Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1432/01/22/01 **Dated:-**

M/s Timco Steel Company,
VPO Bhatian Tehsil Nalagarh,
Distt. Solan. (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1432/01/22/01

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

2. The Sr. Executive Engineer,
Electrical Division HPSEBL
Nalagarh Distt. Solan HP

3. The Sr. Executive Engineer,
Electrical System Division HPSEBL
Nalagarh Distt. Solan HP.

4. The Assistant Executive Engineer,
Electrical Sub-Division No II HPSEBL,
Nalagarh , Distt. Solan (HP).

Respondents

The Certified copy of final order dated 04.06.2022 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,
Shimla171009.

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CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

No. CGRF/Complaint No. 1432/01/22/01 **Dated:-**

Complaint No.: -	**1432/01/22/01**
Date of Admission: -	**01.01.2022**
Quorum: -	**Er. Tushar Gupta, Chairman.** **Er. Vikas Gupta, Member I,** **Sh. K.S. Dhaulta, Member II.**

M/s Timco Steel Company,
VPO Bhatian Tehsil Nalagarh,
Distt. Solan. (HP). **Complainant**

V/s.

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

2. The Sr. Executive Engineer,
Electrical Division HPSEBL
Nalagarh Distt. Solan HP

3. The Sr. Executive Engineer,
Electrical System Division HPSEBL
Nalagarh Distt. Solan HP.

4. The Assistant Executive Engineer,
Electrical Sub-Division No II HPSEBL,
Nalagarh , Distt. Solan (HP). **Respondents**

Final hearing:- **19.05.2022**

Present for:-

Complainant	1 None.
Respondent	1. Sh. Anil Kumar God, Advocate 2. Er. Ram Lal, A.E.

Date of Decision: - **04.06.2022**

ORDER

BRIEF FACTS OF THE CASE –

(1) Complaint has been filed under regulation 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The complainant is a consumer of the HPSEBL;

(2) Between the years 2005 to 2012, the HPSEBL had carried out several works (Annexure C-5) for the strengthening of the Electrical Infrastructure in the State of Himachal Pradesh, inter-alia that of installation of Two (2),66/33kV Transformers in the months of February 2006 and August 2007 in Nalagarh Substation;

(3) In respect of the complainant, on 22.01.2009 (Annexure C-3) a Revised Power Availability Certificate (PAC) was issued and on 22.01.2009 Load sanction letter (Annexure C-4) was issued by the Chief Engineer (Commercial), HPSEBL being an office of the Respondents and both of these were issued subject to various underlying conditions and under the HPERC (Recovery of Expenditure) Regulations, 2005, herein-after referred to as the RoE 2005, Regulations. The Application and Agreement (A&A) form for electricity connection was submitted by the complainant around the date 14.10.2009 (Annexure RA-1) along with undertaking given by the consumer on non-judicial stamp paper (Annexure RA-2) and thereafter electricity connection was released on 17.03.2010 as stated by the Respondent and so the complainant became a consumer of the Respondent on this date;

(4) PAC dated 22.01.2009 (Annexure C-3) issued to consumer, in para 1 ii) speaks of cost sharing by consumer towards recovery of expenditure for supply at 33kV from Nalagarh Substation and in para 4 contains a pre-condition of an 'Undertaking to pay amount' to be given duly authenticated by Class-I, Executive Magistrate towards this recovery of expenditure;

(5) Similar conditions are also contained in The Load sanction letter dated 16.11.2009 (Annexure C-4). Para 1 of this letter speaks of load to be released after commissioning of substation at Nalagarh and Para 17 speaks of cost deposit towards expenditure for supply of electricity under HPERC Regulation for which undertaking to pay the amount as and when demanded by the Board was to be given by the consumer, duly authenticated by the Class-I Executive Magistrate;

(6) This undertaking was given by the consumer around the time of submission of application for connection on non-judicial stamp paper brought on record (Annexure RA-2) by the Respondent HPSEBL, wherein consumer had undertaken to pay the Infrastructure Development Charges (IDC) as per the decision of the HPERC and the HPSEBL. Under this backdrop the connection for supply was released by the Respondent field office on 17.03.2010;

