CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9
No. CGRF/Complaint No. 1511/4/20/040 Dated:-

Complaint No.: - **1511/4/20/040**

Date of Admission: - **11.11.2020**

Quorum: - **Er. Suresh Kumar, Chairman.**

Er. Vikas Gupta, Member.

Sh. K.S Dhaulta, Member.

M/s Sun Pharmaceutical Industries Ltd.
Village Ganguwala, Paonta Sahib,
District Sirmaur, HP-173025. **Complainant**

V/s.

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

2. The Chief Engineer (ES),HPSEBL,
Hamirpur, Distt., Hamirpur (H.P)

3. The Chief Engineer (Comm.) HPSEBL,
Vidyut Bhawan Shimla – 4.

4. The Chief Engineer (OP) South, HPSEBL,
Vidydut Bhawan Shimla – 4.

5. The Addl. Superintending Engineer,
Electrical System Division HPSEBL,
Nahan Distt., Sirmaur (H.P). **Respondents**

6. The Sr. Executive Engineer,
Electrical Division HPSEBL,
Nahan Distt., Sirmaur (H.P)

Final hearing:- **22.06.2021**

Present for:-

Complainant 1. None.
Respondent 1. Sh. Anil Kumar God Advocate
2. Sh. Kamlesh Saklani Law officer

Date of Decision: - **22.06.21**

<u>Order</u>

1. Briefly stated main issue of controversy raised in the present complaint is allegedly wrong, illegal, unjustified and arbitrary acts of delay by respondents in making refund of Demand Charges of Rs. 1,62,06,000/- and with holding the payment of interest on Rs. 1,62,06,000/- deposited towards departmental charges w.e.f. 16.01.2013 to 29.07.2019 @ 15 % per annum. The complainant has made a specific prayer of directing the respondents to pay the interest amount covering said period.

2. Before adverting to the main issue of payment of interest on the amount deposited as departmental charges on its refund w.e.f. 16.01.2013 to 29.07.2019, as claimed by the complainant; it would be proper and just to go into the factual matrix of the case. The present complainant company (erstwhile M/s Ranbaxy Laboratories ltd.) is a limited company incorporated under the Companies Act. Its operations are at village Bangunala, Paonta Sabhib, Distt. Sirmour HP. The erstwhile Ranbaxy Laboratories Ltd. , now amalgamated with M/s Sun Pharmaceutical Industries Ltd. i.e. present complainant; had submitted its proposal for erection and construction of 132 KV S/C Transmission line on D/c Towers from Girinagar to Paonta Sahib and BainKuan to its premises at village Ganguwala, Paonta Sahib Distt. Sirmout HP.

3. The complainant submits that Chief Engineer, Transmission HPSEBL, Hamirpur had issued a demand notice Dated 23.04.2007 for the deposit of departmental charges of Rs. 1,62,06,000/-. The complainant deposited said demand amount on 29.05.2008 vide receipt placed on record as <u>Annexure C-2</u> on account of departmental charges represented establishment charges, tools and plant charges, audit of account charges, maintenance during construction, loss on stock design charges, H.O and Pro-rata charges etc. The complainant company got the survey also conducted in consultation with A.E ES Sub Division Gondpur, Paonta sahib.

4. The re-survey observed many hurdles & restrictions in feasibility of construction or erection of 132 KV Transmission line. More particularly in the fact situation that the Forest land was involved in the construction of 132 KV Transmission Line. Consequently the complainant company requested respondents for scrapping the proposal of construction of 132 KV Transmission line by various communication dated 16.01.2013 to 17.01.2014 annexed as Annexure C -7 with complaint.

5. The Complainant alleges that respondents have not incurred any expenses on establishment, tools and plant, audit on accounts, maintenance etc., as the construction work of proposed 132 KV line was not even initiated by complainant company due to constraints and corridor availability. The complainant alleges that respondents remained complacent or negligent towards the communication C3 to C7 for considerable period to

make refund of Rs. 1,62,06,000/- deposited towards Departmental Charges, for erection of proposed 132 KV Transmission line.

6. The Complainant again after a gap of about 5 years wrote a letter dated 15.01.2019 Annexure C-8 to Chief Engineer (Comm.), Chief Engineer (OP) South and Chief Engineer, ES, Hamirpur requesting for the refund of departmental charges along with applicable interest. It is further submitted that after a lapse of about 6-1/2 years from the date of 1st communication date 16.01.2013 for scrapping the proposal for erection of Transmission line, the respondent issued office order dated 29.07.2019, as thereby sanctioned / refund only Rs. 1,62,06,000/- in favour of complainant company. The same was ordered to be adjusted in future energy bills vide Annexure- C9 placed on record by complainant.

