ORDER

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. The Complainant M/s BN Enterprises, Plot No 10, Industrial Area, Village Khadeen, Parwanoo, District Solan (HP), bearing consumer ID 100012000714 is a consumer of the Respondent HPSEBL;

(2) The Record shows that the Complainant is a Large Industrial Power Supply (LIPS – HT) category consumer availing supply at 11 kV with connected load of 280 kW.

(3) Per Complainant, he was released electricity supply connection in the year 2013 with ‘Permanent’ Contract Demand of 240 kVA. Subsequently, on an application by Complainant, the Complainant’s Contract Demand was revised on ‘Temporary’ basis to 150 kVA by the Respondent HPSEBL with effect from April 2015.

(4) Also, per Complainant, on an application submitted on 17.04.2021, the Complainant’s Contract Demand was revised on ‘Permanent’ basis to 150 kVA by the Respondent HPSEBL and this took effect some two months after the said Application i.e somewhere around June 2021 when codal formalities were stated to have been completed. The Complainant in his complaint has wrongly shown this Application to be placed at Annexure-C3 which is in fact a letter by the Respondent HPSEBL. This Forum cannot ascertain from record the specific dates and details of the stated revisions of Contract Demands;

(5) The Complainant is aggrieved by the action of the Respondent HPSEBL to issue Demand Notice for Rs 2,43,000/= vide No 9470 dated 08.03.2021 (Annexure-C1). This amount was later raised as sundry in the electricity bill dated 03.04.2021 (Annexure C-2) which (as stated by

the Complainant) was deposited under duress lest his power supply be disconnected. Vide another Demand Notice No 213-14 dated 09.05.2022 (Annexure C-5), the Respondent HPSEBL raised an additional amount of Rs 2,05,875/=. This Demand raised vide Notice dated 09.05.2022 was later corrected to Rs 1,41,750/= by the Respondent HPSEBL vide Demand Notice No 239-40 dated 12.05.2022 (Annexure C-6). The Total Amount Demanded by the Responded was accordingly Rs 3,84,750/=. Thereafter, the Complainant vide his letter dated 18.05.2022 (Annexure C-7) addressed to the Respondent, objected to the said Demands stating therein that the HP Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018 cannot be applied retrospectively and sought refunds of the amounts charged. Giving various arguments, the Complainant contends that the HP Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018 (here-in-after referred to as Supply Code 2nd Amendment, 2018 or Supply Code 2nd Amendment) is not applicable to him as he had revised / applied for Temporary Contract Demand (in kVA or MVA) before the enactment of ibid Supply Code 2nd Amendment, 2018. The Complainant has sought relief in terms of quashing of Demand Notices dated 08.03.2021 (Annexure C-1) and 12.05.2022 (Annexure C-6) for Rs 2,43,000/= and Rs 1,41,750/= respectively;

(6) On the other hand, the Respondent HPSEBL in its Reply has submitted that the monetary demand has rightly been raised which is in accordance with the Code 3.10 of Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018 which came into effect from 01.04.2019. The Complainant is trying to make hypothetical contentions / submissions contrary to the provisions of law. The Respondent further submitted that the Forum had previously decided a complaint on 24.07.2021 titled M/s Ambuja Cement Private

Limited versus HPSEBL in complaint No 1444/3/20/2009 wherein it was held that the consumer who had temporarily revised his Contract Demand prior to the year 2018 is liable to make payment of demand charges in terms of the ibid Supply Code 2nd Amendment and this decision was upheld by the Ld Electricity Ombudsman. Thus, the instant complaint is baseless, unfounded and devoid of any merit. The Respondent has also relied upon the judgment passed by the Hon'ble Constitution bench of the Apex Court in case titled PTC India Ltd versus Central Electricity Regulatory Commission (2010) 4 SCC 603 wherein the Apex Court has held that existing Contracts have to be aligned with the provisions of the Regulations. The Respondent has further argued that the ibid Supply Code 2nd Amendment, 2018 was notified by the Ld HP Electricity Regulatory Commission after following due process i.e receiving objections and suggestions from stake holders. However, this procedure has been impugned in the complaint and therefore same is liable to be dismissed.