(7) The issuing of ibid PAC was done during the concurrency of only the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 hereinafter referred to as the 'RoE 2005, Regulations', while the sanctioning of load and the release of electricity connection were done during the concurrency of both the RoE 2005, Regulations and the HP Electricity Supply Code, 2009 hereinafter referred to as the 'Supply Code, 2009';

(8) Between the above period of connection on 17.03.2010 and the initiation of litigation by the complainant in the year 2017, the following events are relevant:-

(9) On 07.12.2012 (Annexure C-5), the ibid office of the Respondents issued a letter to the field units for recovery of Infrastructure Development Charges (IDC) on per KVA basis from consumers towards creation or augmentation of various Sub Stations and lines in accordance with an annexure attached there-with. Relevant to the complainant, at serial number 32 of this annexure are -- the name of scheme (works) as -'addition of 66/11kV, 2x20 MVA Transformers at 66 kV Substation Nalagarh', scheme cost (Rs in crores) as-'Rs 9.01 crores', total expenditure incurred (Rs in crores) as - 'Rs 14.25 crores', capacity in MVA as – '40 MVA', the cost per kVA as - 'Rs 3,562.5' and date of commissioning of the scheme as – 'February 2006 for Transformer 1 and August 2007 for Transformer 2'. This letter further conveyed that - on 29.03.2012 the HPSEBL had issued letter in pursuance to which notices were issued by the field units to consumer which was later withdrawn vide HPSEBL letter dated 07.12.2012 pursuant to HP Electricity Regulatory Commission (HPERC) Order dated 27.11.2012 in case No. 82, 88 and 122 of 2012. The letter dated 07.12.2012 further speaks of this per KVA rates to be applicable to consumers to whom connections were released between 04.04.2005 to 22.05.2012 and for connections released after 23.05.2012 these rates were to be recovered in accordance with HPERC notified provisional normative rates under

the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 herein-after referred to as the 'RoE 2012, Regulations';

(10) Thereafter the foregoing events, several litigations by various consumers ensued. Briefly, in Suo Moto Pet 25 of 2016, Hon'ble HPERC passed an Order dated 05.10.2016 (Annexure C-8) pursuant to various Appeals in similar matters being preferred in the Hon'ble APTEL against a previous clarificatory order dated 02.05.2011 passed by the HPERC which was set aside by the Hon'ble APTEL vide its order dated 18.12.2015 with certain directions to the HPERC. The Order dated 05.10.2016 passed by the HPERC decided therein mechanism for adjustment of Advance cost share towards Infrastructure Development Charges (IDC) charges received under code 3.2.2 of the Supply Code, 2009, received from consumer as advance @ Rs. 1000/- per KVA of contract demand;

(11) Thereafter the Hon'ble Commission's Order dated 05.10.2016, on 03.03.2017 (Annexure C-1), the Respondent HPSEBL issued the impugned Demand Notice dated 03.03.2017 to the Complainant for the payment of balance of Rs 128.125 lacs towards cost share of feeding substation. In the matter, the Respondents had already recovered on various previous occasions i.e before the release of electricity connection, as advance of Rs 50 lacs by way of previous Demand Notices which have not been placed on record by the complainant and are not impugned;

(12) The complainant had on an earlier occasion filed a complaint in this Forum in the year 2017, which was on 08.05.2018 rejected by the Forum by Order (Annexure RA-4 Colly) on grounds of non-maintainability for the reason that complainant had filed a parallel writ petition in the Hon'ble H.P. High Court which was pending adjudication. On 08.12.2021 (Annexure RA-6), the petition before the Hon'ble High Court was ordered to be dismissed or withdrawn with liberty to avail appropriate remedy before competent Forum. Thereafter, the complainant has once again preferred a complaint before this Forum. It is the ibid amount of Rs 128.125 lacs which is referred to in this Forum's Interim Order dated 01.06.2017 (Annexure RA-4 Colly) which creates the presumption that it must be the same Demand Notice under challenge in earlier filing before this Forum as no other record was placed before this Forum either by the complainant or by the respondent to show that it is the same complaint before the Forum at this stage as was in the year 2017.

