

M/s Mahindra Holiday & Resort India Ltd

Vs

HPSEBL (Through Executive Director) and Ors

BRIEF FACTS OF THE CASE –

- (1) Complaint has been filed under regulations 16 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;
- (2) The Complainant M/s Mahindra Holiday and Resort India Ltd, Deon Chowk, Tehsil Kandaghat, District Solan (HP) -173215 bearing consumer ID 100009003640 is a Commercial Supply (CS) category consumer of the distribution licensee HPSEB Ltd being the Respondent here-in;
- (3) The Complainant is aggrieved by the action of the Respondent to raise upon it impugned demand notices dated 13.12.2023 (**Annexure C-2**) for Rs 4,74,266/- later revised to Rs 2,71,009/- on 31.01.2024 (**Annexure C-3**) and demand notice dated 04.06.2024 (**Annexure C-4**) for Rs 3,78,027/-;

COMPLAINANT –

- (4) That the Respondent has raised demand notice dated 13.12.2023 (**Annexure C-2**) for Rs 4,74,266/- later revised vide notice dated 31.01.2024 (**Annexure C-3**) to Rs 2,71,009/- and further demand notice dated 04.06.2024 (**Annexure C-4**) for Rs 3,78,027/-
- (5) That it had applied for temporary reduction of Contract Demand from 350 kVA to 295 kVA on 16.10.2019 and another temporary reduction from 295 kVA to 148 kVA on 23.07.2020 (**Annexure C-5 Colly**). The said temporary reductions of contract demand from 350 kVA to 295 kVA is reflected in bills (**Annexure C-6 Colly**) and from 295 kVA to 148 kVA is reflected in copy of receipt and bills (**Annexure C-7 Colly**);
- (6) That it had also applied for reduction of permanent Contract Demand from 350 kVA to 295 kVA on 11.03.2020 (placed on record by Respondent at **Annexure R-E**);

- (7) That it had also applied for increase in permanent Contract Demand from 148 kVA to 295 kVA on 05.10.2020 which was not implemented. Vide another application made on 18.06.2021 and after payment of IDC of Rs 196,000/- on 24.08.2021, the same is implemented in bills and receipt (**Annexure C-8 Colly**);
- (8) That it had made payment of fees of Rs 1375 (**Annexure C-5**) on 28.01.2020 and of Rs 3675/- (**Annexure C-7**) on 04.08.2020 against the ibid Temporary reduction of Contract Demand from 350 kVA to 295 kVA and from 295 kVA to 148 kVA respectively;
- (9) That it had responded to the impugned demand notices vide its letter dated 18.03.2024 (**Annexure C-9**) and letter dated 10.06.2024 (**Annexure C-10**) vide which it had made payment under protest of Rs 2,71,009/- and Rs 3,78,027/- respectively;
- (10) That the Respondent had effected the Contract Demands which is reflected in its bills (**Annexure C-6 Colly, Annexure C-7 Colly, Annexure C-8 Colly**);
- (11) During final hearing stage, Complainant has made written submissions stating therein that it had deposited IDC and Respondent never asked for fees except as deposited and that the demand is barred by limitation under section 56(2) and that the judgement cited by the Respondents does not apply. Complainant has also placed on record Court Orders for sanction of Scheme of Amalgamation done in the year 2016;
- (12) The Complainant has prayed for quashing and setting aside **Annexures C2, Annexure C3 and Annexure C4** as being illegal and arbitrary.