FORUM

(7) This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the Ld 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;

(8) At the outset, this Forum observes that the Complainant has raised the instant complaint by merely reproducing certain provisions of the Supply Code amendments. The Complainant has argued that the ibid amendment no-where states that the consumers who were being billed on the Temporary Contract Demand prior to the notification of the ibid 2nd Amendment shall fall into the purview of the new mechanism. Complainant further argues that the ibid 2nd Amendment shall be applicable to the future Temporary Contract Demand and that he had sought Temporary reduction of Contract Demand in the year 2015. The Complainant has not clearly stated the legal basis of the complaint. The Complainant is merely alluding that the Supply Code 2nd Amendment notified on 31.07.2018 is not applicable to him as he had revised / applied for Temporary Contract Demand (in kVA or MVA) before the enactment of ibid Supply Code 2nd Amendment, 2018. It is from the Complainants letter addressed to the Respondent dated 18.05.2022 (Annexure C-7), where-in reference to retrospective application of ibid Supply Code amendment has been made by him, that this Forum is taking up 'Retrospective application of ibid 2nd Amendment' as the main issue for determination;

(9) This Forum, before proceeding with the issue(s) that have come up for determination in the instant complaint, considers it necessary and expedient to reproduce for clarity's sake, certain relevant amendments to the HP Electricity Supply Code, 2009 enacted by the Ld HP Electricity Regulatory Commission (or the HPERC). The ibid Supply Code, 2009 was notified by the Ld HPERC on 26th May, 2009. Later Amendments were carried out. Amendments pertinent in the instant matter with regard to 'Temporary' revision of Contract Demand, 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 where-in Code 3.10 was introduced. Thereafter, amendment to this Code 3.10 was done by the HPERC vide the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018. For the sake of convenience, 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, 2018dated 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

(10) Before proceeding to determine the issue(s) arising in the instant complaint, this Forum briefly delves into the working of the Contract Demand (in KVA/ or MVA). The Contract Demand is a provision of the Electricity Supply Code and the Tariff Orders and is a Demand (in KVA/ or MVA) contracted by the consumer at the time of his original application for connection which is also subjected to permissible revisions during the life of the connection, in accordance with 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 said revisions on the choice of the consumer may be of ‘Permanent’ or of ‘Temporary’ nature which are 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 and is applied towards the billing of the consumer or other matters as may be prescribed by way of HPERC Regulations / Supply Code. When the Supply Code regulates the revision of Contract demand, the respective consumer is required to keep a vigil on his consumption pattern by managing the peaks of his actual Demand (in KVA or MVA) while also keeping a vigil and managing / revising his Contract Demand from time-to-time so as to keep both in synchronization and consequently the optimization of its electricity bills;

(11) Vide Supply Code 1st Amendment dated 11.06.2014 conditions for Temporary revision of Contract Demand (in KVA or MVA) were first introduced by insertion of code 3.10 and this Code was later amended vide Supply Code amendment dated 31.07.2018 when certain Provisos were added. In respect of this ‘Temporary’ revision of Contract Demand, while the amendment notified on 11.06.2014 introducing therein code ‘3.10 Temporary revision of contract demand’ which provided for limits of revision, number of revisions in a year, gap between successive revisions etc, the later amendment dated 31.07.2018 introduced certain ‘Provisos’ into the ibid Code 3.10 which specifically provided for total period of 6 months of Temporary contract demand (in KVA or MVA) in a ‘Financial Year’. This 2nd amendment was made

effective from 01.04.2019. The key word here is the 'financial year'. The financial year starts from 01st of April and ends on 31st of March of every year. Accordingly, on 31st March of each financial year, the Temporary Contract Demand, as existing will 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, 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 a previously existing Temporary Contract Demand (sanctioned or deemed sanctioned) shall automatically get reset to the last sanctioned Permanent Contract Demand (in KVA or MVA);

