electricity (Supply) Act, 1948, was vested with powers to make Regulations. Under Section 49 of this Act, the Board was also vested with powers for the supply of electricity on such terms and conditions as the Board thinks fit and for framing and fixing tariffs;
- (48) Thus, the Forum does not find any relevance in the foregoing arguments / submissions made by the Complainant on the applicability of afore mentioned section 22-B of the 1910 Act in the instant matter. This Forum holds these arguments / submissions made by the Complainant as not tenable and accordingly rejects these;
- (49) With regard to the written submissions of the Complainant with regard to limitation under Article 113 of the Limitation Act on said impugned monetary demand and condition of limitation imposed under section 56(2) of the Electricity Act, 2003 upon the impugned monetary demand, Forum observes that in the matter the limitation under Article 113 of the Limitation Act would be applicable to the impugned monetary demand either before the enactment of section 56(2) of the 2003 Act or after section 56(2) of the Act ceases to remain operative/applicable. In the matter, because the impugned monetary demand was raised on 08.04.2004 and the Electricity Act, 2003 enacted on 10.06.2003 thus it is not the Limitation Act but section 56(2) of the 2003 Act which is applicable to the said impugned monetary demand;

- (50) After examining the provisions of the section 56(2) of Electricity Act, 2003 in the matter, it is established that the issue of recovery of past dues of arrears by the DISCOM is no more res-integra. This is in pursuance to the settled position of law laid by the Hon'ble Apex Court while interpreting section 56(2) of the Electricity Act, 2003, in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah Khan alias Rahamjula in Civil Appeal No 1672/2020 decided on 18.02.2020 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No7235 of 2009 decided on October 5, 2021. Accordingly, the Respondent in the year 2004 was certainly within its legal rights to raise past arrears or dues of statutory nature, if not discovered earlier due to any mistake as has been held in ibid Hon'ble Apex Court Judgments while interpreting section 56(2) of the Electricity Act, 2003. Instruction No 180 of the Sales Manual also empowered the Respondent to do so;
- (51) Accordingly, the Forum therefore rejects contentions of the Complainant that the monetary demand raised on 08.04.2004 is time barred and hit by limitation under section 56(2) of the Electricity Act, 2003. In view of the settled position of law, the Forum holds that the monetary demand is clearly not hit by limitation under section 56(2) of the Electricity Act, 2003;
- (52) The Forum also rejects the arguments of the Respondent that the monetary demand raised on 08.04.2004 for the period from April 1997 to April 2000 does not come within the purview of Electricity Act, 2003, which came into effect in the year 2003. The Forum holds that the monetary demand raised on 08.04.20004 certainly comes under the purview of the Section 56(2) of the Electricity Act, 2003;
- (53) Therefore, the Forum holds and concludes that Respondent was within its legal rights to raise the impugned monetary demand however, the validity of such monetary demand on other legal

aspects and its correctness will still need to be seen and determined. This is appropriately dealt here-in-after--

- (54) Here in the instant matter there exists the action of the Respondent to raise a single monetary demand to the Complainant against its two separate electricity connections of two Industrial Units availed in the year 1987 and 1996, by clubbing their respective connected loads (in kW) at the instance of an Audit observation and by relying on a Sales Circular No 5/2001 dated 11/04/2001 (**Annexure R-2**). Accordingly this Forum proceeds to determine the legal validity and correctness of the said action of the Respondent—
- (55) This Forum observes that the relevant applicable Tariff on which the impugned monetary demand was calculated is not the subject matter of dispute in the instant complaint. The Complainant is simply aggrieved by the clubbing of loads of its two Industrial Units which resulted in Complainant being categorized under the large Industrial tariff category and this Large Industrial Tariff category coincidentally has a higher tariff;
- (56) After, perusal of **Annexure R-4**, it is pertinent to mention here that at that time up to the year 2003, it was the Respondent Board which notified the tariffs. These tariffs were for various categories of consumers and specified therein the rates / tariffs to be recovered from the consumer of electricity falling in a category and not from multiple consumers or group of consumers under a particular category;
- (57) This Forum further observes that apart from the Report / observation of Audit (**Annexure R-15** in Hindi language), the Sales Circular No 5/2001 dated 11/04/2001 (**Annexure R2**) and Instruction No. 180 (**Annexure R-7**) of the Sales Manual, the Respondent has no-where evoked any other relevant provisions of the statute under which the impugned action of the Respondent to club the loads of two separate industrial units in the name of same Company but different Agreements, may or may not be held valid. Forum observes from record, that apart from the said Sales Circular / Instruction, there is