RESPONDENT –

- (13) That connection to consumer 'Holidays on Hill Resorts Pvt Ltd' was released by it in January 2000;
- (14) That in accordance with the amalgamation proceedings, amalgamation of Complainant Company took place in the year 2016;
- (15) That the stated requests by Complainant for reduction of contract demand from 350kVA to 295 kVA and from 295kVA to 148 kVA

have no relevance. Change in name to that of Complainant Company was effected on 14.10.2021 and from this date the contractual relationship with Complainant exists;

- (16) That on 11.03.2020, 'Mahindra Holidays & Resorts India Pvt. Ltd' applied simultaneously for change of name by submitting Application and Agreement Form and with separate application for permanent reduction of contract demand from 350 kVA to 295 kVA (**Annexure R-E**). However, no charges and fees were deposited;
- (17) That after the change of name was sanctioned on 14.10.2021 (**Annexure R-G**) by competent authority of Respondent in favour of Mahindra Holidays & Resorts India Pvt. Ltd but because Mahindra Holidays & Resorts India Pvt. Ltd did not deposit the fees for the permanent reduction of contract demand, the permanent reduction in contract demand was not sanctioned;
- (18) That application for temporary reduction of Contract Demand was submitted by Complainant for first time on 16.10.2019 (**Annexure C-5 Colly**) and the processing fees of Rs 1375/- deposited against this Temporary reduction on 28.01.2020 (**Annexure R-B**). Application for permanent reduction of contract demand was made on 11th March 2020, however, the then Assistant Engineer of Respondent inadvertently implemented permanent reduction of Contract Demand after 1 month of the said application for permanent reduction while also forwarding a wrong case for approval to its senior office on 13.12.2021 (**Annexure R-M**) which was turned down by the senior office on 10.01.2022 (**Annexure R-N**);
- (19) That Temporary reduction of Contract Demand is governed by Code 3.10 of Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 (notified on 31.07.2018 which came into effect from 01.04.2019);
- (20) That electricity dues are of statutory nature which the distribution licensee has right to recover on detection of bona-fide mistake in accordance with law settled by Hon'ble Apex Court in Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs

Rahamutullah @ Rahamujulla (2020) 4SCC 650 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No7235 of 2009 decided on October 5, 2021;

- (21) That because the Complainant is liable to pay demand reflected in demand notice and because complaint is devoid of merits, Respondent has prayed that complaint be dismissed.

ORDER

- (22) Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and the HP Electricity Supply Code, 2009 (or the Supply Code, 2009 or the Supply Code or the Code) including amendments thereto, record and facts along-with pleadings of the parties. We have heard the parties at length. The considered opinion of the Forum has been gathered after examining and analyzing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
- (23) Forum observes that in the matter, the Complainant is before this Forum for quashing and setting aside **Annexures C2, Annexure C3 and Annexure C4**;
- (24) During the course of hearing in the matter, the Respondent informed the Forum that the revised demand notice dated 31.01.2024 (**Annexure C-3**) for Rs 2,71,009/- was served after adjusting/ deducting the Infrastructure Development Charges (or the IDC) of Rs 1,96,000/- which had wrongly been received by the Respondent from the Complainant. As per the submissions made by Complainant on record, the date of receipt of this IDC by the Respondent is 24.08.2021. Respondent further informed that the action for return / refund of this IDC is presently in process. However, Forum observes from complaint that this IDC is not in dispute here;

- (25) Also during the hearing stage, the Respondent informed that the other demand notice dated 04.06.2024 (**Annexure C-4**) for Rs 3,78,027/- was served upon Complainant after adjusting the amount of Rs 2,74,552/- which had been deposited by the Complainant under protest on 18.03.2024 (**Annexure C-9**). Thus, the total amount that had become due before 18.03.2024 was 6,52,579/- (**Annexure C-10**). Forum also observes from record that this impugned demand notice dated 04.06.2024 for Rs 3,78,027/- is towards some unbilled amount and is pursuant to a previous demand notice dated 23.04.2024 (not placed on record by the Complainant);
- (26) Forum from record (**Annexure C-10**) finds copy of Respondent's receipt dated 12.06.2024 for Rs 3,87,027/- issued against payment made under protest by the Complainant vide Cheque No 00169;
- (27) Therefore, from record and from pleadings of parties, Forum finds that the Complainant against the total demanded amount of Rs 6,52,579/-, has made a total payment under protest of Rs 6,58,036/- i.e Rs 2,71,009/- (**Annexure C-9**) and Rs 3,87,027/- (**Annexure C-10**);
- (28) Accordingly, the main issue which is now before this Forum for determination is whether the ibid demanded amount is statutorily recoverable by the Respondent and payable by the Complainant in accordance with provisions of Temporary Contract Demand and Sanctioned / Permanent Contract Demand contained in the Code / Regulations framed by the HP Electricity Regulatory Commission (or the HPERC). The Forum now proceeds to determine the same -
- (29) From perusal of complaint, Forum at the outset finds that while the Respondent has raised the impugned demands at the behest of amended provisions of code 3.10 of the Supply Code, 2009 notified by the HP Electricity Commission (or the HPERC), the Complainant on the other hand is before us without any legal basis. It is only during the final hearing, that the Complainant has raised the issue of limitation under section 56(2) of the Electricity Act, 2003;
- (30) The Complainant while relying on certain communications (**Annexure C-9, Annexure C-10**) made by it to the Respondent, has simply

