Complaint No 1453/202309/31

M/s Arush Industries
Vs
Himachal Pradesh State Electricity Board Ltd and Ors

BRIEF FACTS OF THE CASE –

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

(2) The Complainant M/s Arush Industries, Plot No 58, HIMUDA, Bhatolikalan, Barotiwala, Tehsil Baddi, District Solan – 174103, is a Large Industrial Power Supply (LIPS - Two Part) category consumer of the Respondent HPSEBL, bearing consumer ID 100012001983;

(3) Previously, Complainant had filed complaint number 1453/2/23/16 which was disposed by the Forum vide its Order passed on 20.06.2023. In the said Order passed by the Forum, the Complainant was directed to approach the Distribution Licensee under Regulation 5.7 of HP Electricity Supply Code, 2009 for redressal of its billing dispute in the first instance with liberty to re-approach this Forum for redressal of balance of grievances, if any,

(4) In the instant complaint, the Complainant has raised balance of the grievance after the Respondent settled other grievances raised by the Complainant in the ibid earlier complaint filed by the same Complainant. The balance of matter now before this Forum is of a sundry amount of Rs 5,24,888/= raised by the Respondent upon the Complainant, in its electricity bill dated 16.07.2023 **(Annexure C4);**

(5) On 16.07.2022, the Respondent served upon the Complainant electricity bill containing a sundry amount of Rs 5,24,888/= **(Annexure C4)** pursuant to Code 3.10 of the HP Electricity Supply Code (Second Amendment) Regulations, 2018, which was notified by the HP Electricity Regulatory Commission (or the HPERC) on 31.07.2018 and which became effective from 01.04.2019 (here-in-after referred to as Supply Code 2nd Amendment, 2018 or Supply

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Code 2nd Amendment). This sundry amount arose on account of the afore mentioned code wherein the Complainant was originally billed on the basis of temporary contract demand (in kVA) of the previous financial year instead of the original or sanctioned or permanent contract demand (in kVA). This resulted in short recovery in electricity bills from April 2019 to June 2019 i.e three (3) month. Being aggrieved by the levy of the said sundry, Complainant has impugned this sundry;

(6) As submitted on record by the Complainant, the sanctioned or permanent or original Contract Demand of the Complainant is 1500 kVA. As seen from record, the complainant was billed from April 2019 to July 2019 of financial year starting 01.04.2019 **(Annexure C1 colly)**, based upon the Temporary Contract Demand of 1001 kVA existing in previous financial year. Here the said billing pertains to previous month's electricity consumption which is from May 2019 to July 2019 ie 3 months. As also submitted on record by the Complainant, this Temporary Contract Demand was availed by the Complainant in 2018, effected in its electricity bills by the Respondent from 27.07.2018 and thereafter continued by the Respondent into the next financial year i.e. up to billing month of July 2019;

(7) The Complainant has sought relief in terms of refunding the impugned sundry amount of Rs 5,24,888/= **(Annexure C4)** which has been paid by it**;**

(8) On the other hand, the Respondent HPSEBL in its Reply has submitted that the impugned monetary demand has been raised in accordance with the ibid Code 3.10 of Supply Code 2nd Amendment, 2018 and that the temporary revision is only for 6 months in a financial year. The Respondent has further stated that the Regulations override the contracts as has been held by the Hon'ble Apex Court in the matter of PTC India Ltd Vs Central Electricity Regulatory Commission (2010) 4 SCC 603 and because the Supply Code (2nd Amendment) covers the field after 01.04.2019, thus it is the duty of the Respondent to give effect to the Regulations

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and thus the monetary demand raised by the Respondent is within the ambit of the Supply Code and the Complainant is liable to honor the same;

(9) The Respondent has further submitted that the Forum has already decided similar issue in its previous Orders and that the ibid 2nd Amendment to Supply Code was done by the Hon'ble HPERC after previous publication and thus the monetary demands based upon change of law, the statutes, regulations, codes notified and Tariff Orders passed by the Ld HPERC cannot be held to be illegal and thus the complaint being meritless deserves dismissal.