However, under this assumption this Forum has chosen to proceed with the matter and not reject it on grounds of non-maintainability or limitation;

(13) The complainant has filed the instant complaint and sought relief for – quashing of Demand Notice issued by the HPSEBL on 03.03.2017 requiring therein that complainant pay balance amount of Rs 128.125 lacs towards Infrastructure Development Charges (after adjusting for the Advance) and with further directions to the respondents to refund amount of Rs 71,04,200/= additionally recovered by the Respondents along with simple interest and other directions.

<u>COMPLAINANT-</u>

Inter-alia the complainant has raised multitude issues before the Forum as follows:–

(14) that system at the Nalagarh S/Stn was already existing when PAC was issued to the consumer/complainant and that there was no need to augment or install new 2*20 MVA transformers at Nalagarh Sub Station. The transformers were commissioned in February 2006 and August 2007 and no new transformers were commissioned thereafter and this was done before PAC was issued and therefore impugned Demand Notice dated 03.03.2017 deserves to be quashed and set aside for the reason that such includes costs to be recovered on which regulations 4(1)(b) and 4(1)(c) of RoE 2005, Regulations are applicable but which are not applicable in the case of complainant;

(15) that respondents have acted in contravention to regulation 6 of the ibid Regulations wherein such regulations allow for expenditure on infrastructure through two ways- (1) through the CAPEX Plan (or Capital Expenditure Plan) **OR** (ii) through recovery from applicants / consumers. That Respondents are not entitled to recover cost of infrastructure both through tariff route as well as from complainant;

(16) that the Demand Notice is also not in conformity with Orders dated 31.10.2005 passed by the Hon'ble HP Electricity Regulatory Commission in case No. 315/05 in which it was held that only cost of laying of service lines is to be charged from consumer when capacity is available on existing transformer;

(17) that the basis for arriving at a rate of Rs. 3562.50/KVA on which Demand Notice was issued, has not been conveyed to the Complainant and that there are blatant

irregularities in calculation of this rate as this contains costs of transmission components as well, which the distribution licensee is not entitled to recover;

(18) that respondents have straight away issued Demand Notice after 7-8 years and not given to consumer the account of expenditure;

(19) that against scheme cost of Rs 9.01crores, Respondents have incurred Rs. 14.25 crore which is much in excess of 3% allowed by the Regulations 6(2)(b) of the ROE 2005, Regulations.

(20) that Respondents have failed to mention the relevant cost data for preparing estimates.

(21) that the Demand Notice is time barred and hit by limitations under regulation 6(3) of RoE 2005, Regulations.

(22) On afore mentioned case of complainant, the complainant has sought relief for quashing of impugned Demand Notice dated 03.03.2017 issued by the HPSEBL, therein requiring the payment of Infrastructure Development Charges (IDC) for amount of Rs 128.125 lacs and with further directions to the respondents to refund amount of Rs 71,04,200/= additionally recovered by the Respondents along with simple interest and other directions.

RESPONDENT -

The Respondent HPSEBL has inter-alia submitted as follows:-

(23) that the complainant is an Industrial consumer and Demand Notice raised by the Respondent HPSEBL is a proper and legal notice. At the time of his electricity supply connection on 17.03.2010 from Nalagarh substation, the rates for Infrastructure Development Charges (IDC) were not finalised at the relevant time. Further the consumer had given an undertaking on an affidavit to pay the differential amount on account of Infrastructure Development Charges (IDC) after adjustment of Advance Cost Share, already paid and thereafter the connection was released;

(24) that the Demand in respect of the consumer was computed @ Rs 3562/- per kVA, total amounting to Rs 1,78,12,500/= and that before the impugned Demand Notice dated 03.03.2017 (Annexure C-1) was issued for Rs 1,28,12,500/=, the consumer had already deposited 'advance cost share' towards IDC amounting to Rs 50,00,000/= on various occasions up-to the time when connection was released and

balance amount of Rs 1,28,12,500/= was now payable which could not be raised due to matter remaining in litigation.

(25) that the complainant is wrongly assuming and considering only the cost of the Nalagarh substation augmentation scheme, whereas in order to augment the transformers, EHV lines are also needed to be augmented/created.