averred and contended that Respondent has not considered the request of Complainant dated 11.03.2020 (**Annexure R-E**) for permanent reduction of Contract Demand to 295 kVA and Temporary reductions from time to time i.e on 16.10.2019 and 23.07.2020 (**Annexure C-5 Colly**) which are reflected in monthly bills (**Annexure C-6 Colly, C-7 Colly and C-8 Colly**). It has simply argued that demands have been raised on presumed assumption of 350 kVA Contract Demand and accordingly prayed to set aside and quash these demands (**Annexure C-2, C-3 and C-4**);

- (31) On the other hand it is the case of the Respondent that before 14.10.2021 (**Annexure R-L**), the Respondent cannot consider the requests of the Complainant for permanent reduction of the Contract Demand for the reason that such request is not from a consumer recognized by the Respondent and also that no fees was deposited by the Complainant for permanent reduction of the Contract Demand and also that the fees of Rs 1375/- that was deposited on 28.01.2020 (**Annexure R-B**) was for temporary reduction of Contract Demand;
- (32) From examination of complaint, Forum finds that the Complainant had applied for Temporary reduction of Contract Demand from 350 kVA to 295 kVA and from 295 kVA to 148 kVA only on 16.10.2019 and on 23.07.2020 (**Annexure C-5 Colly**) respectively. These facts are not denied by the Respondent;
- (33) From examination of complaint, Forum observes that while the Complainant has referred to certain payments made by it however, Forum could not find the necessary receipts in the complaint towards the statutory processing fees payable by it towards the revision of Temporary or Permanent Contract Demand. In the complaint Forum finds that the Complainant purports to have attached the Receipts at **Annexure C5** and **Annexure C7**, but on examination of complaint Forum has found these to be missing;
- (34) These receipts against the statutory processing fees have only later been provided by the Respondent in its Reply (**Annexure R-B**) and at the time of final hearing which the Forum found to be towards only the

temporary revision of contract demand. One Receipt dated 28.01.2020 (**Annexure R-B**) is for Rs 1375/-. The other receipt dated 04.08.2020 placed on record by Respondent is for Rs 3675/-. Both these receipts are held to be clearly in terms of the statutory processing fees against the said Temporary revision of Contract Demands from 350 kVA to 295 kVA and from 295 kVA to 148 kVA that were applied by the Complainant on 16.10.2019 and on 23.07.2020 respectively;