ORDER

(10) 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) 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;

(11) Forum observes that the Complainant has argued on record that it is automatically eligible for Temporary revision of Contract Demand for 6 months in a financial year and that the Respondents have wrongly denied the benefit in financial year 2019-2020, which is permissible as per the said code 3.10 and that it is nowhere stated that the Complainant has to re-apply on 01.04.2019;

(12) Forum further observes that the Complainant has submitted on record that after 28.06.2019, it had requested for increase of contract demand to sanctioned contract demand of 1500 kVA and had no intention of availing the benefit of reduced contract demand for more than 6 months and had availed the reduction only for 3 months

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i.e. 01.04.2019 to 28.06.2019 and had also written a letter dated 20.07.2022;

(13) However, on this submission made by the Complainant, the Forum does not find anything on record that may substantiate or support the submissions. The Forum finds these submissions as baseless and misleading and thus rejects the same;

(14) At the outset, this Forum finds that the only moot issue that requires determination by it, is on the ibid argument on record made by the Complainant i.e whether the Complainant is or is not automatically entitled to benefit of Temporary Contract Demand, for a period of six (6) months in a subsequent financial year without a fresh re-application for the same, such Temporary Contract Demand having been applied by the Complainant in the previous financial year?;

(15) It is without dispute that financial year is from 01st April to 31st March;

(16) The Forum, before proceeding with the grievance of the Complainant, considers it necessary and expedient to refer to certain relevant amendments to the HP Electricity Supply Code, 2009 enacted by the HP Electricity Regulatory Commission (or the HPERC). The Supply Code, 2009 was notified by the HPERC on 26th May, 2009. Later Amendments were carried out from time to time. We mainly refer to amendments pertinent in the instant matter with regard to 'Temporary' revision of Contract Demand. The said amendments were first introduced by the HP Electricity Regulatory Commission (or the HPERC) vide Himachal Pradesh Electricity Supply Code (First Amendment) Regulations, 2014 notified on 11th June, 2014. In this amendment Code 3.10 was first inserted. Thereafter, amendment to this Code 3.10 was carried out by the HPERC vide the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018. For the sake of clarity, relevant extracts of these amendments are reproduced here-in-under:-

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

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Quote

10. Insertion of para 3.10.- *In the said Code, the following para 3.10 shall be inserted; namely:-*
"3.10 Temporary revision of contract demand.–
The consumers to whom two part tariff is applicable shall be entitled to revise their contract demand within the total sanctioned contract demand without surrendering their lien of the total sanctioned contract demand, subject to the following condition- 10
(a) that the consumer shall not reduce the contract demand to lesser than 50% of the total sanctioned contract demand subject to a further condition that the contract demand shall not be reduced below the lowest limit of contract demand as per the tariff category (or any sub-category thereof) applicable to him;
(b) that the consumer shall not be entitled to revise the contract demand more than twice a year subject to the condition that the time gap between two successive revisions shall not be less than 3 months;
(c) that the consumer shall give a notice of at least one month to the licensee before revising the contract demand under this mechanism. Even though the consumer shall not be required to obtain any sanction from the licensee for change in contract demand under this mechanism, he, so as to avoid the disputes, shall ensure that the notice(s) for such revision are duly served by him upon the licensee through registered post or through courier service or is delivered by hand against signed receipt therefor;
(d) that in cases where the contract demand is reduced under this mechanism, such reduced contract demand shall be applicable for billing purposes; and
(e) that in cases where the consumer gets his contract demand reduced permanently, the limit under clause (a) shall be considered with respect to such reduced contract demand, but such reduction shall not be considered to have been made under this mechanism and the time gap of 3 months as per clause (b) shall be reckoned from the date from which the demand was last revised under this mechanism.
Illustration.- *If a consumer who is having sanctioned contract demand of 10 MVA temporarily revises the contract demand to 6 MVA w.e.f. 01.08.2014 under this mechanism but gets his sanctioned contract demand permanently reduced to 8 MVA w.e.f. 01.09.2014, he shall have to pay charges based on 6 MVA contract demand till 31.10.2014 (i.e. till the expiry of 3 months period from the date at which the contract demand was last revised i.e. from 01.08.2014). However, if the contract demand is to be reduced permanently to lesser than 6 MVA (say 4 MVA as on 01.09.2014), the demand charges would have been based on a contract demand of 4 MVA during the period upto 31.10.2014."*

Un-Quote

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

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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