7. The Complainant alleges that respondents have surreptitiously withheld the payment of interest on the amount of Departmentally Charges; of Rs. 1,62,06,000/- within a reasonable time of 60 days or was 90 days. The respondents kept sleeping over the matter for more than six & half Years and used the huge amount of Rs. 1,62,06,000/- of the complainant company for this considerable period. Respondents with-held its refund without any just and reasonable cause. As such the same attracts interest @ 15 % per annum for the said period of six and half years.

8. The Complainant Company had written to respondents for refund of Rs. 1, 62, 06,000/- along with interest thereof vide communications annexed as Annexure: C-10 to 11. The respondents declined the request of refund of interest amount on Rs. 1,62,6,000/- vide communication annexed with complaint as Annexure C12 and C13; by wrongly construing the various provisions of HPERC (Recovery of Expenditure for supply of Electricity) Regulations, 2005 & 2012 and not appreciating the true spirit of provisions of said Regulations, the provisions of Supply Code and Interest Act 1978.

9. The Complainant refers to Para 5.7.3 of the Supply Code, 2009 and Electricity Supply Code (2nd Amendment) 2018: to support its claim for interest @ 15 % per annum. A reliance has also been placed on the second provision to Regulations 15 and 18 of HPERC (Recovery of Expenditure for supply of Electricity) Regulation,2012 which provide for payment of simple interest @ 12 % per annum on excess amount paid towards service connection charges for beyond permitted period of 90 days and differential costs (Regulation 18) etc, which require to be refunded or recovered, as the case may be, within 60 days from the submission of account, and the unrefunded or unrecovered amounts, as the case may be, shall attract simple interest @ 12 % per annum for the period beyond the said limit of 60 days. Thus, the respondents are liable to pay simple interest @ 12 % per annum to the complainant company on Rs. 1,62,06,000/-

w.e.f. 16.01.213 when the company requested for scrapping the proposal of erection of 132 KV Transmission line.

10. The Complainant has also placed reliance on the Supreme Court pronouncements while interpreting the provisions of Interest Act, 1978. The Respondents as per law on the matter are legally bound to refund of Rs. 1, 62, 06,000/- along with interest at the prevailing banking rates from the date of its deposit. In view of careless and negligent attitude of Senior Officers of the Respondent Board, to withhold decision on refund for more than six and half years and depriving the complainant company from making investment of such a huge sum in its manufacturing activities; deserves a deterrent treatment by this Forum and impose interest @ 15 % per annum in Rs. 1,62,06,000/- from the date of deposit i.e. 29.05.2008.

11. The Respondent Board contesting the claim of the complainant filed its reply raising preliminary objections of limitation under Regulation 19 of HPERC consumer Grievance Redressal (CGRF) Regulation, 2013. The complainant in its rejoinder have answered the objection by submitting that present cause of action arose on 29.07.2019 when the amount of Rs. 1,62,06,000/- was refunded without interest. Prior to said date no cause of action had arisen for filling the instant complaint. We find substance in the submissions of the complainant and disallow the claim of Respondents on the issue of limitation and time barred complaint under Regulation 19 ibid. The said regulation 19(6) clearly provide that the Forum may reject the grievance in cases where the grievance has been submitted two years after the date on which the cause of action has arisen. In the present case the complaint admitted on 11/11/2020, whereas the cause of action arose after refusal to pay interest by respondent vide communication dated 29.07.2019. Thus, its within limitation and not barred by time and deserves to be heard on merits & facts.

12. The Respondents in its reply contended that present dispute is not maintainable before this Forum in view of the terms of agreement executed on 30.03.2009 (Annexure R-1) between the parties. All rights and liabilities are subject matter of the agreement and thus present complaint is liable to be dismissed. The complainant in rebuttal has submitted that it has cause of action locus to file the present complaint, in terms of the provisions of Regulations and refusal of the Respondents to allow interest on the amount refunded after 6 ½ years in 2019. The complainant also contended that 1st agreement dated 13.03.2007 was signed and on amount of Rs. 1,62,06,000/- was deposited, as per cost estimates dated 28.04.2007 prepared by respondents in line with agreement dated 13.03.2007. Subsequently agreement dated 13.07.2007 was scrapped and new agreement dated 30.03.2009, was signed between the parties; whereby the scope of the work had been drastically reduced. Now under new agreement single circuit line was to be erected on Single Circuit Towers, from Poanta sub- station to Ranbaxy instead of Girinagar on