- (35) Forum further observes that Complainant had applied for sanctioned / permanent revision of contract demand from 350 kVA to 295 kVA only on 11.03.2020 which is also not placed on record by it. This is however, observed from letter written by Complainant (**Annexure R-E**). As per the other submissions made by Complainant on record, the payment of IDC by it is on 24.08.2021 and this payment cannot be construed by the Forum to mean or be against sanctioned / permanent revision of contract demand. Forum could not find any separate statutory processing fees that may have been made by the Complainant against a request by it for permanent revision;
- (36) Forum holds that Complainant has accordingly tried to make out its case for the revision of contract demand based upon payment of IDC on 24.08.2021 and on ibid processing fees receipt dated 28.01.2020 (**Annexure R-B**) which is towards temporary reduction of contract demand. Forum finds the submissions made by the Complainant to be misleading;
- (37) The alleged application by the Complainant for the revision of sanctioned / permanent contract demand from 350 kVA to 295 kVA is dated 11.03.2020 while receipt for the statutory fees is dated 28.01.2020. It honestly cannot be Complainant's proposition that a payment by it preceded its application for revision of sanctioned / permanent contract demand by some months. Further, Office Order by Respondent for sanction of change of name with original contract demand of 350 kVA is dated 14.10.2021 (**Annexure R-L**). It also honestly cannot be Complainant's proposition that the payment of IDC

made by it on 24.08.2021 deems sanction of revision for sanctioned / permanent contract demand;

- (38) Forum also observes that the Complainant had purportedly applied on 05.10.2020 for the temporary increase in Contract Demand from 148 kVA to 295 kVA which was not implemented by the Respondent. In this regard, this Forum could not find any application for the same nor could it find any statutory processing fees accompanying or against the request for this reduction;
- (39) Forum is thus not inclined to accept the argument made by the Complainant during the hearing stage, that no fees was demanded by the Respondent for the revision of Contract Demand from 148 kVA to 295 kVA and for sanctioned permanent revision from 350 kVA to 295 kVA. Clearly, the Forum cannot assume that the Complainant was not aware of the statutory requirement of fees to accompany the request for any revision of contract demand, especially when it had in fact already made the first payment of the statutory fees on 28.01.2020 (**Annexure R-B**);
- (40) Thus from examination of complaint and from foregoing discussions, Forum is constrained to observe that while the complaint is misleading at the same time it is severely lacking in clear and earnest representation of facts. Forum observes that to prove its case, it is incumbent upon the Complainant to bring out facts in a clear and earnest manner so as to enable the Forum to determine the complaint effectively. To present facts in a distorted or oblivious manner, nowhere helps to serve the case and cause of the Complainant;
- (41) Now coming to the contention of the Respondent with regard to amalgamation of the Complainant Company in the year 2016 and with regard to its contractual Agreement as existing in its records of being in name of the previous Company and not with the Complainant Company, the Forum on examination of record finds that the change of name in its records was done /sanctioned by the Respondent by way of Office Order (**Annexure R-L**) only on 14.10.2021. Till such time, M/s 'Holidays on Hill Resorts Pvt Ltd' continued to be the Company with

whom the Respondent carried the contractual terms. This fact is not disputed. Forum is of the opinion that for a long time, the Complainant had adopted a nonchalant and passive stance and had awoken only after realizing the adverse financial implications. Further the sanction dated 14.10.2021 by the Respondent was only in terms of change of name and still not for revision in permanent Contract Demand for which the Complainant had not deposited the statutory processing fees as has been observed by the Forum in para supra. As a result, the Permanent or sanctioned Contract Demand of the Complainant continued to stand as 350 kVA and was not revised;

- (42) Based on the facts of the matter, the Forum is inclined to agree with the Respondent on the original Agreement for Supply not being executed with the Complainant. In the considered opinion of the Forum, the Agreement for Supply is a contract with a consumer and no other person can assume the role of that consumer unless there is a change in name affected in the records of the Respondent. Only thereafter can the new consumer request a modification in the terms of the Agreement which inter-alia include reduction of the Contract Demand. Here the change in name was effected by the Respondent at the behest of application by Complainant only on 14.10.2021 (**Annexure R-L**) although without revision in sanctioned or permanent contract demand;
- (43) Thus the Forum does not agree with the arguments and contentions of the Complainant and holds that the Complainant had not fulfilled the statutory requirement of payment of processing fees for sanction of contract demand on permanent basis. Accordingly for all purposes the sanctioned / permanent contract demand of the Complainant remained 350 kVA before the said Office Order as well as after the said Office Order;
- (44) The Forum now proceeds to delve into the concept of Temporary and Permanent or sanctioned Contract Demand -
- (45) Forum from perusal of Regulations / Code finds that distinction exists between Temporary Contract Demand and sanctioned Contract