(26) That the works for augmentation of Nalagarh sub station was carried out to meet the load requirements in Industrial area and this cost was liable to be recovered from Industrial consumers. Thus, the demand notice of Rs 1,28,12,500/= for payment of IDC is proper, legal and in accordance with the extant Regulations and order dated 05.10.2016 passed by Hon'ble HPERC on the matter.

FORUM -

(27) Pursuant to the Hon'ble HPERC Order dated 05.10.2016 and in pursuance to the ibid mentioned 'Undertakings' submitted at the time of connection by the Complainant, the impugned Demand Notice dated 03.03.2017 was issued by the Respondent HPSEBL. The impugned Demand Notice issued by the Respondent HPSEBL on 03.03.2017 was for the payment of amount of only Rs 128.125 lacs towards Infrastructure Development Charges (IDC), while it also reflected the total amount. This total amount included in it the amount previously deposited by the Complainant of Rs 50 lacs. In the complaint before us the complainant has laid challenge to the total amount of Rs 178.125 lacs, which include such amounts, which had already been paid by the Complainant and those might have been raised by way of other Demand Notices issued by the Respondent at the time of connection. However, we find that these other previous Demand Notices if any, are not placed on record by either party and are also not under challenge in the complaint. The challenge to other previously issued Demand Notices in our opinion appears to be therefore by way of 'disguise' by placing challenge to amounts contained therein and also paid by the Complainant. If that is so, then presumption can be raised here that these other Demand Notices may be time barred and covered under provisions of limitation. Accordingly, this Forum considers it not worth examining this complaint in lack of any supporting documents and decides to proceed herein to determine the Complaint only against Demand Notice dated 03.03.2017 for Rs 128.125 lacs which is under challenge;

Before this Forum frames issues for determination in the instant complaint, the Forum herein dwells on understanding the reason behind a dispute despite relevant Regulations being in place:-

(28) It is undisputed that the connection was released to the consumer complainant on 17.03.2010. Accordingly, the Complaint herein is squarely covered under the provisions of the RoE 2005, Regulations which came into existence on 01.04.2005 and the Supply Code, 2009 which came into existence on 26.05.2009;

(29) While the RoE 2005, Regulations did not carry any provision on Infrastructure Developmental Charges (IDC), the Supply Code, 2009 at the time it was released in May, 2009, contained code 3.2.2 which referred to an expression "advance cost share, towards infrastructural developmental charges" and this was not defined anywhere and led to the Respondent seeking clarification from the HPERC in the year 2011 followed by a spate of litigations which continued till the Hon'ble HPERC issued ibid Order dated 05.10.2016 determining there-in the mechanism for adjustment of advance cost share towards IDC recovered/received under code 3.2.2 of Supply Code, 2009.

(30) In respect of connections released prior to 18.05.2012 i.e between 04.04.2005 and 18.05.2012, there was also no concept of recovery of expenditure on infrastructure of general nature which would not have been paid by the consumer as not being specifically created for that consumer but which was being used by him. Moreover, the concept of normative rates for the purpose of recovery of expenditure / recovery of Infrastructure Development Charges (IDC) for this infrastructure of general nature also came into existence after the Commission notified the RoE 2012, Regulations released on 18.05.2012 and therefore Recovery of expenditure made by the licensee against infrastructure of general nature not specific to any consumer or group of consumer and under the RoE 2005, Regulations could either be through tariffs determined by the Commission or if not considered during the tariff process by the Commission, then the only logical outcome would be that it would either become a permanent loss to the licensee or be borne by that category of consumers for whom such infrastructure was created. The code 3.2.2 of the Supply Code, 2009 is reproduced as follows for the sake of clarity:-

<u>Quote</u>

………

3.2.2 The consumer shall apply, for grant of Power Availability Certificate, on payment of –

(i) the earnest money ……..

(ii) advance cost share, towards infrastructural developmental charges, calculated @ Rs.1000 per kW/kVA of the load applied for.

…….