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

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

(19) From the Supply Code, it becomes apparent that the Contract Demand, Permanent or Temporary, is a provision of the Electricity Supply Code and the Tariff Orders. It is a Demand (in KVA/ or MVA) contracted at the discretion of the consumer at the time of its original application for connection, which is also subjected to permissible revisions during the life of the connection, strictly in accordance with the provisions of the Supply Code, 2009. This

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Contract Demand is an option exercised and applied for, by the consumer and sanctioned by the licensee, inter-alia with the underlying purposes of billing of the consumer, determining the Standard Supply Voltages at the time of connection etc etc. The original Contract Demand is of 'Permanent' nature and the subsequent revisions at the option of the consumer may be of 'Permanent' or of 'Temporary' nature which are also regulated in accordance with the provisions of the Supply Code. This Contract Demand (in KVA or MVA) serves as a reference vis-à-vis the actual maximum Demand (in KVA or MVA) recorded on the meter during the times of electricity consumption. When the Supply Code regulates the revision of Contract Demand (in kVA or MVA), which is an option exercised by the consumer, then the concerned consumer is expected to keep a vigil at all times for the purpose of applying or revising or managing its Contract Demand (in kVA or MVA), while simultaneously also keeping a vigil on its electricity consumption patterns by managing the peaks of its maximum Demands (in KVA or MVA), so as to keep both the contracted as well as the actual contract demand in synchronization and consequently the optimization of its electricity bills. Thus, it becomes clear to the Forum that the Contract Demand (in kVA) is a lever given in the hands of the consumers to manage their Maximum Demand (in kVA) and consequently optimize their consumption patterns and electricity bills;

(20) On further perusal of the ibid Supply Code, Forum finds that the Supply Code First (1^{st}) Amendment dated 11.06.2014, stipulated various conditions for Temporary revision of Contract Demand (in KVA or MVA) and these were first introduced there by insertion of Code - '3.10 Temporary revision of contract demand'. This Code was later amended vide Supply Code amendment dated 31.07.2018, when certain Provisos were added to it;

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(21) The First (1st) amendment, 2014 provided for permissible number of revisions in a year as two (2) with gap between successive revisions as three (3) months. The subsequent amendment of Supply Code (ie Supply Code 2nd Amendment) notified on 31.07.2018 introduced therein certain ‘Provisos’ to the said Code 3.10. The Provisos specifically provided for total period of Temporary contract demand (in KVA or MVA) as six (6) months in a ‘Financial Year’. This 2nd amendment came into force from 01.04.2019 and is thus of relevance in the present matter;

(22) Forum finds that in the said provisos of the Supply Code 2nd amendment, the word or expression ‘financial year’ is the key in context of the instant complaint. When the financial year starts from 01st of April and ends on 31st of March, which is undisputed, it becomes clear from the said 2nd amendment that on 31st March of each financial year, the ‘Temporary Contract Demand’, as existing previously shall expire. The distinction between the Temporary and the Permanent (or sanctioned) Contract Demand is created here. From the 1st of April of the subsequent financial year, i.e when the financial year starts, the Contract Demand would get reset to the Permanent Contract Demand (in KVA or MVA) unless a fresh Temporary Contract Demand is re-applied by the consumer. It thus becomes the right of the Complainant to decide and exercise the option or discretion on the period of six (6) months in a financial year when the Complainant would desire a revision in its Contract Demand (in kVA or MVA) on temporary basis i.e Temporary Contract Demand (in kVA or MVA);

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

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effective. Consequently, the last sanctioned Permanent Contract Demand (in KVA or MVA) shall automatically stand and become effective;

(24) From the foregoing implications of express provisions of Code – '3.10 Temporary revision of contract demand' (or Temporary Contract Demand) (in KVA or MVA) as prescribed in the Supply Code 2nd Amendment, 2018, this Forum holds and safely sums up and concludes that from 01.04.2019, i.e when the financial year starts or whenever any financial year starts, then any monetary demand (in Rs) raised by the Respondent HPSEBL on a consumer based on a Temporary Contract Demand (in KVA or MVA) existing prior to 01.04.2019, can only be with regard to electricity consumption done prior to 01.04.2019. For electricity consumption occurring after 01.04.2019, such monetary demand (in Rs) shall necessarily have to be based on Temporary Contract Demand (in KVA or MVA), if such is applied, or reapplied after 01.04.2019 by the consumer. In absence of such application or re-application for Temporary Contract Demand, this monetary demand shall automatically get based upon Permanent sanctioned Contract Demand which was last applied by the consumer. This process shall follow for each / new financial year. This is the essence of ibid Code 3.10 of the Supply Code 2nd Amendment. From foregoing proposition of statute, Forum observes that this summed up view of the Forum is radically opposed to the arguments on record extended by the Complainant;