Demand (or Permanent Contract Demand). This distinction becomes evident from the provisions of the Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 dated 11.06.2014 regulating the Temporary Contract Demand which are reproduced here-in-after for the sake of convenience –

Quote

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“3.10 Temporary revision of contract demand.–

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

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

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Un-Quote

- (46) Thus from bare perusal of the foregoing provisions on Temporary revision of Contract Demand, it becomes clear to the Forum that there does exist a distinction between Temporary Contract Demand and sanctioned Contract Demand (or Permanent Contract Demand). Further while Temporary Contract Demand does not necessitate a strict sanction however, Permanent Contract Demand is sanctioned in accordance with the original provisions of the Supply Code, 2009 notified on 26th May, 2009 and this further necessitates Agreement between parties to effect the change in the contractual terms;
- (47) Before the Forum proceeds further in matter to determine the status of Temporary Contract Demand of the Complainant, it considers it

necessary and expedient to also refer in detail to the relevant amendments to the HP Electricity Supply Code, 2009 enacted by the HP Electricity Regulatory Commission (or the HPERC). The Supply Code, 2009 was notified by the HPERC on 26th May, 2009. Later Amendments were carried out from time to time. We mainly refer to amendments pertinent in the instant matter with regard to 'Temporary' revision of Contract Demand. The said amendments were first introduced by the HP Electricity Regulatory Commission (or the HPERC) vide Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 notified on 11th June, 2014. In this amendment Code 3.10 was first inserted. Thereafter, amendment to this Code 3.10 was carried out by the HPERC vide the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018. For the sake of clarity, relevant extracts of these amendments are reproduced here-in-after:-

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

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Quote

10. Insertion of para 3.10.- *In the said Code, the following para 3.10 shall be inserted; namely:-*

"3.10 Temporary revision of contract demand.-

The consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition- 10

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

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

(c) that the consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly

served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;

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

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

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

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Un-Quote

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

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Quote

3. Amendment of para 3.10:- For the sign “;” occurring after clause (a) of para 3.10 of the said Code, the sign “:” shall be substituted and thereafter the following provisos shall be inserted, namely:-

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

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

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

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Un-Quote

- (48) Thus from above provisions of regulations/ Code, it is observed by the Forum that Temporary revisions are regulated in accordance with code 3.10 of the amended provisions of HP Supply Code, 2009 notified on 11.06.2014 by the HPERC by way of Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014. Before this, all Contract Demand and its revisions were of Permanent nature requiring sanction in accordance with un-amended provisions of the HP Supply Code, 2009. The provisions now provide for Temporary Contract Demand revisions as well, simply on bare notice.
- (49) Further, before proceeding to determine the complaint, this Forum also considers it pertinent to briefly delve into the working of the Contract Demand (in KVA/ or MVA). It is apparent that the Contract Demand is a provision of the Electricity Supply Code and the Tariff Orders passed by the Ld HPERC. It is a Demand (in KVA/ or MVA) contracted by the consumer at the time of its original application for connection, which during the life of the connection, is also subjected to permissible revisions strictly in accordance with the provisions of the Supply Code, 2009. This Contract Demand is applied for by the consumer and sanctioned by the licensee, inter-alia with the underlying purposes of billing of the consumer, determining its Standard Supply Voltages at the time of connection, etc. The original Contract Demand is of 'Permanent' nature and the subsequent revisions at the option of the consumer may be of 'Permanent' or of 'Temporary' nature which are regulated in accordance with the provisions of the Supply Code and further applied to billing etc in accordance with the provisions of various Regulations / Codes enacted and Tariff Orders passed by the HPERC. This Contract Demand (in KVA or MVA) serves as a reference vis-à-vis the actual maximum Demand (in KVA or MVA) recorded on the meter during the times of electricity consumption and is applied on the billing of the consumer or other matters, as may be prescribed by way of HPERC Regulations / Supply Code / Tariff Orders. When the Supply Code regulates the revision of Contract Demand (in kVA or MVA), the concerned consumer is expected to