(12) Therefore, from the foregoing implications of express provisions of 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 that after 01.04.2019, 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. In absence of such re-application, this monetary demand shall have to be based upon Permanent sanctioned Contract Demand. This process shall follow for each new financial year. In view of above observations, this Forum arrives at a logical conclusion that question of Retrospective application of Supply Code 2nd Amendment, 2018 by the Respondent HPSEBL shall arise only, if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity

consumption period/ electricity billing prior to 01.04.2019. Thus, no question of such retrospective application or effect of ibid Supply Code 2nd amendment, 2018 arises if a monetary demand is raised by the Respondent HPSEBL after 01.04.2019 for any electricity consumption period after 01.04.2019. This is based on the condition of 'financial year' contained in the amended provisions of Code 3.10 of the Supply Code, 2009 2nd Amendment, 2018 ibid. This Forum in the facts and circumstances of the case, safely sums up that any Temporary revision of Contract Demand that may have existed in the past before 01.04.2019 shall cease to remain effective beyond 01.04.2019 therefore, the Complainant shall have to apply afresh, if he so requires and in absence of such revision or re-application the only Contract Demand that survives is the Permanent Contract Demand (in kVA or MVA) on the basis of which further billing can be made or demand can be raised. When Complainant does not apply afresh or does not revise, any Temporary revision of Contract Demand (in KVA or MVA) sought before 01.04.2019, such shall deem 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 is received from consumer 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;

(13) Now coming to the instant complaint, it is observed by this Forum that the Complainant was allowed 'Temporary' revision of Contract Demand to 150 kVA in April 2015 and thereafter, it had not revised or applied afresh for this Temporary Contract Demand (in KVA or MVA) even after the enforcement of the Supply Code 2nd Amendment notified

on 31.07.2018. The Permanent reduction of Contract Demand was applied for by the Complainant and sanctioned by the Respondent HPSEBL to value of 150 kVA which appears to have been made only somewhere around June 2021 (fact not verifiable from record). Consequently, the Respondent HPSEBL raised the total monetary demand to the Complainant of Rs 3,84,750/= vide two Demand Notices placed on record (Annexure C-1, Annexure C-6) on account of Supply Code 2nd Amendment, 2018, only for those periods of electricity consumption occurring after 01.04.2019. This fact has not been denied by the Complainant. Therefore, the application of the amended provisions of the Supply Code, 2009, vide Supply Code 2nd Amendment, 2018, cannot be held to be applied retrospectively by the Respondent HPSEBL;

(14) This Forum also observes that the arguments extended by the Complainant in general with regard to Temporary Contract Demand, pertain to the conditions which are applicable within a financial year and not in terms of start of the financial year or its end. In fact, this Forum is of the considered view that the it is the arguments of the Complainant which have the net effect of the application of bid 2nd Amendment, 2018 becoming retrospective, which cannot be allowed by the Forum;

(15) The Complainant has also argued that the Respondent has tried to gain financially by remaining silent regarding the need for revision of the Contract Demand and no Notices for revision of Contract Demand were served upon the consumer by the Respondent and the 'Note' at the end of Code 3.10 of Supply Code, 2009 2nd Amendment, 2018 for the purpose of intimating the procedure to the field offices, was not followed. It is a settled position that ignorance of law is no excuse. The change of law through amendments is done after following due process

and after inviting objections etc from stake holders. After amendments enacted, the same is notified and published in official gazette for the knowledge of public/stake holders. This procedure of notification and publication has not been challenged by the Complainant. Thus, there is no requirement of any prior notice to raise monetary demand (in Rs) as per amended provisions of the Code as has been done in the present case. 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. The pleas of the Complainant are devoid of any substance and therefore not tenable on this count;

(16) The present complaint under adjudication, relates to the undeniable fact and circumstances where the Complainant has failed to keep vigil on the change in law. Onus of knowledge of statute or change in statute rests with both parties especially when the change is made public and its intimation to the consumer is not imperative upon the Respondent HPSEBL. There is also no requirement under the Supply Code with regard to prior intimation by the HPSEBL to the consumers of change in law. The Forum finds that due diligence to exercise vigil especially in respect of change in law affecting the consumer, has not been made by the consumer Complainant who ought to have appropriately revised its Contract Demand in pursuance to the Supply Code 2nd Amendment, 2018. Even the 'Note' at the end of Code 3.10 of the Supply Code 2nd Amendment, 2018 is in terms of issuing of detailed procedural instructions by the HPSEBL to only its field units and not to the consumers.

