CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 1421/1/23/04
Date of Admission: - 31.01.2023
Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member

In ref:-

M/s Ind-Sphix Precision Ltd.
1, Takshal Road, Kasauli Marg,
Parwanoo, Distt. Solan (HP). **Complainant**

V/s.

HPSEBL & Others.

Respondents

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

2. The Executive Engineer,
Electrical Division,
HPSEBL, Parwanoo, Distt. Solan (HP).

3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Parwanoo , Distt. Solan (HP). **Respondents**

Final hearing:-24.05.2023.

<u>Counsels:-</u>

Complainant 1. Sh. Lalit Sharma and Ashwani Sharma (Advocates)

Respondent 1. Sh. Anil Kumar God, Advocate

Date of Decision: -20.06.2023

Complaint No 1421/1/23/04

M/s Ind-Sphinx Precision Ltd
Vs
Himachal Pradesh State Electricity Board Ltd and Ors

BRIEF FACTS OF THE CASE –

(1) Complaint has been filed under regulations 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;

(2) The Complainant M/s Ind-Sphinx Precision Ltd, 1, Taksal Road, Kasauli Marg, Parwanoo, Himachal Pradesh 173220 bearing consumer ID 100012000667, is a Large Industrial Power Supply (LIPS – HT-Two Part) category consumer of the Respondent HPSEBL;

(3) In the year 2019, the Original or Permanent sanctioned Contract Demand of the Complainant was increased to 600 kVA. This has been stated on record by the Complainant;

(4) On 10th October, 2019, the Complainant submitted an application to the Respondent for temporary reduction of its Contract Demand (Temporary Contract Demand) to 500 kVA (Annexure C1), which was effected in December 2019;

(5) Accordingly, the electricity billing of the Complainant, up to December, 2019 in the respective financial year, was done by the Respondent on the basis of the ibid Permanent Contract Demand of 600 kVA. Thereafter, as stated on record by the Complainant, it was billed by the Respondent on the basis of the ibid Temporary Contract Demand of 500 kVA up to March 2020;

(6) The instant matter is regarding raising of monetary demand of Rs 1,35,000 /= by the Respondent HPSEBL to the Complainant vide Demand Notice dated 15.03.2021 **(Annexure C3)** further raised as sundry in Bill for month of April 2021 **(Annexure C4)**, and another monetary demand of Rs 2,70,000 /= vide Bill for the month of June 2022 **(Annexure C6)**, pursuant to HP Electricity Supply Code (Second Amendment) Regulations, 2018 which was notified on 31.07.2018 and which became effective from 01.04.2019 (here-in-after referred to as Supply Code 2nd Amendment, 2018 or Supply Code 2nd Amendment).

COMPLAINANT –

(7) The Complainant has argued on record that the Respondent was entitled to recover for six (6) months and that the 2nd Amendment to Supply Code only restricts the benefit to six months in a year but the amendment no-where states that there will be automatic switching of contract demand (in kVA or MVA) to level of sanctioned contract demand in the beginning of financial year and thus the Complainant was eligible for benefit of temporary reduction for the period 01.04.2020 to 30.09.2020 and thus no separate application was required;

(8) Had the Respondent raised the bill of April 2020 on the basis of sanctioned contract demand, the Complainant would have submitted fresh application for temporary reduction and taken benefit of six (6) months;

(9) The Complainant is aggrieved by the action of the Respondent to have recovered arrears of Rs 2,70,000/= in excess of six (6) months, i.e for full Twelve (12) months, while earlier charges of Rs 1,35,000/= were also for the same period, such action being against provisions of code 3.10 of Supply Code 2nd Amendment;

(10) The Complainant has sought relief in terms of quashing of Demand Notice and Sundry charges of Rs 2,70,000 /= in Annexure C-6-P1.