Double Circuit Towers, as contained in clause 1&3 of the agreement dated 30.3.2009 and also admitted by Respondents in Para 3 of its reply. The facts on record clearly establish that the respondents as per clause 7 of the terms of revised agreement were to issue revised estimate, which could have been much lesser than the previous estimate; in view of the drastic reduction in scope of work. However, no revised estimate was issued by the respondents and thus kept on holding the amount deposited by the complainant on the basis of previous agreement. We find force in the arguments of the complainant that respondents did not revise the estimate as per clause-7 of revised / new agreement and thus, failed to comply its provisions. This conduct of the respondent itself stops it from raising the plea of having all rights & liabilities being the subject matter of agreement dated 30.3.2009, to challenge maintainability of complainant before this Forum. It's clear from the express provision of the Regulation 19 of HPERC (CGRF & Ombudsman) Regulation, 2013 that an agreement entered between the parties for specific purpose (as in this case) is no limitation or pre-conditions for submission of grievance before this Forum and the same cannot become a ground to reject the claim unless, the circumstances enlisted in the sub- regulations (a) to (b) are met . We find the present complaint, as per Regulations ibid and overrule the objection/ contention of Respondents on this score. Thus, in the aforesaid terms in Para 11-12 above, the issue of limitation & maintainability of complaint are decided to proceed on merits & facts of the case here under to dispose the complaints as per Regulations facts and merits.

13. The contention of the Respondents in its reply and arguments that there is no provision for payment of interest can not be accepted in view of the provision of Regulation, Supply Code & law as redressed above. Its settled law that the provision of agreement cannot run contrary to that of the provisions of Regulations/ law on the matter. In case of any conflict, the provision of statutory Regulation/Act/ Law shall prevail. We find no rational and substance in plea raised and reject the submissions of respondents that the agreement dated 30.03.2009 does not provide for payment of any interest hence present complaint is not maintainable.

14. The Respondent Board makes its counter claim of Rs. 7.366 lacs which is 0.5% of the estimated cost and this sum has not been deducted from refundable amount of Rs. 1,62,06,000/-. This sum is stated to be incurred by respondents, as departmental charges and thus, entitled to deduct this amount from the departmental charges deposited by the complaint. After going into the details of the complaints / pleading and the provisions of Regulation, Supply Code, Case laws etc. and provisions of law on the matter, it becomes clear and apparent that the main issue before us is to determine as to whether the complainant is entitled to claim interest @ 15 P.a. or at the rate applicable under Regulations/ law or not?

15. In order to answer the controversy/ issue, we need to refer to the facts & provisions of Regulations, Code & law relevant to the case. The admitted facts on record is that the complainant company and respondents at the first instance entered into an agreement on 13.03.2007 to erect a 132 KV Transmission line in 2007. The complainant deposited, as per demand notice dated 23.04.2007 a sum of Rs. 1,62,06,000/- on 29.05.2008. It's also undisputed that the Regulation, 2005 on the matter were in force and the same was regulated under these regulations. Similarly, the Supply Code, 2009 Regulations were also in force on the matter.

16. The facts on record is not denied by the parties that 132 KV transmission line was not erected till 2013. Thus, its proposal was asked to be scrapped by the complainant company vide its communication dated 18.1.2013 and others till dated 17.01.2014 (Annexure C3-C7). The fact on record is not denied that the agreement dated 13.03.2007 was cancelled and new agreement dated 30.03.2009 was entered into by the parties and the scope of work was drastically reduced. As per new/ revised agreement now single circuit line was to be erected on single circuit towers from Ponta Sub-Station to Ranbaxy instead of Girinagar on Double circuit towers. Now the revised estimate and demand notice, as required to be issued by Respondents which was not done as per requirement of the new agreement between the parties.

17. The fact is also not controverted that since no line was erected the demand amount so deposited was sought to be refunded by the complainant since, 2013. But Annexure C-7 communication date 17.1.2014 reflects that complainant sought scrapping of the proposal. However, no request for refund was specifically made. The record clearly shows that 1st request for refund was made on 15/01/2019 vide Annexure C-8 with applicable interest. The refund of mandatory charges of Rs. 1,62,06,000/- was made by respondents vide order dated 29.07.2019 without interest as per Annexure C-9. The Annexure C-12 & C13 of Respondents rejects the claim of the complainant on the basis of Regulation 6 of HPERC (Recovery of Expenditure for Supply of Electricity), 2005 which is not applicable in the instant case since the proposed 132 KV line was never constructed, as no connection was released from this line.

