

ORDER

Brief Facts Of The Case –

1. Complaint has been filed under regulation 16 and 17 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. In terms of Definitions in regulation 3 of this Regulation, the Complainant M/s Pawansons Enterprises, Parwanoo, Distt Solan is -- “an applicant for the supply of electricity”;
2. The Complainant had purchased an Industrial unit through e-auction under the Insolvency and Bankruptcy Code 2016. The Industrial Unit was previously owned by M/s Samtel Electronics Ltd who was a consumer of the Respondent HPSEBL.
3. Annexed with the complaint is ‘**Annexure C-1**’ which is an Order dated 04.07.2018 passed by the National Company law Tribunal, New Delhi, Principal Bench in the matter of Punjab National Bank Vs Samtel Colour and ors, for allowing application by Resolution Professional under section 33(2) of the Insolvency and Bankruptcy Code, 2016 and initiation of liquidation process of the Corporate Debtor being Samtel Colour.
4. The Complainant is aggrieved by the action of Respondent HPSEBL for not sanctioning and release of new service connection to the premises of the complainant pursuant to demand raised by the Respondent HPSEB Ltd. The Demand has been raised on the basis of provisions of HP Electricity Supply Code, 2009 being a statutory enactment by the HP Electricity Regulatory Commission inter-alia for the purpose of recovery of outstanding dues of previous consumer from the next owner/ occupier of the premises in this case being the complainant - applicant for a new connection for supply of electricity;
5. The complaint seeks relief mainly for grant of stay for deposit of the amount demanded by the Respondent and further to direct the Respondents to release the new service connection till the final decision of complaint.

Complainant-

Briefly the case of the complainant before the Forum is –

6. That the Complainant purchased the Industrial unit through e-auction from the Liquidator appointed by the Hon’ble National Company Law Tribunal, Principal Bench, New Delhi vide order Dated 04.07.2018 (**Annexed C-1**) under the Insolvency and Bankruptcy Code 2016;

7. That the Complainant is a consumer in a separate electricity supply connection which was applied in the month of December 2018 and was released by the Respondent under consumer ID 200007002241. After a gap of 5 months, the consumer had received bill No. 170000137608 dated 14.05.2019 for Rs. 6,57,400/- including the sundry amount of Rs. 653035/-pertaining to outstanding amount of previous consumer, which was set aside by this Forum vide its Order dated 13.07.2020 and amount deposited was ordered to be refunded;
8. That the Complainant has in respect of previous consumer of the premises also stated that the outstanding amount mentioned on Permanent Disconnection Order (or PDCO) No. 10019 in Book No. 01111 dated 01.02.2012 was Rs. 591346/- with Advance Consumption Deposit (or ACD) of Rs. 744125/-, and balance to be paid Rs. 89702/- (**Annexed C-3**). The amount of Rs. 563333/- was raised as Peak Load Exemption Charges against previous consumer in the month of March 2013 after a period of 13 months from the date of PDCO dated 01.02.2012 and after raising the final bill No. 57167 dated 10.02.2012 for Rs. 8,19,246/- (**Annexed C-4**) for the period from 04/2006 to 06/2012;
9. That the Respondents had filed a civil suit No. 22/2015 in the court of Ld. Civil Judge (Senior Division) Kasauli- for the recovery of outstanding dues against the previous consumer i.e. Samtel Electron Devices Limited, which was dismissed by the Hon'ble Ld Court on 26.10.2021.
10. That the Respondent No. 2 had on 27.12.2019 received a letter from the Liquidator appointed by the Hon'ble National Company Law Tribunal, Principal Bench New Delhi in reference to emailed letter No. HPSEB/PED/WS Genl/2018-19-4595-99 dated 07.09.2018 as subject: Filing of Claim FORM-C against any pending dues of Samtel Colour Limited- In Liquidation. (**Annexed C-6**);
11. That the Respondent No. 3 (Sr. Executive Engineer, ED, Parwanoo) in reply to ibid letter dated 27.12.2019 from the liquidator has filed the claim FORM-C with the Liquidator in the matter of Samtel Color Limited appointed by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi vide letter No. PED/WS-M/s Samtel Color Ltd. /19-20-8161 dated 20.01.2020 (**Annexed C-7**);
12. That the Complainant has again applied for new industrial connection for supply of electricity vide online application No 1001387194 dated 28.01.2022 in respect of which Demand Notice dated 02.02.2022 (**Annexure C-2**), for payment of Rs