nothing on record to show that the relevant statute at any time or any Order of the Board at the time of releasing the ibid electricity connections, prohibited in any way, the releasing of two separate connections in the name of the same company or person existing on same land or in adjacent premises or on contiguous establishments;

- (58) Forum still further observes that a consumer is distinctly identified by a consumer ID after an Agreement for Supply is executed between it and the Board. The Agreement to Supply carries the details of the consumer, connected load in kW (and/or contract demand in kVA), the category of tariff applicable, the voltage at which the Supply is to be given etc. After a consumer ID is created, bills (or monetary demands) based upon the conditions of the Agreement and applicable tariff, are raised for the recovery of dues payable by the consumer for the electricity consumed and other items;
- (59) This Forum still further observes that the ibid impugned monetary demand was raised by the Respondent after the issuance of the Sales Circular No 5/2001 on 11/04/2001 (**Annexure R2**) by it, which was with regard to clubbing of loads. Thus, the said monetary demand was raised by the Respondent after the advent of the said Sales Circular;
- (60) The Forum still further observes that the instant matter is not one with regard to monetary demand being raised against any new electricity supply connection released after the advent of the Sales Circular No 5/2001 on 11/04/2001 (**Annexure R2**), but is one with regard to already existing electricity supply connections released in the years 1987 and 1996. Thus, the monetary demand of Rs 30,09,000/- raised as sundry in bill dated 08.04.2004 was raised upon the Complainant after the advent of the ibid Sales Circular and at the instance of Audit observation, by simply clubbing the existing loads of already existing two separate supplies or two separate electricity connections released in the years 1987 and 1996;

- (61) The aforementioned electricity supply connections were released to the Complainant's Unit-II in the year 1996 and an earlier Unit-I in the year 1987, after duly executing Agreements for Supply by the Respondent Board. This Forum does not find anything on record to show that before the impugned monetary demand was raised by the Respondent in the year 2004, there may have been a change in the contracting status between parties by way of re-aligning of already executed Supply Agreements for the purpose of fulfillment of any condition of clubbing of load at a later date. In-fact, the Forum does not find any condition embedded in these Agreements that may cast upon the parties, any obligation to club loads at a later date against future separate electricity connections. There is also nothing on record that may suggest that the load clubbing became a statutory requirement so as to align contracts with the statute or change in statute. Further, the Forum also does not find anything on record which may show that the Respondent before raising the said monetary demand may have prevailed upon the Complainant for realigning the two executed Agreements into one or that the Complainant may have at any time consented or requested to clubbing of loads, which may have enabled the Respondent to raise the impugned monetary demand;
- (62) This Forum still further observes that the said Agreements were rightly or wrongly executed and the electricity connections were rightly or wrongly released in the year 1987 and in the year 1996 by the Respondent on same land or on contiguous premises of the Complainant and thereafter the Complainant continued to receive electricity supply. The action of the Respondent to execute the ibid Agreements against new and separate electricity connections, was not seen by it to be wrong or invalid at the time these Agreements were executed nor at any time between the period of the said connections and the ibid Sales Circular No 5/2001 dated 11/04/2001 (**Annexure R2**). It is only after the ibid Audit Report /Observations (**Annexure R-15** in Hindi language) and after the advent of the said Sales Circular in the year 2001 that the Respondent perceived its

action of releasing two separate electricity connections to the Complainant as wrong, overlooking and not appreciating the fact that in the matter the parties were originally bound by two separate Agreements;