keep a strict vigil on its electricity consumption patterns by managing the peaks of its maximum Demands (in KVA or MVA), simultaneously also keeping a vigil and managing / revising its Contract Demand (in kVA or MVA) from time-to-time so as to keep both in synchronization and consequently the optimization of its electricity bills;

- (50) The Supply Code 1st Amendment dated 11.06.2014 stipulated various conditions for Temporary revision of Contract Demand (in KVA or MVA) and these were first introduced here by insertion of Code '3.10 Temporary revision of contract demand'. This Code was later amended vide Supply Code amendment dated 31.07.2018, when certain Provisos were added to it. This 1st amendment, 2014 provided for limits of revision, number of revisions in a year, gap between successive revisions etc. The subsequent amendment of Supply Code (ie Supply Code 2nd Amendment) notified on 31.07.2018 which introduced the 'Provisos' to Code 3.10 inter-alia provided for total period of 6 months of Temporary contract demand (in KVA or MVA) in a 'Financial Year'. This 2nd amendment came into force from 01.04.2019. It is pertinent to mention here that with regard to ibid 'Temporary revision of contract demand', the key word in the said proviso / amendment is the 'financial year'. In accordance with the Companies Act a financial year generally starts from 01st of April and ends on 31st of March. Accordingly, it becomes clear from the said amendments that on 31st March of each financial year, the 'Temporary Contract Demand', as existing previously shall expire. From the 1st of April of the subsequent financial year, the Contract Demand would get reset to the Permanent Contract Demand (in KVA or MVA) unless the Temporary Contract Demand is re-applied by the consumer. Therefore, a consumer is statutorily required to apply afresh for re-revision of its Temporary Contract Demand (in KVA or MVA) in any new financial year, else a previously existing Temporary Contract Demand shall automatically get reset to the last sanctioned Permanent Contract Demand (in KVA or MVA) which was also initially /

previously applied for by the consumer and allowed or deemed allowed by the distribution licensee;

- (51) From the foregoing implications of express provisions of 'Code 3.10 Temporary revision of contract demand' as prescribed in the Supply Code 2nd Amendment, 2018, this Forum holds that after 01.04.2019, i.e. when the financial year starts, any monetary demand (in Rs) raised by the Respondent HPSEBL based on a Temporary Contract Demand (in KVA or MVA) existing prior to 01.04.2019, can only be with regard to electricity consumption done prior to 01.04.2019. For electricity consumption occurring after 01.04.2019, such monetary demand (in Rs) shall necessarily have to be based on Temporary Contract Demand (in KVA or MVA), if such is reapplied by the consumer. In absence of such re-application, this monetary demand shall automatically get based upon Permanent sanctioned Contract Demand which was last applied. This process shall follow for each / new financial year;
- (52) This Forum in the facts and circumstances of the case, safely sums up that any Temporary Revision of Contract Demand (in kVA or MVA) that may have existed in the past before 01.04.2019 shall cease to remain effective beyond 01.04.2019. Therefore, the consumer shall have to apply afresh for a 'Temporary Contract Demand' beyond 01.04.2019, if it so requires and in absence of such revision or re-application, the only Contract Demand that automatically survives in accordance with the Supply Code 2nd Amendment is the 'Permanent Contract Demand' (in kVA or MVA) on the basis of which further billing shall be done or any monetary demand shall be raised by the distribution licensee. When concerned consumer does not apply afresh or does not revise its Contract Demand after 01.04.2019, then any Temporary revision of Contract Demand or 'Temporary Contract Demand' (in KVA or MVA) sought before 01.04.2019, shall be deemed to get reset to the sanctioned 'Permanent Contract Demand' (in KVA or MVA) from this date onwards, till such time a fresh application for Temporary revision of contract demand or 'Temporary