(25) Coming to the instant complaint, it is observed by this Forum that the Complainant has admitted on record that it had temporarily revised its Contract Demand to 1001 kVA (Temporary Contract Demand) only in the financial year 2018-19. Thereafter, as also observed from record, the Complainant assumed the continuation of the said Temporary Contract into the next financial year and failed

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to revise or apply afresh for the 'Temporary Contract Demand' (in KVA or MVA) even after the start of the new financial year 2019-20. Consequently, the Respondent HPSEBL raised the impugned monetary demand by way of sundry amount to the Complainant vide **Annexure C4** on account of Supply Code 2nd Amendment, 2018 for three (3) months of financial year 2019-20 based on the Permanent (or sanctioned or original) Contract Demand, as is provided in the amended Supply Code 2nd Amendment;

(26) In accordance with the Supply Code 2nd Amendment, the end of the financial year is signified by the date of 31st March of the year and this is not denied by the Complainant. On this end date the 'Temporary Contract Demand' of the Complainant as existing, expired and ceased to exist. Thus, from the start of the next financial year i.e 01st April, which is also not denied by the Complainant, the Complainant was expected to apply afresh for the Temporary Contract Demand (in KVA or MVA), if it so intended and desired. It was the choice of the Complainant to choose its Temporary Contract Demand as well as the six (6) months of Temporary Contract Demand, either continuous or in the case of continual, then its period and duration, in the respective financial year. In the instant complaint, the Complainant had failed to apply afresh for the 'Temporary Contract Demand' from 01.04.2019 onwards, ie the start of financial year 2019-20 and was thus liable to be billed on the basis of sanctioned Permanent Contract Demand from 01.04.2019 onwards and for the impugned period. The Complainant has irrationally argued on untenable propositions and placed forth wrong arguments that the six months period for the Temporary Contract Demand has been allowed in a subsequent financial year by the Supply Code 2nd Amendment Regulations, 2018 notified on 31.07.2018, even without a fresh re-application on its part in the subsequent financial year. The Complainant has misconceived and

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mis-appreciated the ibid Supply Code 2nd Amendment notified on 31.07.2018 to wrongly mean that it allows the benefit of six (6) months of Temporary Contract Demand of a previous financial year to run into the subsequent financial year. This very idea causes the defined Temporary Contract Demand to lose significance. Therefore, the plea of the Complainant that 'it is eligible for Temporary revision of Contract Demand also for 6 months in the financial year 2019-20, based upon Temporary Contract Demand of previous financial year and that the Respondent is wrongly denying to it the benefit of ibid Code 3.10 of the Supply Code 2nd Amendment', is held by this Forum as wrong, far-fetched and not tenable in face of express provisions of the Supply Code 2nd Amendment ibid. This Forum does not find force in the arguments of the Complainant. The contention of the Complainant is out-rightly rejected by the Forum as being grossly misplaced and wrong. So as to be in consonance with the Supply Code 2nd Amendment, the Complainant cannot be allowed benefit of Temporary Contract Demand to run into the next financial year without a fresh re-application for the same, which as has been held in paras supra, is an option exercised in the hands of the Complainant;

(27) From foregoing discussion, it can safely be concluded by the Forum, that it is Complainant's own fault of not re-applying for a fresh 'Temporary Contract Demand beyond 01.04.2019 ie after the start of the financial year. Because the Complainant failed to re-apply afresh for Temporary Contract Demand beyond 01.04.2019 or after the start of the financial year thus, which was an option to be exercised by the Complainant, then any benefit of three or six months as is being argued by the Complainant, cannot and shall not become entitled to the Complainant in the year 2019-20. Thus the submissions and arguments on record made by the Complainant are found to be grossly misplaced and wrong;