- (63) From perusal of various clauses of the Sales Circular No. 05/2001 dated 11/04/2001 (**Annexure R-2**), this Forum still further observes that the applicability of Sales Circular is clearly in terms of an existing consumer who applies for a new connection i.e after the advent of the said Sales Circular whereas, the instant case is one where the Complainant is an existing consumer who was not applying for a new third electricity connection after the advent of the *ibid* Sales Circular. Both the electricity connections in the name of the Complainant already stood released to the Complainant after duly executing Agreements much before the said Sales Circular was issued by the Respondent. Thus the Respondent's reliance on *ibid* Sales Circular in no way supports the case of the Respondent. The Forum, for the purpose of clubbing with already existing electricity connection, holds the Sales Circular to be applicable for electricity connections / loads of a consumer which may be released after the advent of the said Sales Circular;
- (64) In the instant matter, the Complainant has stated that it had not applied for the clubbing of the loads. This fact not having been disputed by the Respondent, the clauses in the Sales Circular pertaining to clubbing of loads at the behest of request by the Complainant are therefore also not applicable in the instant case. Thus, this Forum is of the considered opinion that any attempt to make any clause of the Sales Circular applicable for clubbing connections already existing before the advent of Sales Circular without consent of the Complainant, would without doubt imply giving retrospective effect to the said Sales Circular;
- (65) It thus becomes clear, that the Respondent has wrongly relied upon the said Sales Circular to raise the impugned monetary demand, which was clearly not applicable to the Complainant for the period

from April 1997 to April 2000 for which the impugned demand was raised;

- (66) On further delving into the matter, the Forum observes that the two Agreements for new electricity connections executed in the years 1986 and 1996 have not been denied by either party. The Forum is of the considered opinion that at the time the Agreement for Unit-II was executed in the year 1996, the Respondent was at liberty to insist for a Supplementary Agreement or for an Agreement for extension of load to the existing electricity connection which was clearly not done by it for whatever reason best known to the Respondent. The fact undoubtedly remains that rightly or wrongly, two separate Agreements for new electricity connections were still executed in the years 1986 and 1996 between parties and consequently two separate connections released. It can thus not be inferred that the Agreements were not executed consciously by the Respondent or were in any way wrong, or bad in the eyes of law at the time these were executed. At that time, it was for the Respondent to have seen the land documents for the Unit –II placed before the Respondent by the Complainant for executing the Agreement. Thus the fact remains that two separate Agreements came into existence at that time. To allege fraud by the Respondent at a later date does not garner the support of the Forum. The Forum therefore holds as baseless the submissions made by the Respondent that the complainant had withheld the material facts while obtaining second connection and thus rejects the same;
- (67) Once it is established that the Sales Circular dated 11.04.2001 (**Annexure R2**) had wrongly been made applicable to the Complainant, that there is nothing on record to show any provision in the statute that may prevent separate electricity connections to a contiguous establishment in the name of same Company or person or on the same land, that any one of the Agreements executed between parties has not been rescinded or cancelled and thus both Agreements against different consumer IDs albeit in the name of

same Company stood on ground at the time of raising the impugned monetary demand, that the tariff rates are applicable only in respect of a consumer and not group of consumers, then the only conclusion that can be drawn is that a single monetary demand cannot be created against two separate consumer IDs by clubbing their loads existing under separate Agreements, even if in the name of same person or company;

- (68) Further, the Forum is convinced that in the instant matter it is immaterial whether Sales Tax being paid was common or not, or that the contiguous units were not separated by any means or that these may have been manufacturing the same product etc. The fact remains that separate Agreements for supply of electricity were executed in different times and the parties are bound by these unless mutually modified or modified by statute. Thus, under the given facts and circumstances of the matter, the Forum holds that these electricity connections were separate, already existing at the time of issuance of the Sales Circular dated 11/04/2001 (**Annexure R-2**) and these could not have been clubbed other than under the due process of law or on mutual agreement between parties or on request by the Complainant;
- (69) From foregoing discussion, Forum concludes that the Complainant de-facto exists as two separate consumers with two separate consumer IDs. The action of the Respondent of clubbing loads is one where the two separate consumers would always entail a single bill, which is wrong here. Distinction exists here towards the two conditions which seemingly have been mistaken by the Respondents i.e when the electricity connections are newly applied for or when the electricity connections already stand released or already exist with different consumer IDs. Having the resultant effect of combined tariff/ billing by way of single demand can therefore exist only after the Agreements against all consumer IDs but one, are rescinded or cancelled, electricity connection permanently

disconnected and thereafter merged or clubbed into one single Agreement / Entity, which is not the case here;

