

Order

BRIEF FACTS OF THE CASE –

- (1) Complaint has been filed under regulation 17 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;
- (2) The Complainant M/s JB Rolling Mills Ltd, Village Kheri, Trilokpur Road, Kala Amb, is a consumer of the Respondent HPSEBL, bearing consumer ID 100012002351. Complainant is a Large Industrial Power Supply (LIPS – EHT) category consumer with existing Connected load of 47336.31 kW and currently availing Contract Demand of 47475 KVA at supply voltage of 132 kV;
- (3) The instant matter is with regard to recovery by the Respondent of the expansion rebates amounting to Rs 7,76,10,713/=, which were allowed to the Complainant previously in the energy bills for the period August 2020 to December 2021 in pursuance to Ld HP Electricity Regulatory Commission (HPERC) Tariff Order dated 06.06.2020. This ibid recovery amount was later amended to Rs 9,20,46,325/=for period upto August 2022 of energy bills, instead of December 2021. Subsequently the Respondent raised the ibid amount by way of sundry and arrears in future bills while not granting further benefit of this rebate.

COMPLAINANT –

- (4) The Complainant Company has submitted that M/s Aditya Industries was taken over by the Complainant Company and their loads clubbed in terms of Director Industries, Shimla, letter dated 18.10.2014 (**Annexure C-2**). On clubbing of the loads, the connected load of Complainant Company stood as 24475 kW and the Contract Demand as 24975 kVA;
- (5) The Complainant Company herein, had earlier also filed complaint bearing No 1515/3/22/24 before this Forum laying challenge to bill dated 12.07.2022, which was rejected by the Forum vide its Order dated 29.07.2022 (**Annexure C-22**) on grounds of matter also being under adjudication in CWP 4275 of 2022 before the Hon'ble High Court. Subsequently, the Complainant herein represented before the Ld Ombudsman against the ibid Order dated 29.07.2022 of the Forum. During the concurrency of the Representation, the Complainant withdrew the ibid writ petition on 16.08.2022 and the Ld Ombudsman thereafter disposed of the representation vide its Orders on 03.11.2022 (**Annexure C-23**) with liberty to Complainant to approach the Forum;
- (6) Vide another earlier Order dated 08.05.2018 (**Annexure C-4**), the Forum had also dismissed a complaint No 1515/3/17/052 filed before it, which was in terms of treating of additional Contract Demand of 4000kVA. This Order of the Forum dated 08.05.2018 was subsequently assailed by the Complainant before the Ld Ombudsman. The Order passed by the Ld Ombudsman on

23.07.2018 was subsequently assailed by the Respondent HPSEBL in CWP 1136 of 2019 before the Hon'ble High Court;

- (7) The Complainant in the instant complaint is aggrieved by the act of the respondent to deny to it the expansion rebate on the increase in Contract Demands from time-to-time, which the Ld HPERC has allowed in Tariff Order dated 06.06.2020;
- (8) At the time of notification of the ibid Tariff Order, the Complainant's Contract Demand was 18475 kVA which had been reduced from 29475 kVA in terms of Respondent's Office Order dated 06.05.2020 (**Annexure C-7**);
- (9) The Complainant has laid challenge to Demand Notice dated 07.06.2022 (**Annexure C-16 and Annexure R-4**) raised by the Respondent HPSEBL towards recovery of excess expansion rebate allowed to the Complainant in the energy bills for the period August 2020 to December 2021 for an amount of Rs 7,76,10,713=;
- (10) This ibid recovery amount was later amended by another Demand Notice dated 08.06.2022 and 29.08.2022 (**Annexure C-18 and Annexure R-5**) for period of energy bills upto August 2022, instead of December 2021 to Rs 9,20,46,325/=. This recovery, accordingly became part of the future bills as sundry / arrears;
- (11) The challenge to the ibid Demand Notices is mainly on grounds that Complainant is entitled to the expansion rebates which the Ld HPERC has allowed in Tariff Order dated 06.06.2020 on the additional Contract Demands (in kVA) released from time to time by the Respondent HPSEBL;
- (12) In bill dated 12.07.2022 and also in later bills, further expansion rebate has been denied to the Complainant. Complainant's challenge to these bills is also on grounds that it is entitled to the

expansion rebate against the additional Contract Demand released in its favour and in these bills also the expansion rebate has been denied by the Respondent HPSEBL;