<u>Un-Quote</u>

The relevant extracts of the Commission's Order dated 05.10.2016 is reproduced below for the sake of clarity:-

<u>Quote</u>

……

……

9. In light of the position set out in preceding paragraphs…..the Commission by invoking ….. proposed that the amount received per para 3.2.2 of the Supply Code, 2009, from the prospective consumer(s), for grant of Power Availability Certificate(s) @ Rs 1000 / per KVA in respect of the Contract Demand applied may be adjusted as under :-

……

……

Category-II

Such amounts in respect of Contract Demand …… may be adjusted as under:-

A. In case of the Application ……. covered under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005,-

(i) such amount, in respect of Contract Demand for which Application is made, shall be adjusted against the various lump sum amounts, except for the cost of service line, recoverable from the Applicant for supply of electricity under the aforesaid Recovery of Expenditure Regulations of 2005;

(ii) ……

(iii) ……

B. …….

C. …….

<u>UnQuote</u>

(31) We have heard the parties and examined the record / documents adduced during the course of hearing. We have gone through the provisions of Act, Rules and Regulations on the matter.

(32) **In the matter the following issues have emerged for determination by this Forum:-**

(a) What is the nature of Investment made by the Respondents and being recovered from the Complainant? and whether recovery of such investment from a consumer category herein being the category of 'Industrial consumers', is a legal one or not?;

(b) Which are those provisions under the RoE 2005, Regulations, on the stilts of which the instant matter can stand when viewed vis-à-vis code 3.2.2 of Supply Code, 2009 in terms of 'advance cost share towards infrastructural development charges' and whether or not the Respondents have acted in contravention to regulation 6 of the ibid RoE 2005 Regulations;

(c) Are the Clarificatory Orders dated 31.10.2005 passed by the Hon'ble HP Electricity Regulatory Commission in case No. 315/05 squarely applicable in the present matter;

(d) Is the rate of Rs 3562.5 per kVA as calculated by the Respondent, blatantly irregular for the reason that the basis for arriving at this rate of Rs. 3562.50/KVA on which Demand Notice was issued, has not been conveyed to the Complainant and this rate contains costs of transmission components as well, which the distribution licensee is not entitled to recover;

(e) In the RoE 2005 Regulations, in context of this complaint, what is the relevance of regulation 6(2) pertaining to the account of expenditure in relation to initial estimated account, relevance of proviso to regulations 6(2) pertaining to expenditure in excess of 3% of the estimate, and relevance of regulation 13 pertaining to standard cost data;

(f) Whether the Demand Notice is time barred and hit by limitations per regulation 6(3) of RoE 2005, Regulations.

The Forum now proceeds towards determining each issue as follows:-

(33) It is undisputed and apparent that, when investments made are specific to an applicant or group of applicants, then cost recovery is done directly from applicants under regulations 3, 4 and 5 of the ibid RoE 2005, Regulations, by way of framing an estimate of costs and then raising the Demand to the applicant(s). Further, subsequently, if necessary, cost sharing is done by the future applicants with the original applicant(s). Such investments are directly relatable to applicants;

(34) This Forum is not inclined to divulge into the underlying philosophy of tariff determination under the HPERC Tariff Regulations. However, because the complainant has made an attempt to direct its complaint on the Tariff Regulations and its applicability etc., this Forum in order to dispel any confusion is of

considered opinion that when investments made in general (and not specific to an applicant) are recovered through HPERC determined tariffs, then Capital Expenditure Plans, as may be approved by the HPERC, are considered in the tariff determination process. These CAPEX Plans are then implemented by the licensee by way of Schemes and got funded, as loans through financing institutions, as grants from the Governments, as consumer contributions etc. However, under a special condition when an investment is one of CAPEX nature but not approved by the Commission for the purpose of recovery through tariffs, then a logical outcome is that it will have to be recovered from those category of applicants, as well as, consumers in respect of whom, such investments were made, and the Commission may not have objected to or barred such recovery. It can safely be concluded that the investment recovery pertaining to the present matter conforms to this typical condition and the investment is one of CAPEX nature but not approved by the HPERC for the purpose of recovery through tariffs but which has also not been objected to or barred by the HPERC anytime in all the years, when the matter had come up before the Hon'ble HP Electricity Regulatory Commission (HPERC) i.e at the time of various Tariff Orders issued by the Commission from the Financial Years 2006 to the time when the Clarificatory Order dated 02.05.2011 was issued. Further till the time when the Order dated 05.10.2016 was issued. Whether such Recovery of Expenditure or cost is a legal one or not, can be tested vis-à-vis regulation 6(1) of the RoE 2005, Regulations which is reproduced below:-

Quote

6. Recovery of cost.- (1) Subject to the provisions of sub-regulation (2), the balance cost of electrical plant and or electric line after deducting the amount payable by the applicant under sub-regulation (1) of regulation 3, regulation 4 and regulation 5 shall be either invested by the licensee or paid for by the applicant and where licensee's investment approval does not permit this cost, the licensee shall recover the total balance cost from the applicant:

Provided that the balance cost shall be refunded to the applicant as and when new connections are installed or given from the electrical plant and/or electrical line on pro-rata basis with the interest rate of 8% compounded annually.