- (70) Further on proposition of law, it is settled that all laws are prospective, subject to enactment of an express provision or intendment to the contrary. Effect to a statute or an Order can be given from the date of the Order ie prospectively and not from an anterior date i.e retrospectively;
- (71) In the instant matter, Respondent herein was not exercising any powers under the statute to club loads of two separate electricity supplies of the Complainant but had exercised its statutory powers to issue Orders / Circulars / Directions vide Sales Circular dated 11/04/2001. This Forum does not find any powers in the 1948 Act which may have been vested with the Respondent to issue Orders / Circulars / Directions with retrospective effect. Therefore, the Sales Circular dated 11/04/2001 (**Annexure R-2**) could only have been given prospective effect in the hands of the Respondent;
- (a) Therefore, this Forum also holds and concludes that the Sales Circular dated 11/04/2001 (**Annexure R-2**) in toto, was clearly not applicable to the Complainant at the time the monetary demand was raised. In the statute being the 1948 Act, no powers were available to the Board to issue Orders / Circulars / Directions with retrospective effect. The instant matter is also not one where any aligning of the executed Agreements with the statute, may have arisen or become necessary. The Forum agrees with the contention of the Complainant that to give effect to the said Sales Circular, in the manner as has been done by the Respondent, clearly amounts to giving retrospective effect to the said Sales Circular, which is not within its powers to do so. In the matter Forum finds on record Judgement passed on 16.05.2008 by the Hon'ble Apex Court, in Civil Appeals No 101, 102-06 and 3309 of 2007 titled Kusumam Hotels Private Limited Vs Kerela State Electricity Board and Ors;

- (72) Thus, the action of the Respondent of fastening a monetary demand upon the Complainant by clubbing the two electricity connections of the Complainant existing under separate Agreements by wrongly interpreting the Sales Circular dated 11/04/2001 (**Annexure R-2**) clearly does not sustain in the eyes of the law;
- (73) Further, with regard to the reliance of the Respondent on the Audit Report / Observation, Forum finds that the Audit while overlooking the fact of the existing Agreements *ibid* and while also overlooking the fact that at the time there was no statute to enable clubbing of loads, had wrongly perceived less billing to the Respondent on a faulty premise of release of electricity connections under the Medium Industries Supply (MS) category instead of Large Industries Supply (LS) category. This was a perceived monetary loss in the eyes of the Audit for the reason that the tariff rates at that time may have been higher for the LS category. However, the Audit failed to appreciate the fact that while such rates at that time may have been higher, it may not be a condition in the future. In the opinion of the Forum, the fact that the tariff of large industrial supply category was higher than that of the medium industrial supply category is coincidental. The Forum thus holds that such a basis for perceiving less billing by the Audit or the Respondent is simply faulty;
- (74) Further, Auditors / Audit Report / Observations failed to understand the retrospective effect that such liability if fastened on a consumer will have. Liability could not have been fastened by the Respondent on the Complainant merely on the basis of audit note. The Respondent ought to have got its legal validity evaluated. Thus Forum clearly holds the action of the Respondent to consider the clubbing of loads of two electricity connections existing under separate Agreements, with retrospective effect, at the insistence of Audit, as legally wrong and untenable;
- (75) From foregoing discussion, this Forum is convinced that apart from the *ibid* Sales Circular, the said impugned monetary demand dated