18. It's also established on record that the agreement dated 30.03.2009 (Annexure RA-1) relied upon by the respondents, clearly mention that the already deposited amount in advance as "Departmental Charges" against earlier tentative cost estimate issued on 28.4.2007, will be adjusted against the now payable, "Departmental Charges", as per the new tentative cost estimate and either party will refund/ deposit the balance amount, Thus, it becomes clear from the above stated facts on record that respondent Board had to give new tentative cost estimate as per terms of agreement and to refund / charge any balance amount.

19. Respondents as per record made available failed to provide any tentative cost estimate to the complainant company since new agreement dated 30.03.2009 and finally refunded the amount of “Departmental Charges” of Rs. 1,62,06,000/- on 27/09/2019 (Annexure RA-2) without interest. Thus, now the question of claiming “Departmental Charges” of Rs. 7.366 Lacs afresh cannot be raised in reply after refund of entire amount vide RA-2 by respondents.

20. Further we find force in the arguments of the complainant that there is no mention of previous specific communication regarding incurring of Rs. 7.366 Lacs by the respondents. Had it been there on record of such estimate/ communication of incurring costs of Rs. 7.366 Lacs, then the same would have been placed on record and also communicated to complainant and adjusted / deducted against the refund made on 27.9.2019 to complainant by the respondents. The facts on record does not established the claim of respondents for Rs. 7.366 Lacs and by their own conduct and acquiescence, they are now stopped to raise such claim against the complainant at this belated stage in its reply.

21. The fact on record placed by the complainant in its rejoinder as Annexure C-14, The communication of respondent Superintending Engineer, ES, Circle HPSEBL, Totu to Chief Engineer (Comm.) Shimla-1 for refund of “Departmental Charges” of complainant company and interest thereof. The communication dated 29.08.2019 clearly establish the fact that complainant deposited “Departmental Charges” towards erection of 132 KV line amounting to Rs. 1,62,06,000/- on 29/05/2008 . However, the proposal did not mature and load was released at 33 KV.

22. The Respondent had scrapped the proposal in January, 2013, as per Regulation referred to in the communication. The clause 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, provide for refund of the balance cost to the applicant as and when new connection are installed or given from the electrical plant and/ or electrical lines, on pro-rata basis with interest rate of 8% compounded annually.

23. Similarly clause 6(4) (b) (b) of ibid Regulations provide that before starting the work of laying electric line, erection of electrical plant and creating any other facilitates for extending supply to the applicant, seeking new connection, if the applicant denies to take the supply, total amount of estimate shall be refunded by the Licensee to the applicant within thirty days.

24. The annexure C-12 i.e., communication dated 17.09.2019 of Chief Engineer (Comm.) to Chief Engineer (ES) HPSEBL Hamirpur, in its Para-3 clearly states that SE (ES) circle HPSEBL, Totu has agreed to pay interest @ 8% compounded annually, as per Regulation

6 of HPERC (Recovery of Expenditure for Supply of Electricity), 2005, is not applicable in this case as no line was erected or no connection was released. We fail to understand as to why the provision to clause 6 of Regulations ibid is not applicable in the instant case. The clause 6 of Regulations ibid clearly provide for refund of interest. Further clause 6(4) (a) (a) of the ibid. Regulations reproduced below for celerity sake, specifically provide where, after the payment of the estimated costs and:-

" (a) (a) before the completion of work, if the applicant declines to take the supply, the amount paid by him shall be refunded with in thirty days, after deducting there from , the actual reasonable expenditure incurred; or

(b) (b) before starting the work of laying of electric line, erection of electrical plant and creating any other facilities for extending supply to the applicant seeking new connection, if applicant declines to take the supply , total amount of estimate shall be refunded by the Licensee to the applicant within thirty days."

25. The above referred Regulations relied upon by the parties clearly states that Licensee has to refund the estimate amount either after deduction there from, the actual reasonable expenditure incurred or where applicant declines to take supply, the total amount of estimate within 30 days. The present case of the complainant admittedly and squarely covered under clause 6(4) (b) of Regulation, 2005 ibid and the Licensee was legally bound to make refund of total amount of estimate with in thirty days. However, it was not refunded within 30 days, as the complainant had sought scrapping of the proposal in 2013 and the proposal was scrapped by Respondents in 2014, as is evident from record. The respondents were required to refund the entire amount of estimate within 30 days but same was not done. Hence the clause 6(1) of Regulations, 2005 ibid shall be operative to allow interest.