Contract Demand' (in KVA or MVA) is not made by the Complainant consumer and/or allowed by the Respondent. This process shall follow for each financial year beyond 01.04.2019 and accordingly all matters of electricity billing shall be dealt vis-à-vis this 'Permanent Contract Demand' (in KVA or MVA) under such a condition;

- (53) Returning to the instant complaint, as observed by this Forum in paras supra, fact remains that the Complainant Company's sanctioned or permanent Contract Demand for the period of dispute is 350 kVA and this was not revised;
- (54) However, the Forum in paras supra has found that the Respondent was in receipt of processing fees of Rs 1375/- on 28.01.2020 (**Annexure R-B**) and on 04.08.2020 for Rs 3675/- which has been held by the Forum to clearly be against Temporary reduction of Contract Demand from 350 kVA to 295 kVA and from 295 kVA to 148 kVA respectively. In accordance with the express provisions of Supply Code regulating Temporary Contract Demand, this Contract Demand can be valid for a maximum period of 6 months or till the end of financial year i.e 31st of March and from 1st of April the same is reset to the value of Permanent Contract Demand. Forum further observes that the Contract Demand has wrongly been reflected in the bills raised by the Respondent, firstly as 148 kVA in bills from April 2020 to August 2021 and then as 295 kVA in bills from September 2021 to March 2023. Forum observes that while a condition can be wrongly reflected in bills however, the same has to be viewed and ascertained from the statutory provisions. Things have to be seen in a correct and legal perspective. Further, the said Temporary revisions of Contract Demand certainly do not match the corresponding record of processing fees payment and applications made in this regard by the Complainant nor are these in line with amended provisions of the Supply Code. Even a bare perusal would go on to show that the Temporary Contract Demand has been made applicable by the Respondent's office for a period of more than 6 months and also after the financial year which is clearly against the provisions of the Supply Code. A statutorily invalid

or a wrong action by an office of the Respondent cannot be held to be the action of the Respondent Company and deserves to be set right;

- (55) The Complainant had submitted application for the revision of its Contract Demand from 350 kVA to 295 kVA and from 295 kVA to 148 kVA temporarily (Temporary Contract Demand) after payment of processing fees on 28.01.2020 (**Annexure R-B**) and on 04.08.2020 respectively which was allowed by the Respondent's office. However, the fact remains that because fees in this regard was received by the Respondent and was never returned or refunded, thus the Respondent is bound to give the service for which the fees has been received which cannot be denied by the Respondent even if the Complainant was not before it against an Agreement. However, in accordance with the statute reproduced in paras supra, such Temporary Contract Demand revision cannot exceed the permissible 6 months in a financial year and such Temporary revision cannot extend beyond the 31st of March of the financial years in question. On this end date, the 'Temporary Contract Demand' as existing, shall deem to expire or cease to exist. Thus, from the start of the next financial year as being 01st April, the Complainant would be required to apply afresh for the Temporary Contract Demand. Accordingly, considering the one (1) month notice period as specified in the regulations / code, the Complainant cannot be denied the benefit of revised Temporary Contract Demand of 295 kVA from 01.03.2020 to 31.03.2020 and of 148 kVA from 05.09.2020 to 04.03.2021 by the Respondent after receipt of payments against these by it. Thus before and after these periods, the Complainant is liable to be billed on the basis of permanent Contract Demand of 350 kVA till the time the Complainant has not got its sanctioned or permanent contract demand revised;
- (56) In view of foregoing discussion, Forum sums up and concludes that the permanent Contract Demand of the Complainant is 350 kVA in accordance with Respondent's Office Order dated 14.10.2021 which was not revised owing to the fault of the Complainant. However, because there was receipt of fees of Rs 1375/- on 28.01.2020