08.04.2004 (**Annexure P-33**) raised as arrear in bill dated 11.05.2004 (**Annexure P-38**), is wrongly based upon the ibid Report / observation of Audit. This Forum has already held in paras supra that the Sales Circular (**Annexure R-2**) had been given retrospective effect and had wrongly been made applicable to the Complainant. The Sales Circular could only entail prospective effect implying that if the Complainant after the advent of said Sales Circular established a subsequent Unit, then the clubbing of loads as prescribed in the said Sales Circular shall become applicable to the subsequent Unit. Further, the Audit observation / Report (**Annexure R-15** in Hindi language) was in itself legally wrong to suggest un-rightful benefit of Rs 30,08,923/= given to Complainant for the period from April 1997 to April 2000 due to non-clubbing of loads of each electricity connection and further the action of Respondent was wrong to rely upon the same. Thus, the Forum holds that no monetary demand could have been fastened upon the Complainant by giving retrospective effect to the said Sales Circular (**Annexure R-2**) and therefore the action of the Respondent to do so is ab-initio wrong;

- (76) From foregoing discussions the Forum also does not find any relevance of the site inspection done by the officer(s) of the Respondent;
- (77) In view of foregoing, the Forum concludes and holds that the action of Respondent to raise upon the Complainant impugned monetary demand as sundry in revised bill dated 08.04.2004 for Rs 30,09,000/- (**Annexure P-33**) and as arrear in bill dated 11.05.2004 (**Annexure P-38**), is bad in the eyes of law and otherwise also wrong and thus cannot sustain ab-initio. The impugned monetary demand, is accordingly set aside with directions to Respondent to refund the Rs 7,52,250/- paid as 25% of the disputed amount by Complainant at the behest of the directions passed by the Ld FRGC on 23.08.2008;

On aforesaid terms, the complaint is **Allowed** and is disposed accordingly.

**Complaint No 1426/2/08/019 – 1432/202409/31**

Parties are left to bear their own costs.

Order is announced before the parties present today on 06.11.2024 at Shimla in open Forum.

Certified copies of this Order be supplied to the parties. The complaint along with this Order be consigned to record room for safe custody.

**Date: 06.11.2024**

**Shimla**

**--Sd--**

**Anil Sharma  
(Member)**

**--Sd--**

**Vikas Gupta  
(Member)**

**--Sd--**

**Tushar Gupta  
(Chairperson)**

CGRE SHIMLA

**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI,  
SHIMLA-9.**

**Complaint No.: - 1426208019 (1432/202409/31)**

**Date of Admission: -28.09.2024**

**Quorum: - Er. Tushar Gupta, Chairman  
Er. Vikas Gupta, Member  
Sh. Anil Kumar Sharma Member**

**In ref:-**

M/s Claridge Moulded fiber Ltd.  
Cillage Malkumajra Tehsil Nalagarh,  
District Solan (HP).

**Complainant**

**V/s.**

HPSEBL & Others.

**Respondents**

1. The Executive Director (Pers.),  
HPSEBL, Vidyut Bhawan,  
Shimla-171004.

2. The Assistant Engineer,  
Electrical Sub-Division  
HPSEBL, Nalagarh,  
District Solan (H.P.)

**Respondents**

**Final hearing:- 23.10.2024.**

**Counsels:-**

Complainant 1. Sh. O.C. Sharma, Advocate

Respondent 1. Sh. Kamlesh Saklani, Under Secretary Law.  
2. Sh. Rajesh Kashyap, Advocate  
3. Sh. Mukesh Bhardwaj A.E ESD Manpura.

**Date of Decision: -06.11.2024**

**Notice**

**Registered**

**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.**

**No. CGRF/Complaint No. 1426208019 (1432/202409/31)      Dated:-**

M/s Claridge Moulded fiber Ltd.  
Cillage Malkumajra Tehsil Nalagarh,  
District Solan (HP).

**Complainant**

**V/s.**

HPSEBL & Others.

**Respondents**

**Complaint No. 1426208019 (1432/202409/31)**

1. The Executive Director (Pers.),  
HPSEBL, Vidyut Bhawan,  
Shimla-171004.
2. The Assistant Engineer,  
Electrical Sub-Division  
HPSEBL, Nalagarh,  
District Solan (H.P.)

**Respondents**

The Certified copy of final order dated 06.11.2023 passed by the Hon'ble Forum in the aforesaid complaint is enclosed find herewith for further necessary action at your end please. The compliance be reported/ intimated within one month after the receipt of order in the office.

**DA:-As above.**

Secretary,  
Consumers Grievances Redressal Forum,  
HPSEBL, Kasumpti Shimla-9.