- (13) The Complainant has sought relief in terms of setting aside the ibid Demand Notices and for the restoration of the expansion rebates pursuant to Ld HPERC Tariff Order dated 06.06.2020 on grounds of time to time release of Contract Demands by the Respondent HPSEBL;
- (14) In its Rejoinder, the Complainant has mainly replied that - the dispute raised in the present complaint is not for the interpretation of the Tariff Order but for its implementation. Further, the Complainant, with regard to a clarification issued by way of letter by the Executive Director Tariff, HPERC on 25.11.2021 (**Annexure R-1**), which has been brought on record by the Respondent in its Reply, has disputed this clarification as merely being a communication inter-se Chief Engineer (Commercial) HPSEBL and the Executive Director Tariff, HPERC and thus not being a pronouncement of Order by the Ld HPERC and that the same has no binding force.

RESPONDENT

On the other hand, the Respondent HPSEBL has mainly contended the complaint on grounds that -

- (15) Question of whether the Complainant is eligible for expansion rebate or not, is a matter of Tariff interpretation and that the Respondent after receiving clarification on eligibility of expansion rebate by the Complainant from the Ld HPERC Executive Director

Tariff, HPERC on 25.11.2021 (**Annexure R-1**), has acted accordingly;

- (16) Further, the Complainant was already availing Contract Demand of 29445 kVA before the notification of the Tariff Order dated 06.06.2020, which was reduced to 18475 kVA on 06.05.2020 (**Annexure C-7**) and thus there is no expansion and therefore the Complainant is not entitled to expansion rebate provided in the Tariff Order;
- (17) Thus, the complaint is liable to be dismissed.

FORUM

- (18) This 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, the Relevant Tariff Order notified by the Ld HPERC on 06.06.2020, 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 analysing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
- (19) At the outset the Forum observes in the matter that, after the Order was reserved by the Forum, the Complainant, by way of a

Miscellaneous Application, placed on record the letters dated 01.07.2020 and 30.03.2021 from Member Secretary, Department of Industries, Single Window Clearance Kala Amb, Sirmaur, addressed to the Complainant;

- (20) From examination of the complaint, the Forum finds that Department of Industries is not a party in the instant complaint and the ibid communications from the Industries Department are inter-se Complainant and the Member Secretary Industries Department, Kala Amb and not the Respondent. Further, these communications also conflict with the fact that the Complainant was already availing Contract Demand of 29445 kVA before the notification of the Tariff Order dated 06.06.2020, which was reduced to 18475 kVA on 06.05.2020 (Annexure C-7). Furthermore, as per the Tariff Order dated 06.06.2020 passed by the Ld HPERC, communications of such or similar nature have no-where been prescribed or made binding on the Respondent HPSEBL in order to determine industrial expansion and therefore the cause and context of these communications cannot also be ascertained from therein, by the Forum. The Forum therefore rejects the ibid Application;
- (21) In the matter on the eligibility of expansion rebate to the Complainant, the Respondent may have acted accordingly after receiving clarification dated 25.11.2021 (Annexure R-1) from the Ld HPERC Executive Director Tariff, HPERC. Thus the action of the Respondent HPSEBL in pursuance to Annexure R-1 cannot be held to be wrong. However, the Forum in the present facts and circumstances is inclined to accept the contention of the Complainant that clarification given by Executive Director (Tariff) vide letter dated 25.11.2021 (Annexure R-1) is communication

inter-se Chief Engineer (Commercial) HPSEBL and the Executive Director Tariff, HPERC. Thus it cannot be termed as a pronouncement of Order by the Ld HPERC and therefore the same has no binding force. The Forum holds that while this communication may be of relevance to the Respondent, it certainly cannot give effect to the Tariff Order notified under the relevant HPERC Tariff Regulations, for the purpose of conclusively determining this complaint;

- (22) In the instant complaint, the Forum finds that the main issue arising for determination by the Forum is ‘whether Complainant is entitled to expansion rebate pursuant to Tariff Order dated 06.06.2020 notified by the Ld HPERC on grounds that it had increased the Contract Demand (kVA) from time to time, or not’;
- (23) The issue raised by the Complainant can be settled by merely determining the question of ‘expansion’ vis-à-vis the definition of Contract Demand given in the Supply Code, as shall be applied to the expansion rebate provided in the Tariff Order –
- (24) Consequently, before proceeding with the *ibid* issue that has come up for determination in the instant complaint, Forum considers it necessary and expedient to refer to the definition of ‘Contract Demand’ given in the HP Electricity Supply Code, 2009 enacted by the HP Electricity Regulatory Commission (or the HPERC) and notified on 26th May, 2009 and also the relevant provisions with regard to expansion rebate in Tariff Order notified by the Ld HPERC on 06.06.2021. For the sake of clarity, relevant extracts of these are reproduced here-in-under:-