UnQuote

On bare perusal of the ibid regulation 6(1) it is safely concluded by this Forum that the nature of Capital Investment or CAPEX depicted in annexure to the

Respondents letter dated 07.12.2012 (Annexure C-5) being recovered by the Respondent is a legal one. This Recovery is in accordance with regulation 6(1) of the ibid RoE 2005, Regulations and not objected to by the Hon'ble HP Electricity Regulatory Commission (HPERC) at any stage. The Complainant herein, has also failed to establish the fact that the expenditure on such investment made for installation of Two (2) Transformers stands recovered through tariffs such as to not warrant its recovery from a consumer category being the 'Industry' in this case, especially when an 'Undertaking' to this effect was also given by the Complainant. The contention raised by the Complainant on the legality of recovery of expenditure as Infrastructure Development Charges or IDC from complainant, is rejected on grounds that this Infrastructure created under CAPEX Schemes and not recovered through tariffs was to be recovered from the complainant as well as other consumers/applicants and in respect of which the complainant had given an Undertaking at the time of his connection. The contention does not hold merit. The Recovery of Expenditure is a legal one. Issue as emerging in para (32)(a) of this Order is determined and settled accordingly in aforesaid terms.

(35) The expression "advance cost share, towards infrastructural developmental charges" was first introduced in code 3.2.2 of the Supply Code, 2009 and this was not defined anywhere and led to the Respondent seeking clarification from the HPERC in the year 2011. Thereafter, the HPERC Order dated 05.10.2016, the mechanism for adjustment was set out. The concept of Infrastructure Development Charges (IDC) was introduced in the RoE 2012, Regulations where concept of 'Normative Charges' was also introduced. Accordingly, after the advent of the Supply Code, 2009, cost share, as advance against creation of Infrastructure was Demanded from consumers / applicants which was later adjusted after the finalisation of costs and fresh Demand was raised for balance of finalised cost. We find that the Demand Notice dated 03.03.2017 is therefore, also legal and proper notice being issued in accordance with code 3.2.2 of the Supply Code, 2009. The contention of the complainant that the Demand Notice is illegal is rejected as being without merit. This Forum holds that the Impugned Demand Notice is legal. Issue as emerging in para (32)(b) of this Order is determined and settled accordingly in aforesaid terms;

(36) It is a clear and undisputed fact that at the time the clarificatory Orders dated 31.10.2005 were passed by the Hon'ble HP Electricity Regulatory Commission in case No. 315/05, the Supply Code, 2009 had not come into existence. The Code came into existence on 26.05.2009. As the instant matter is also determined on the anvil of the Supply Code, 2009 along with RoE 2005, Regulations, the contention of the Complainant, that the ibid clarificatory order of the Hon'ble HPERC dated 31.10.2005 is applicable in the present matter, is wrong and can't be accepted in the facts and circumstances of the case. The ibid clarificatory Order passed by the Hon'ble HPERC is based only upon the RoE 2005, Regulations while the instant matter is based both on the Supply Code, 2009 and the RoE 2005, Regulations. Therefore the ibid clarificatory order of the Hon'ble HPERC dated 31.10.2005 cannot be squarely made applicable in the present matter. The issue emerging in para (32)(c) is determined and accordingly settled on foregoing terms;