26. The fact is also brought on record that the Regulations, 2005 have been superseded and replaced by HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 vide notification dated 18th May, 2012. Now the present case is covered under ibid Regulations, 2012. The clause 18 of amended Regulation clearly provide for recover or refund, as the case may be, the diffrence between the actual expenditure and estimated cost within 60 days from submission of account and the unrefunded or unrecovered amounts, as the case may be, shall attract simple interest @ 12 % per annum for the period beyond the said 60 days .

27. We do not find any force in the arguments/ submissions of the Respondents that the present case of the complainant is covered under the HPERC Regulations, 2005, as no new line was constructed or new connection was released. We are convinced that the Regulations of 2005 & 2012 ibid on the matter clearly provide for refund of the estimate costs without interest within 30 days and 60 days respectively. However, if the same is not made within stipulated period then the interest as applicable shall be charged for the

period beyond the said limit of 30 days or 60 days, as the case may be. Thus , the plea of Respondents if considered to cover the instant case under HPERC Regulations, 2005 ibid shall not provide any benefit as discussed above in paras supra.

28. In the instant case, the proposal was scrapped in the year 2014 and the load was released on 33 KV to the complainant, as per the demand of additional load. It's not disputed that the plants of the complainant company are being fed through separate 33 KV feeders have connected load of 11792 KW/ connected demand 5200 KVA at Ganguwala Plant and connected load 500 KW / contract demand 250 KVA at Bataniarle plant, as per respective sanction load orders dated 14.11.2017 and dated 06.1.2017. The refund of the amount deposited, as departmental charges, was to be made by the respondents within stipulated period, as provided in the Regulations ibid but same was not refunded with in stipulated period as is evident from record. The Respondents failed to explain the delay in refund and merely stated that the refund was claimed only in the year 2019 by the complainant. The Regulations 2005 & 2012 referred above on the matter are crystal clear that after refusal or scrapping of the proposal of 132 KV transmission line in 2013-2014, the amount was to be refunded with in stipulated period as per extant Regulations.

29. Since the ibid HPERC Regulations, 2005 have been superseded and replaced by new Regulations, 2012 on the matter; hence the present case shall be governed under new Regulations 2012 for refund made in 2019, Under the Regulations, 2012. The Clause 18 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 expressly provide for recover for refund, as the case may be, the difference between the actual expenditure and estimated cost within 60 days from submission of account and the unrefunded or unrecovered amounts, as the case may be, shall attract simple interest @ 12% per annum for the period beyond the said 60 days.

30. In the instant case, the refund has been made of Rs. 1,62,06,000/- vide order dated 29.07.2019 i.e. after scrapping of the proposal of erection of 132 KV transmission line in the year 2013-14. Thus, the respondents had retained and utilized the said amount of "Departmental Charges", and refunded it after abort five years of its scrapping. We are of this considered opinion that in the interest of equating & law, the complainant deserve to be compensated for being deprived of using the amount of Rs. 1,62,06,000/- refunded after delay of about five years, as per extant Regulations on the matter.

31. In view of the discussions and observation made here in above, the present complaint is allowed. The Respondents are directed to calculate the admissible interest on the amount of refund of "Demand Charges" of Rs. 1,62,06,000/- (One Crore Sixty Two Lakh and six thousand only) made by Respondents to Complainant, w.e.f. the date of scrapping of the proposal by it in the year 2014 to the date of actual refund made in the year,2019 ; at the rate of 12% p.a. simple interest, in terms of clause 18 of HPERC (Recovery of

Expenditure for Supply of Electricity) Regulation, 2012. The said interest refund shall be made by way of adjustment in the future energy bills of the complainant Company. The compliance of these orders of the Forum shall be ensured by Respondents with in a period of one month from the communication of these orders under intimation to the Forum.

In the aforesaid terms the instant Complaint stand disposed of. The parties are left to bear their own costs.

The file is consigned to the record along with original copy of the order. The certified copy of order be kept in safe custody in the folder of order. Certified copies of this order be supplied to all parties.

Place: - Shimla

Dated: -22.06.21

Sd/-	**Sd/-**	**Sd/-**
(K.S.Dhaulta)	**(Vikas Gupta)**	**(Suresh Kumar)**
(Member)	**(Memsber)**	**Chairman**

<u>Notice</u>

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.
No. CGRF/Complaint No. 1511/4/20/040 **Dated:-**

M/s Sun Pharmaceutical Industries Ltd.
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6. The Sr. Executive Engineer,
Electrical Division HPSEBL,
Nahan Distt., Sirmaur (H.P)

The Certified copy of final order dated 22.06.21 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.

<u>DA:-As above</u>.

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