(**Annexure R-B**) and of Rs 3675/- on 04.08.2020 by the Respondent, which was not returned or refunded, thus the Complainant is entitled to benefits for the period Temporary Contract demand remains effective in a financial year in accordance with the provisions of code 3.10 i.e 295 kVA from 01.03.2020 to 31.03.2020 and of 148 kVA from 05.09.2020 to 04.03.2021;

- (57) Further, on the argument by Complainant with regard to demand being hit by limitation under section 56 of the Electricity Act, 2003, the Forum agrees with the contention of the Respondent and holds that the Hon'ble Apex Court has already settled the law in this regard vide Judgment dated 18.02.2020 in Civil Appeal No 1672 of 2020 titled Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah alias Rahamujulla (2020) 4SCC 650 and in M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No7235 of 2009 decided on October 5, 2021. In the instant matter, this Forum observes that in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal No 1672 of 2020, which has further relied upon other Apex Court cases while interpreting section 56(2) of the Electricity Act, 2003, it has been held that section 56(2) does not put any limitation for raising the past dues or arrears, if not discovered earlier due to any mistake. Liability to pay arises on consumption of electricity and obligation to pay when bill is raised. Electricity charges would become first due only when bill is issued by the licensee to the consumer quantifying therein the charges to be paid. Accordingly, the Hon'ble Court has held in clear terms that limitation starts from the date the Bill/ Demand is raised which is when the sum becomes first due and it is from this date that the period of limitation of 2 years as provided in section 56(2) of the Electricity Act shall start. Thus the action of the Respondent to raise the impugned demand dated 27.06.2023 (**Annexure C2**) is not hit by the limitation under section 56 of the Electricity Act, 2003;
- (58) In view of forgoing, no illegality is observed by the Forum with regard to the monetary demands raised by the Respondent (**Annexure C-2**)

for Rs 4,74,266/- later revised to Rs 2,71,009/- on 31.01.2024 (**Annexure C-3**) and demand notice dated 04.06.2024 (**Annexure C-4**) for Rs 3,78,027/- which are upheld to the extent as discussed in paras supra. Forum holds and concludes that the Complainant is entitled to benefit of Temporary Contract Demand of 295 kVA from 01.03.2020 to 31.03.2020 and of 148 kVA from 05.09.2020 to 04.03.2021. Before and after these periods, the Complainant is liable to be billed on the basis of permanent Contract Demand of 350 kVA till the time the Complainant has not got its sanctioned or permanent contract demand revised or applied afresh for temporary contract demand;

- (59) In view of foregoing, Forum directs that in case the Respondent has received any amount that may have been paid by the Complainant for the period from 01.03.2020 to 31.03.2020 and from 05.09.2020 to 04.03.2021 against the impugned monetary demands, then the same shall be refunded / adjusted in the next electricity bill of the Complainant. Conversely, in view of foregoing discussion any amount if recoverable from the Complainant shall also be done in the next electricity bill of the Complainant;

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

Parties are left to bear their own costs.

Order is announced before the parties present today on 28.03.2025 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: 28.03.2025

Shimla:

**--Sd--
Vikas Gupta
(Member)**

**--Sd--
Tushar Gupta
(Chairperson)**

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 1414/202407/18

Date of Admission: - 20.07.2024

**Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member**

In ref:-

M/s Mahindra Holiday & Resorts,
India Ltd. Deon Chowk, Tehsil Kandaghat,
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, Kandaghat,
District Solan (H.P.)

Respondents

Final hearing:- 12.03.2025.

Counsels:-

Complainant 1. Miss Shalini Thakur, Advocate

Respondent 1. Sh. Rajesh Kashyap, Advocate

Date of Decision:- 28.03.2025

Notice

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

No. CGRF/Complaint No. 1414/202407/18

Dated:-

M/s Mahindra Holiday & Resorts,
India Ltd. Deon Chowk, Tehsil Kandaghat,
District Solan (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1414/202407/18

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

Respondents

The Certified copy of final order dated 28.03.2025 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.