RESPONDENT –

(11) On the other hand, the Respondent HPSEBL in its Reply has submitted that the impugned monetary demand has been raised strictly in accordance with the Code 3.10 of Himachal Pradesh Electricity Supply Code 2009 and that the Forum has already decided similar issues in its previous Orders. In the 2nd Amendment, 2018 word "financial year" is used by the Hon'ble HPERC;

(12) That it is without any dispute that financial year is from 01st April to 31st March in each year;

(13) That 2nd Amendment to Supply Code was done by the Hon'ble HPERC after previous publication, calling objections from stake holders and after public hearing. The Amendment was duly published in the official gazette of Himachal Pradesh and thus Complainant cannot be allowed to claim ignorance;

(14) That the Complainant has completely misunderstood and misinterpreted the provisions of Code 3.10 of Supply Code 2009. The Complainant is not entitled to benefit of temporary reduction of Contract Demand for entire financial year 2020-21 and that from April, 2020 the Complainant was liable to be charged on the basis of sanctioned Permanent Contract Demand of 600 kVA;

(15) That the impugned action of the Respondent is valid and legal and therefore the complaint is liable to be dismissed.

ORDER

(16) 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;

(17) At the outset, this Forum finds that the only moot issue that has come up before it for determination, is whether the Complainant is or is not entitled to continued benefit of Temporary Contract Demand existing in a previous financial year into the subsequent financial year, for a period of six (6) months, without a fresh re-application?;

(18) The Forum, before proceeding with the grievance of the Complainant, considers it necessary and expedient to refer to certain 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-under:-

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

<u>Quote</u>

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."

Un-Quote

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

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."*

Un-Quote

(19) On examination of the HP Supply Code, 2009, the Forum finds that the concept of Temporary Contract Demand was first introduced by way of first (1st) amendment to Supply Code vide HP Electricity Supply Code (First Amendment) Regulations, 2014, notified by the HP Electricity Regulatory Commission on 11.06.2014. Thus, it becomes evident that before the notification of this amendment, the Contract Demand and its revisions were of Permanent nature;

(20) Before proceeding to determine the grievance raised by the Complainant, this Forum considers it pertinent to briefly delve into the working of the Contract Demand (in KVA/ or MVA)-

(21) It is apparent that the Contract Demand is a provision of the Electricity Supply Code and the Tariff Orders. It is a Demand (in KVA/ or MVA) contracted by the consumer at the time of its original application for connection, which is also subjected to permissible revisions during the life of the connection, 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 determining the Standard Supply Voltages at the time of connection, for billing of the consumer 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 also regulated in accordance with the provisions of the Supply Code. 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. 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;

(22) The Supply Code First (1^{st}) 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 First (1^{st}) amendment, 2014 provided for permissible

number of revisions in a year as two (2) with gap between successive revisions as three (3) months;

(23) The subsequent amendment of Supply Code (ie Supply Code 2nd Amendment) notified on 31.07.2018 introduced certain 'Provisos' to Code 3.10. The Provisos specifically provided for total period of Temporary contract demand (in KVA or MVA) as six (6) months in a 'Financial Year'. This 2nd amendment came into force from 01.04.2019;

(24) On further examination of the ibid Supply Code 2nd Amendment, the Forum finds that, in the said proviso / amendment to the ibid 'Temporary revision of contract demand', the word or expression 'financial year' is the key and is therefore of significance in context of the instant complaint. It is undisputed that the financial year 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 subsequently a fresh Temporary Contract Demand is re-applied afresh by the consumer. It thus becomes the right of the Complainant to decide the period of six (6) months in a financial year when the Complainant would temporarily (Temporary Contract Demand) desire a revision in its Contract Demand (kVA or MVA);

(25) Therefore, in our considered view, a consumer would be required to apply afresh for re-revision of his Temporary Contract Demand (in KVA or MVA) in any new financial year, else the previously existing Temporary Contract Demand (sanctioned or deemed sanctioned) shall automatically get dissolved and cease to remain effective and thus the last sanctioned

Permanent Contract Demand (in KVA or MVA) shall automatically stand and become effective;

(26) From the foregoing implications of express provisions of ‘Code 3.10 Temporary revision of contract demand’ (or Temporary Contract Demand) (in KVA or MVA) as prescribed in the Supply Code 2nd Amendment, 2018, this Forum holds and safely concludes that from 01.04.2019, i.e when the financial year starts or whenever any financial year starts, then 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 applied or reapplied after 01.04.2019 by the consumer. In absence of such application or 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;