(A) Tariff Order dated 06.06.2020 (effective 01.06.2020) :

Quote

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SCHEDULE - LARGE INDUSTRIAL POWER SUPPLY (LIPS)

1. *Applicability*

This schedule is applicable to all other industrial power consumers with contract demand exceeding 100 kVA including the Information Technology industry (limited only to IT parks recognized by the State/Central Govt.) and not covered by schedule "IDWPS".

2. *Character of Service: Applicable as per provisions under Part – II.*

3. *Two Part Tariff*

a) Fixed Charge (Charges-1)

Description	Fixed Charge (Rs/month)
<i>EHT</i>	<i>Nil</i>
<i>HT-1 (Contract Demand up to and including 1MVA)</i>	<i>Nil</i>
<i>HT-2 (Contract Demand above 1 MVA)</i>	<i>Nil</i>

b) Energy charge (Charges-2)

Description	Energy Charge (Rs./kVAh)
<i>EHT*</i>	
<i>220 kV and above</i>	<i>4.20</i>
<i>132 kV</i>	<i>4.25</i>
<i>66 kV</i>	<i>4.30</i>
<i>HT-1* (Contract Demand up to and including 1MVA)</i>	<i>4.60</i>
<i>HT-2* (Contract Demand above 1 MVA)</i>	<i>4.35</i>

***Note:**

- For new industries coming into production after 01.06.2020, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of 3 years.*
- For existing industries which have undergone expansion in the FY 2018-19 onwards and/or shall be undergoing expansion in this financial year i.e. FY2020-21, energy charges shall be 10% lower than the approved energy charges corresponding to the respective category for a period of three years for quantum of energy consumption corresponding to proportionate increase in contract demand.
Provided that such expansion if undertaken during 1.07.2019 to 31.05.2020, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years for*

quantum of energy consumption corresponding to proportionate increase in contract demand.

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Un-Quote

(B) HP Electricity Supply Code Notified on 26.05.2009 by the HPERC :

Quote

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1.2.15 “contract demand” expressed in kVA units means the maximum demand contracted by the consumer in the agreement with the licensee and in absence of such contract, the contract demand shall be determined in accordance with the Tariff Order;

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.....

Un-Quote

- (25) From bare perusal of ibid provision of Tariff Order on ‘expansion in existing industry’, it becomes clear that expansion by an Industry has to be undertaken in FY 2018-19 (ie 01.04.2018 onwards) or later, for being eligible for expansion rebate for 3 years in terms of HPERC Tariff Order dated 06.06.2020. The ibid rebate for expansion is then to be determined or calculated at specified rate on approved energy charges for the energy consumption corresponding to proportionate increase in Contract Demand (in kVA);
- (26) From the ibid definition of Contract Demand (in kVA) it becomes clear that Contract Demand is a demand contracted or agreed between the consumer and the licensee. In the practical application of the Contract Demand (kVA) and in accordance with the Tariff Orders, the actual Maximum Demand (in kVA) recorded on the

meter for the purpose of billing the consumer, is evaluated vis-à-vis this Contract Demand (kVA);

- (27) Therefore, Contract Demand (in KVA) when read in conjunction with the provision of rebate on expansion given in the Tariff Order dated 06.06.2020, it further becomes clear that Contract Demand is to be applied only to determine or calculate the proportionate increase in energy consumption after the condition of expansion in FY 2018-19 or after, has been met;
- (28) The Forum further finds that the *ibid* Tariff Order dated 06.06.2020 does not define the word or expression 'expansion' and neither does it provide for its treatment. It is a known fact that the word 'expansion' implies physical increase of factors such as size, number, importance etc. What constitutes expansion in industry, like whether industries merging/splitting or industries undergoing increase/decrease in production or industries increasing/decreasing capital/manpower with or without increase in capacity or the point of start/end of infusion of capital or some yardstick by the Respondent's technical parameters/standards, has not been laid out in the Tariff Order to assess the fact, quantum and effective time of expansion;
- (29) In view of foregoing discussion, the Forum concludes that while expansion of industry is a physical outcome, the Contract Demand (kVA) is a contractual obligation. Thus the Contract Demand (kVA) or its increase or decrease does not imply expansion or contraction of Industry and it is to be applied in the context of expansions as provided in Tariff Order dated 06.06.2020 only for the limited purpose of calculating the proportionate increase in energy consumption so as to determine the applicable rebate.