(37) The issue raised by the Complainant and emerging in para (32) (d) of this Order for determination by this Forum with regard to the irregularity of calculation of rate of Rs 3562.5/KVA on grounds that basis for this rate has not been conveyed to the complainant and that this rate contains costs of transmission assets and therefore the Distribution licensee is not entitled to recover cost of transmission assets is far-fetched. This issue is examined under relevant provisions of the Electricity Act, 2003. The Act ibid expressly defines the "distribution licensee" in sub-sections 2(17), the "distribution system" in sub-section 2(19), the "transmission lines" in sub-section 2(72) and the "transmission licensee" in sub-section 2(73). The ibid provisions do not distinguish between the distribution system and the transmission system based on voltage levels and clearly establish the distribution system being that authorised with the Distribution Licensee. Further, the Transmission lines together with transformers, switch gear etc, are defined as those that are authorised with the Transmission Licensee. The ibid sub-sections of section 2 of the Act are reproduced as follows for the sake of clarity:-

<u>Quote</u>

2. Definitions.-- *In this Act, unless the context otherwise requires,--*

……

(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

……

(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines…… and the point of connection to the installation of the consumers";

……

(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station……. And other works.

(73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;

<u>Un-Quote</u>

Forum finds that by raising this issue, the Complainant is trying to establish the assumption of assets being determined on the basis of voltages and to mean that the assets created and reflected in the annexure to Respondent letter dated 07.12.2012 (Annexure-C5) are transmission assets. The complainant has also nowhere shown as to what part of the calculations for arriving at the Rate of Rs 3562.5/kVA is wrong. The submissions of the Complainant are far-fetched and based on conjectures and surmises and wrong assumptions on the assets being a part of the Transmission System and that the calculated rate is wrong. The contentions of the complainant in this regard are un-tenable as being not based on law/Regulations etc. This Forum is not inclined to accept arguments of complainant which are based on conjectures, wrong assumptions and distortion of facts and accordingly this Forum does not find merit in the submission and arguments of the complainant on this issue. The issue at para (32)(d)is decided against the complainant accordingly.

(38) On the issue emerging in para (33)(e) of this Order, as determined by this Forum in foregoing para where CAPEX schemes under Regulation 6(1) were executed and where investments were not made specific to consumers /applicants and consequently where estimate framing was not done such as to invoke regulations 3, 4,and 5 of the RoE, 2005 Regulation but where schemes were formulated to implement the CAPEX under regulations 6(1) of ROE, 2005 Regulations, this Forum concludes that the relevance of regulation 6(2) pertaining to the account of expenditure in relation to initial estimated account, relevance of proviso to regulations 6(2) pertaining to expenditure in excess of 3% of the estimate and relevance of regulation 13 pertaining to standard cost data of the ibid RoE 2005 do not hold, and these provisions of regulations are not applicable in the present

matter. The issue as created by the complainant and emerging in para (33)(e)for determination by this Forum is rejected as being mis-placed and not holding merit .

(39) On the issue whether the Demand Notice issued by the respondent is hit by limitation per regulation 6(3) of the RoE 2005, Regulations, this Forum observes that regulation 6(3) pertains to 'grants and subventions' and is not a limitation clause and therefore the contentions of the complainant are mis-placed. This Forum does not find merit in this contention of the complainant. The contention of the complainant does not hold as being without merit. The issue as emerging in para (32)(f) of this Order is decided accordingly.

(40) In view of foregoing terms, the impugned Demand Notice dated 03.03.2017 amounting to Rs 1,28,12,500/= raised to the complainant consumer for creation of infrastructure in year 2006 and 2007 by addition of 2*20MVA 66/33 KVA transformers at Nalagarh Sub Station is upheld. Accordingly the Forum hold that the demand notice for Rs 1,28,12,500/= shall be payable by the complainant within a period of two months from the date of this order, failing which the Respondent Board shall be at liberty to claim interest @8% per annum on the unpaid amount from the date of the Demand Notice, in accordance with the Regulations. It is also made clear that no interest shall be recovered from the complainant for the period the matter remained under litigation before this Forum i.e 28.12.2021 to the date of present orders.

The Complaint is decided on merits and is Disposed of on aforesaid terms and is accordingly Dismissed.

Each party to bear their own costs.

After the order has been issued, the original case file be consigned to record room for safe custody

Place:-Shimla
Dated:-04.06.2022

Sd/-	Sd/-	Sd/-
(K.S.Dhaulta)	**(Vikas Gupta)**	**(TusharGupta)**
(Member)	**(Member)**	**(Chairman)**