(27) 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 or after the start of any financial year thereafter, if he 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 can be done or any monetary demand can be raised by the distribution

licensee. When concerned consumer does not apply afresh or does not revise his Contract Demand after 01.04.2019 or after the start of financial year, then any Temporary revision of Contract Demand or ‘Temporary Contract Demand’ (in KVA or MVA) existing before 01.04.2019 or in a previous financial year, such shall deem to get reset while sanctioned ‘Permanent Contract Demand’ (in KVA or MVA) shall stand 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 received from consumer and/or sanctioned 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;

(28) Now coming to the instant complaint, it is observed by this Forum that the Complainant had temporarily revised its Contract Demand to 500 kVA (Temporary Contract Demand) in the financial year 2019-20 and thereafter, it had failed to revise or apply afresh for the ‘Temporary Contract Demand’ (in KVA or MVA) even after the start of the new financial year 2020-21. Consequently, the Respondent HPSEBL raised the impugned monetary demand to the Complainant vide **Annexure C-3, Annexure C4 and Annexure C6** on account of Supply Code 2nd Amendment, 2018 for the complete financial year based on the Permanent Contract Demand as provided in the amended Supply Code 2nd Amendment. Therefore, the plea of the Complainant to this effect that the 2nd Amendment, 2018 allows benefit of Temporary Contract Demand of previous financial year for six (6) months in subsequent financial year, is wrong, far-fetched and not tenable in face of express provisions of the Supply Code 2nd Amendment ibid. The

contention of the Complainant is out-rightly rejected by the Forum as being grossly misplaced and wrong;

(29) In accordance with the Supply Code 2nd Amendment, the end of the financial year is signified by the date of 31st March of the year and this is not denied by the Complainant. 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 i.e 01st April, which is also not denied by the Complainant, the Complainant shall be expected to apply afresh for the Temporary Contract Demand (in KVA or MVA), if it so intends and desires. It is the choice of the Complainant to select the six (6) months of Temporary Contract Demand, either continuous or in the case of such being continual then its period and duration, in the respective financial year. In the instant complaint, the Complainant had failed to apply afresh for the 'Temporary Contract Demand' from 01.04.2020 onwards, ie the start of financial year 2020-21 and thus was liable to be billed on the basis of sanctioned Permanent Contract Demand from 01.04.2020 onwards;

(30) Therefore, it can be safely concluded by the Forum, that it is Complainant's own fault of not re-applying for a fresh 'Temporary Contract Demand beyond 01.04.2020 ie after the start of the financial year. Because the Complainant failed to re-apply afresh for Temporary Contract Demand beyond 01.04.2020 or after the start of the financial year thus, any benefit of six months as is being argued by the Complainant, cannot and shall also not become available to the Complainant. Thus the argument of the Complainant is found to be grossly misplaced and wrong;

(31) The Forum also finds the contention of Complainant as being argumentative that, had the Respondent raised bill for the month of April 2020 correctly on the basis of permanent contract demand, it would have taken corrective

measures in time. It is a settled proposition that ignorance of law is no excuse. The fact is undisputed that change of law through amendments is done after following due process. The instant 2nd Amendment, 2018 to Supply Code has been effected by the HPERC after inviting public/ objections etc from all stake holders. The said amendments after enactment were notified and published in official gazette for the knowledge of public/stake holders at large. It is safely presumed and expected that all stake holders / public including the Complainant are well aware of the said amendment. In the instant matter it is Complainant's own fault of not re-applying for a fresh 'Temporary Contract Demand beyond 01.04.2020 ie after the start of the financial year. The contention and plea of the Complainant to this effect is patently wrong, misplaced, naive, flimsy and devoid of any substance and not tenable in facts and circumstances narrated above and is accordingly rejected;

(32) The Forum finds that the Complainant has irrationally argued on untenable propositions and placed forth self-contradictory arguments that a six months period is allowed in a subsequent financial year by the Supply Code 2nd Amendment Regulations, 2018 notified on 31.07.2018, even without a fresh re-application on its part for the Temporary Contract Demand in the subsequent financial year;