However, before this Contract Demand is applied, Expansion will still have to be verified and established in clear unambiguous terms by the Respondent HPSEBL to extend the benefits of ibid rebate;

- (30) From examination of the complaint, the Forum finds that the Complainant has not proven the requisite expansion duly verified by the Respondent who has to give effect to the Tariff Order notified by the Ld HPERC. The Complainant has largely based its contention of expansion on the assumption and argument of increase or decrease of Contract Demand (in kVA). This assumption and argument of Complainant is flawed and is neither in tune with the extant provisions of the Regulations nor the Tariff Order dated 06.06.2020. Thus, the Forum is constrained to reject the assumption and argument of the Complainant that increase or decrease of Contract Demand (in kVA) implies expansion or contraction of industry. As discussed by the Forum in paras supra, such assumption and argument of the Complainant is neither tenable nor valid;
- (31) In view of foregoing observations, the Forum also does not find merit in the argument of the Complainant that because the Complainant has increased its Contract Demand (in kVA) from time to time, therefore this is expansion and therefore Complainant is eligible for expansion rebate as allowed to industries in the ibid HPERC Tariff Order dated 06.06.2020. The Forum is thus constrained to also reject this argument as well as not being tenable. It is reiterated that Contract Demand is of contractual nature and is to be applied only to determine the eligible rebate based on increase in energy consumption proportionate to the said Contract Demand (in kVA);

- (32) In view of the observations made here-in-above, the Forum does not find merit in the complaint. There are no plausible reasons or grounds that have been made out by the Complainant, to enable this Forum to interfere with the action of the Respondent to raise monetary demands by way of impugned Notice dated 07.06.2022 (Annexure C-16 / Annexure R-4), impugned electricity Bill dated 25.06.2022 (Annexure C-19) and impugned electricity Bill 12.07.2022 (Annexure C-20) and the future electricity bills with or without rebate as specified in the Tariff Order dated 06.06.2020 notified by the Ld HP Electricity Regulatory Commission;
- (33) Thus the ibid impugned Notice (Annexure C-16/ Annexure R-4), impugned electricity Bill dated 25.06.2022 (Annexure C-19) and impugned electricity Bill 12.07.2022 (Annexure C-20) and the impugned future bills raised by the Respondent HPSEBL are accordingly upheld.

On aforesaid terms, the instant complaint filed by M/s JB Rolling Mills Ltd is decided on merits, in favour of the Respondents HPSEBL and against the Complainant and is accordingly dismissed.

Parties are left to bear their own costs.

Order reserved on 15.02.2023 is announced today on 03.03.2023 in open Forum at Shimla, before the parties present.

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:-03.03.2023

Place:- Shimla

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

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

**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI,
SHIMLA-09**

No. CGRF/Complaint No. 1515/4/22/31

Complaint No.: - 1515/4/22/31

Date of Admission: - 30.11.2022

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

In ref:-

M/s J.B. Rolling Mills Ltd.
Village Kheri, Trilokpur Road,
Kala Amb, Tehsil Nahan,
Districts Sirmour (HP)

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. Executive Engineer,
Electrical Division, HPSEBL,
Nahan, Distt. Sirmour (HP).
3. Assistant Engineer,
Electrical Sub-Division Kala Amb,
HPSEBL, Nahan,
District Sirmour (H.P.)

Respondents

Final hearing:-03.03.2023

Counsels:-

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

Respondent 1. Sh. Kamlesh Saklani, Under Secretary Law.

Date of Decision: -03.03.2023

Notice

Registered
CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI
SHIMLA-171009.

No.CGRF/Complaint No. 1515/4/22/31

Dated:-

M/s J.B. Rolling Mills Ltd.
Village Kheri, Trilokpur Road,
Kala Amb, Tehsil Nahan,
Districts Sirmour (HP)

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1515/4/22/31

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. Executive Engineer,
Electrical Division, HPSEBL,
Nahan, Distt. Sirmour (HP).
3. Assistant Engineer,
Electrical Sub-Division Kala Amb,
HPSEBL, Nahan,
District Sirmour (H.P)

Respondents

The Certified copy of final order dated 03.03.2023, 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.