- 6,53,035/- as outstanding amount of M/s Samtel Electronics Devices Private Ltd, was issued by the Respondent HPSEBL;
13. That the Complainant is mainly aggrieved by the action of Respondent HPSEBL for not sanctioning and release of ibid new service connection to the premises of the complainant and by wrongly raising of demand vide ibid Demand Notice;
14. That the Para 5.2.14 of Supply Code 2009 states that -- *Once the final bill is raised, the licensee will not have the right to recover any other charge(s), other than those in the final bill for any period prior to the date of such bill except amount due on account of under billing or fraud, or unauthorized use of electricity by the consumer which could not be detected at the time of the special reading.*
15. In the matter the Complainant has relied upon the provisions of section 33(5) and provisions of inserted new section 32-A of Insolvency and Bankruptcy Code, 2016 and upon decision of the National Company Law Tribunal, Allahabad Bench, dated 21.08.2018 passed in Company Petition No. (IB) 23/ ALD/ 2017 and upon Hon'ble Supreme Court of India Judgement dated 09.11.2012 passed in Civil Appeal No. 7899 of 2012 Judgement dated 27.07.2017 passed in Civil Appeal No 1918 of 2016;
16. In the Rejoinder, the Complainant in respect of raising of outstanding amount of the previous consumer M/s Samtel, has cited the scope of 'limitation' per the Supply Code, 2009, the Electricity Act, 2003 and interpretations rendered by Hon'ble Apex Court as well as that of Hon'ble Punjab and Haryana High Court i.e limitation provision in section 56(2) of the Electricity Act, 2003.
17. The Complainant is aggrieved by the action of Respondent HPSEBL for not sanctioning and release of new service connection to the premises of the complainant pursuant to demand raised by the Respondent HPSEB Ltd;
18. The complaint seeks relief mainly for grant of stay for deposit of the amount demanded by the Respondent and further to direct the Respondents to release the new service connection till the final decision of complaint.

Respondent -

Briefly, the Reply by the Respondent HPSEBL is--

19. That the actions of Respondents are with-in the provisions of law. The earlier connection released to the Complainant was of temporary nature covered under

- provision of code 3.3.1 of the Supply Code, 2009 for 'Temporary Supply' while the new Industrial connection being applied for now is a permanent one;
20. That new connection now applied by the Complainant is the Small Industrial Power Supply (SIP), for which a new Application and Agreement (A&A) is required to be executed and submitted by the Complainant in terms of the provisions of the HP Electricity Supply Code, 2009. Pursuant to the request of the Complainant for the release of new Industrial connection, a Demand Letter No 1754-56 dated 02.02.2022 (Annexure C-2) was issued to Complainant under code 3.1.4 of the HP Electricity Supply Code, 2009 and under amended code 5.2.13 read with inserted new sub-para 5.2.13A of the HP Electricity Supply Code (Fourth Amendment) Regulations, 2020, which provide for the recovery of the outstanding of the previous consumer from the new owner/occupier of premises. The Respondent Board in its demand letter Annexure C-2 has also clearly mentioned that if claimed amount is matured/ paid by Ld. Liquidator / NCLT then the same will be refunded / adjusted in the energy bills of the Complainant;
21. That the Respondents admits the fact that a claim dated 20.01.2020 (**Annexure C-7**) has been filed under the Insolvency and Bankruptcy Code, 2016, but there is no likelihood of recovering of the ibid outstanding amount of the Respondents. The Regulations which have been made by the Electricity Regulatory Commission are in the form of law and Respondents are bound to implement the same in their letter and spirit;
22. That the case law / judgements cited by the Complainant do not have any bearing on the present matter and that every case has to be decided in its circumstances of the case. In the present case, since amended regulation of sub Para '5.2.13 A' provide for the recovery of dues of previous consumer from the next owner/occupier, the ratio of the decisions quoted by the Complainant are not applicable.