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(28) The Complainant has clearly also failed to set-up the legal basis of its arguments. Forum holds that the fact is undisputed that change of law through amendments is done after following due process. The instant 2nd Amendment, 2018 to Supply Code has been effected by the HPERC after inviting public/ objections etc from stake holders. The said amendments after enactment were notified and published in official gazette for the knowledge of public/stake holders at large and it is safely presumed and expected that all stake holders / public including the Complainant, are well aware of the said amendment. In the instant matter, it is Complainant's own fault of not re-applying afresh for a fresh 'Temporary Contract Demand beyond 01.04.2019 ie after the start of the financial year as provided in the said Supply Code 2nd Amendment. It is a settled proposition, that ignorance of law is no excuse. The Forum is in agreement with the submissions made by the Respondent to this effect and thus in facts and circumstances narrated above, the contentions, arguments and pleas of the Complainant are held by this Forum to be patently wrong, misplaced, naive, flimsy and devoid of any substance and not tenable and are accordingly rejected;

(29) No fault is seen by the Forum in the action of the Respondent to raise monetary demand in accordance with the Regulations / Code. The Forum holds that the Respondent is correct in its interpretation and application of the provisions of ibid Code 3.10 of the Supply Code 2nd Amendment. 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 Forum does not find any illegality in the impugned sundry amount raised by way of the electricity bill dated 16.07.2022 **(Annexure C4)** by the Respondent HPSEBL, which this Forum finds as having been issued in terms of the amended provisions of the Supply Code, 2009 i.e Code 3.10 notified on 01.07.2018. The Forum in unambiguous terms

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holds that the Complainant is not entitled to benefit of Temporary Contract Demand of the disputed three (3) months without fresh reapplication for the same in the subsequent financial year as is being sought by it. Thus, on this score alone the complaint deserves to be dismissed as being argumentative and without any legal basis;

On aforesaid terms, the impugned sundry amount for Rs 5,24,888/= raised by the Respondent HPSEBL upon the Complainant by way of the electricity bill dated 16.07.2022 **(Annexure C4)**, is held by this Forum to be legal and in accordance with the Supply Code notified by the HP Electricity Regulatory Commission and is accordingly upheld.

The complaint is decided on merits in favour of the Respondent HPSEBL and is accordingly disposed as **Dismissed**.

Parties are left to bear their own costs.

Order is announced before the parties present today on 05.12.2023 at Shimla in open Forum.

Certified copies of this Order be supplied to the parties. The complaint along with this Order be consigned to record room for safe custody.

Date: 05.12.2023
Shimla:

--Sd--	--Sd--	--Sd--
Anil Sharma (Member)	**Vikas Gupta (Member)**	**Tushar Gupta (Chairperson)**

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CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 1453/202309/31
Date of Admission: -27.09.2023
Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member
Sh. Anil Kumar Sharma Member

In ref:-

M/s Arush Industries, **Complainant**
Jharmajri, Baddi,
District Solan (HP).

V/s.

HPSEBL & Others. **Respondents**

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

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

3. The Assistant Engineer,
Electrical Sub-Division HPSEBL, Nalagarh,
District Solan, (H.P.) **Respondents**

Final hearing:- 21.11.2023.

<u>Counsels:-</u>

Complainant 1. Sh. Rakesh Bansal, (Authorized Representative)

Respondent 1. Sh. Rajesh Kashyap, Advocate

2. Sh. Kamlesh Saklani, U.S. Law

Date of Decision: -05.12.2023

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Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1453/202309/31 **Dated:-**

M/s Arush Industries,
Jharmajri, Baddi,
District Solan (HP). **Complainant**

V/s.

HPSEBL & Others. **Respondents**

Complaint No. 1453/202309/31

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

2. The Sr. XEN, (E) Division Barotiwala,
HPSEBL, Distt. Solan,(H.P.)

3. The Assistant Engineer,
Electrical Sub-Division
HPSEBL, Barotiwala,
District Solan (H.P.). **Respondents**

The Certified copy of final order dated 05.12.2023 passed by the Hon'ble Forum in the aforesaid complaint is enclosed find herewith for further necessary action at your end please. The compliance be reported/ intimated within one month after the receipt of order in the office.

DA:-As above.

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

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