(17) However, the Complainant during the course of arguments admitted that the amended provisions of Code 3.10 of the Supply Code, 2009 2nd Amendment notified on 31.07.2018 with regard to the Temporary revision of Contract Demand, had not been applied by the Respondent

HPSEBL on the electricity consumption existing prior to 01.04.2019 which is evident from Annexure C-1, Annexure C-5 and Annexure C-6;

(18) It is evident from the observations made here-in-above that the instant complaint pertains to non-application /non-revision of contract demand (in kVA or MVA) on Temporary basis (Temporary Reduction of Contract Demand) after 01.04.2019 by the Complainant. This resulted in Permanent Contract Demand (in kVA or MVA) becoming the basis for raising of a net monetary demand by the Respondent HPSEBL on 08.03.2021 (Annexure C-1) and on 12.05.2022 (Annexure C-6) for Rs 2,43,000/= and Rs 1,41,750/= respectively. These Demands are for the consumptions done in the financial years after 01.04.2019 based on the Supply Code 2nd Amendment, 2018 notified on 31.07.2018. This Forum is not inclined to accept the arguments extended by the Complainant. `There is no force in the arguments of the Complainant that amended provisions of Code 3.10 of Supply Code 2nd Amendment, 2018 are not applicable to him and by making such applicable, it amounts to giving retrospective effect to the Supply Code 2nd Amendment, 2018. From the observations made above, it is established and held that the monetary demands (in Rs) have not been raised by the Respondent HPSEBL by way of retrospective application of or by giving retrospective effect to the amended Code 3.10 of Supply Code 2nd Amendment notified on 31.07.2018;

(19) After examining the material facts placed on record, provisions of the Supply Code 2009 and amendments made thereto, law / case laws etc and having heard the parties at length etc, this Forum finds the present complaint devoid of any substance and merits and rejects the same accordingly. Forum finds no fault with the impugned demand notices issued by the Respondent HPSEBL which have not been issued by giving retrospective effect to the amended provisions of code 3.10 of

Supply Code, 2009 vide 2nd Amendment notified on 01.07.2018 (effective 01.04.2019). Thus, no illegality can be found in the Demand Notices dated 08.03.2021 (Annexure C-1) and 12.05.2022 (Annexure C-6). This Forum finds no reason to interfere with the ibid Demand Notices issued by the Respondent HPSEBL which are in tune with the HP Electricity Supply Code, 2009 and amendments ibid made thereto. The present complaint is found to be argumentative and severely lacking in substance.

In the aforesaid terms, the complaint being devoid of substance and merits is rejected. The complaint is accordingly decided on merits against the Complainant and in favour of the Respondents HPSEBL and stand disposed of as dismissed.

Parties are left to bear their own costs.

Order is announced before the parties present today on 17.10.2022 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: 17.10.2022

Shimla:

Sd/-
Vikas Gupta
(Member)

Sd/-
Tushar Gupta
(Chairperson)

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09

No. CGRF/Complaint No. 1421/2/22/

Date of Admission: - 03.06.2022

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

In ref:-

M/s B.N. Enterprises,
Plot No.10, Industrial area,
Village Khadeen, Parwanoo,
District Solan (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, Parwanoo, Distt. Solan (HP).

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

Final hearing:- **30.09.2022**

Present for:-

Complainant 1. Sh. Rakesh Bansal, Authorized Representative

Respondent 1. Sh. Anil God, Advocate,

Date of Decision: - **17.10.2022**

Notice

Registered
CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.
No. CGRF/Complaint No1421/2/22/17 **Dated:-**

M/s B.N. Enterprises,
Plot No.10, Industrial area,
Village Khadeen, Parwanoo,
District Solan (HP). **Complainant**

V/s.

HPSEBL & Others. **Respondents**

Complaint No 1421/2/22/17

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

2. The Sr. Executive Engineer,
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 17.10.2022, 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.