Forum -

23. We have heard the parties at length and gone through the relevant provision of Supply Code, 2009 along with the latest amendment, record and case law etc. produced by the parties during the course of hearings. We have also examined the relevant provision of Electricity Act, 2003, Insolvency and Bankruptcy Code 2016 and the pleadings of the parties;

24. In this complaint, this Forum finds that the facts / issues raised by the Complainant with regard to his being a consumer in another electricity supply connection applied / availed in December 2018, is not a subject matter of dispute here and neither is this previous connection a reason for grievance of the Complainant and accordingly this Forum observes that the facts / issues with regard to this previous connection of the Complainant is of extraneous nature raised by the Complainant and therefore this Forum restricts its findings only to the new electricity supply connection applied in January 2022 but not granted by the Respondent and where the Respondent has raised Demand Notice dated 02.02.2022 (**Annexure C-2**), for payment of Rs 6,53,035/- and in respect of which only, the Complainant has sought relief;
25. In this complaint, this Forum also finds that the previous consumer / owner of the premises being M/s Samtel is not a party. M/s Samtel being a Corporate Debtor before the Liquidator, provisions of Insolvency and Bankruptcy Code 2016 are applicable only to him as a Corporate Debtor and not to the Complainant for the reason that the Complainant has merely purchased the Industrial unit through e-auction and has approached the Respondents for electricity supply connection in respect of which provisions of the Electricity Act, 2003 are specifically applicable. Issues / facts of previous consumer's electricity supply connection such as that of permanent disconnection, temporary disconnection, reconnection, reading, billing, Advance Consumption Deposit (ACD) or Security Deposit, payments, defaults, claims of Respondent before the Liquidator against Corporate Debtor M/s Samtel etc or for that reason any matter pertaining to the previous consumer, as have been raised by the Complainant including the issue of limitation contained provided in section 56(2) of the Electricity Act, 2003, are therefore observed by this Forum as also being of extraneous nature and case specific only to previous consumer and not to the Complainant and therefore this Forum declines to entertain any submissions or arguments on extraneous grounds;
26. The Complainant had purchased the Industrial unit through e-auction and had applied for electricity supply connection(s). For matters related with grant of new connection(s), the Electricity Act, 2003 and Regulations and Rules framed there-under alone prevail and are accordingly addressed here;
27. The provisions of sub-para 5.2.13 of HP Electricity Supply Code, 2009 as relied upon by the Complainant stand amended by the HP Electricity Regulatory Commission on

3rd July, 2020 by way of HP Electricity Supply Code (Fourth Amendment) Regulations, 2020 which reads as –

Quote

4. Amendment of sub-para 5.2.13.- In sub-para 5.2.13 of the said Code –

(i) the sentence „The licensee will not be entitled to require payments of such amount from the next occupier of the premises.” occurring at the end shall be omitted; and

(ii) the following new sub-para 5.2.13 A shall be inserted, namely:-

“5.2.13 A The licensee will also be entitled to recover, in addition to the charges recoverable by it under the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and any other relevant regulations for providing connection and supply, the outstanding amount against the previous consumer from the next owner/occupier of the premises subject to a maximum limit of the amount equal to the average billing for two months worked out on the average for past twelve months immediately prior to the temporary disconnection of the previous consumer:

Provided that in case the connection/supply is sought to be released in the name of the original consumer or owner or their legal heirs, the entire outstanding amount shall be recovered before release of new connection or release of supply for the premises:

Provided further that the amount to be recovered on this account shall not exceed the total updated outstanding amount, including the interest after permanent disconnection, but after adjustment of the security deposit of the previous consumer: Provided further that the Licensee shall recover the balance outstanding amount, if any, after adjustment of the amount recovered from the new occupier, through any other means available to it:

Provided further that in case the connection is released after recovery of earlier dues from the new applicant /consumer and the licensee, after resorting to appropriate remedies, recovers the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount so recovered shall be adjusted against the expenses incurred to recover such dues as well as the balance outstanding dues against the original consumer, not recovered from the new consumer, and the balance if any after such adjustment shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered:

Provided further that in cases where the new consumer avails the relief in the infrastructure development charges payable by it as per the special provisions of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 whereunder the payment of entire outstanding dues is a precondition, the provisions of this sub-para shall not be applicable and in such cases the relevant provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 shall have overriding effect.”