(33) On the anvil of foregoing discussions, this Forum also does not find force in the arguments of the Complainant that benefit of Temporary Contract Demand (in kVA or MVA) of previous financial year can be continued into the next financial year and that there is no necessity for re-applying for the new Temporary Contract Demand in the subsequent Financial Year. From the foregoing discussions and express provisions of the Regulations, it is amply clear that on 01st April of a financial year, ie. at the start of the new

financial year, any Temporary Contract Demand of a previous year ceases to remain effective. The Complainant, if it had so desired, may have re-applied for a fresh Temporary Contract Demand in the subsequent financial year, which the Complainant failed to do. The absence of re-application for a fresh Temporary Contract Demand causes the Permanent sanctioned Contract Demand to become the basis for future billing of the Complainant by the Respondent, which has been done by the Respondent in accordance with the provisions of Supply Code 2nd Amendment. Thus, no fault is seen in the action of the Respondent to raise monetary demand in accordance with the Regulations / Code;

(34) This Forum also observes that the Complainant has failed to set-up the legal basis of his arguments in the complaint. The Complainant has at the same time misconceived and mis-appreciated the ibid Supply Code 2nd Amendment notified on 31.07.2018 to wrongly mean that it allows the benefit of six (6) of Temporary Contract Demand of a previous financial year to be continued in the subsequent financial year;

(35) It is evident from the observations made here-in-above, that the instant grievance pertains to non-re-application /non-revision of Contract Demand (in kVA or MVA) on Temporary basis i.e Temporary Reduction of Contract Demand, after 01.04.2020 by the Complainant. This resulted in Permanent Contract Demand (in kVA or MVA) automatically becoming the basis for raising of impugned monetary demand by the Respondent HPSEBL in accordance with the amended provisions of the Regulations / Code notified on 31.07.2018, effective 01.04.2019 by the Ld HP Electricity Regulatory Commission (or the HPERC);

(36) Monetary demands based upon Statutes, Regulations/ Codes notified by the HPERC and on Tariff Orders passed by the Ld HPERC, cannot be held to be

illegal. Thus, on this score alone the complaint deserves to be dismissed, being argumentative and without any legal basis, as it cannot be held that the Respondent wrongly applied the Regulations notified by the Ld HPERC;

(37) In view of the foregoing discussions, the Forum in unambiguous terms holds that the Complainant is not entitled to benefit of six (6) months as is being sought by it, for the sole reason that the Complainant had failed to re-apply for fresh Temporary Contract Demand ie revise it at the start of financial year 2020-21 or later as necessitated by the provision of Supply Code. The Forum does not find any illegality in the Demand Notice (Annexure C-3) nor in the Bills (Annexure C4 and Annexure C6) raised by the Respondent HPSEBL which this Forum finds as having been issued in terms of the amended provisions of the Supply Code, 2009 i.e Code 3.10 notified on 01.07.2018;

On aforesaid terms, the Demand Notice (Annexure C-3) for Rs 1,35,000/= further included as sundry in Bill dated 03.04.2021 (Annexure C4) and impugned Sundry of Rs 2,70,000/= included in Bill dated 01.06.2022 (Annexure C6-P1) raised by the Respondent HPSEBL, are held by this Forum to be legal and in accordance with the Supply Code notified by the HP Electricity Regulatory Commission. Further, Annexure C6-P2 clearly depicts the difference of amount to be recovered from the Complainant, which includes Rs 1,35,000/= that was previously recovered by the Respondent and thus Forum also does not find any infirmity in the ibid sundry of Rs 2,70,000/= in Annexure C6-P1. The ibid monetary demands are accordingly upheld. The complaint is accordingly decided on merits and is disposed as dismissed.

Parties are left to bear their own costs.

Order is announced before the parties present today on 20.06.2023 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: 20.06.2023
Shimla:

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

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1421/1/23/04 Dated:-

M/s Ind-Sphix Precision Ltd.
1, Takshal Road, Kasauli Marg,
Parwanoo, Distt. Solan (HP). **Complainant**

V/s.

HPSEBL & Others. **Respondents**

Complaint No. 1421/1/23/04

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Electrical Division,
HPSEBL, Parwanoo, Distt. Solan (HP).

3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Parwanoo , Distt. Solan (HP). **Respondents**

The Certified copy of final order dated 20.06.2023 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.