Un-Quote

28. The regulations which have been framed by the Electricity Regulatory Commission under the Electricity Act, 2003 are binding in nature and Respondents are bound to

implement the same. Since the provisions of the amended regulations 'sub para 5.2.13-A' of the HP Electricity Supply Code, 2009 provide for recovery of the outstanding amounts against the previous consumer from the next owner/ occupier of the premises, this Forum finds that the Respondent is within its Rights to demand the outstanding dues of previous consumer however, strictly in accordance with the prevailing statute / Act/ Rules / Regulations from the applicant Complainant here-in being the next occupier/ owner of premises. Accordingly, the Complainant being the next occupier/ owner of premises is liable to make the payment of this demand;

29. This Forum is also of the view that case law/ judgements cited by the complainant in support of the complaint do not have any bearing on the present matter. It is settled principle that each and every case has to be decided on its own facts & circumstances unless squarely covered by settled law on the matter. In the present case, since statute being the amended regulation of sub-para 5.2.13A of the HP Electricity Supply Code, 2009, provides for the recovery of the outstanding amount against the previous consumer from the next occupier, thus, the decisions referred by the Complainant, cannot be made squarely applicable to the present case, where regulations allows such recovery. However, a detailed reading of these judgements does reveal that the ratio is inherent there-in that where prevailing statute does provide for recovery of amounts of the nature *ibid*, the recovery could be made. It is therefore understandable that at the time of the Temporary connection applied in the year 2018 by the Complainant, the prevailing statute did not provide for such Recovery and in the instant case where-in permanent connection has been applied for, statute has been amended and now it does provide for such recovery;
30. In view of foregoing, the present Complaint is found devoid of substance and merits. The Complaint is decided on merits and is disallowed and dismissed on aforesaid terms;
31. At the same time, this Forum directs the Respondent(s) that on receipt of amount of outstanding dues of the previous owner from Complainant, to be demanded strictly in accordance with the prevailing Regulations / the HP Electricity Supply Code, 2009 and amendments thereto, the Respondent Board shall release new service connection to the applicant for electricity supply connection / complainant here-in, in accordance with extant Regulations, Supply Code, 2009 as amended from time to time. This Forum also directs that the demanded amount of outstanding against previous consumer as may be paid by the complainant in excess of that provided in Regulations

/ the HP Electricity Supply Code, 2009, shall be refunded to the Complainant, as and when the claim filed by the Respondents is matured / received from the Liquidator as also stated by Respondent in its Reply and as also undertaken in the demand letter 'Annexure C-2';

Order reserved is released before the parties present today on 28.06.2022 in open Forum.

Certified copies of this Order be supplied to the parties.

The original case file be consigned to record room along with this Order, for safe custody.

Dated:-28.06.2022

Place:- Shimla

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

**Sd/-
(Tushar Gupta)
Chairman**

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09
No. CGRF/Complaint No. . 1421/1/22/08

Complaint No.:- . 1421/1/22/08

Date of Admission:- 02.03.2022

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

In ref:-

M/s Pawan Sons Enterprises,
Plot No.6 Industrial Area,
Sector 2 Parwanoo

Complainant

V/s.

HPSEBL & Others.

Respondents

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

Respondents

Final hearing:-

28.06.2022

Present for:-

Complainant

1. Praveen Gupta, Representative

Respondent

1. Sh. Kamlesh Saklani, Law Officer

Date of Decision:-

28.06.2022

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. .1421/1/22/08

Dated:-

M/s Pawan Sons Enterprises,
Plot No.6 Industrial Area,
Sector 2 Parwanoo

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. . 1421/1/22/08

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

Respondents

The Certified copy of final order dated 28.06.2022, passed by the Hon'ble Forum in the aforesaid complaint is enclosed herewith for further necessary action at your end please.

DA:-As above.

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