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 Ultratech Cement Ltd (Unit: Bagheri Cement Works), Village Tikkari-Bagheri, Post Office Bagheri, Tehsil Nalagarh, District Solan (HP) -174101, bearing consumer ID 100012000948 is a consumer of the Respondent HPSEBL. The predecessor of the Complainant was M/s Jaypee Himachal Cement (a unit of Jaiprakash Associate Ltd);

(2) Record shows that 'Permanent' reduction of Contract Demand of the Complainant consumer from 10000 kVA (10 MVA) to 8500 kVA (8.5 MVA) at voltage 66 kV, was sanctioned by the Respondent HPSEBL vide Office Order No 10538-42 on 29.12.2021 (Annexure-C8);

(3) Record also shows that before the ibid date of 29.12.2021 when Permanent reduction of Contract Demand took place, record shows that on 25.09.2017 (Annexure-C1), M/s JP Cement had applied for 'Temporary' reduction of Contract Demand from 10 MVA to 9 MVA which was allowed by the Respondent HPSEBL with effect from 01.10.2017 vide its letter dated 03.10.2017 (Annexure-C2);

(4) The Complainant is aggrieved by the action of the Respondent HPSEBL to issue Demand Notice for Rs 57,37,500/= vide No 356-57 dated 16.12.2021 (Annexure-C6),which was deposited under protest by the Complainant. The Complainant has mainly contended that there is retrospective application to HP Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018 in the hands of the Respondent HPSEBL. Vide this Demand Notice, the Respondent has raised the said demand on account of the ibid Supply Code amendment

which allows the 'Temporary' revision of the Contract Demand for a total period not exceeding 6 months in one financial year;

(5) On the other hand the Respondent HPSEBL in its Reply has admitted the fact that the said impugned Demand has been deposited by the Complainant. The Respondent has contended that the said demand is just and legal and in accordance with the Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018 and which came into effect from 01.04.2019. The Complainant had 'Temporarily' revised his Contract Demand earlier i.e with effect from 01.10.2017.

FORUM

(6) 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 Code) including amendments thereto, record and facts alongwith pleadings of the parties. We have heard the parties at length. The considered opinion of the Forum has been gathered after examining and analysing fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

(7) This Forum observes that, the Complainant has not prayed in the complaint for quashing and setting aside of Demand Notice dated 16.12.2021 for Rs 57,37,500/= (Annexure C-6) but has prayed for quashing and setting aside of another Notice which is also dated 16.12.2021 (Annexure-C5) which is in terms of directions by the Respondent HPSEBL to the Complainant to get the Contract Demand sanctioned and wherein Demand for Rs 57,37,500/= has not been raised.

The Complainant during the argument stage admitted that the prayer has inadvertently and wrongly been made for the quashing and setting aside of Annexure C-5 however, this may be considered in respect of Annexure C-6 as the prayer had also been made for setting aside of demand for Rs 57,37,500/=. The Complainant before filing the complaint ought to have validated his complaint and not have left it to the Forum to make assumptions or presumptions on the intentions of the Complainant. However, so as not to be prejudiced by the omissions in the complaint, this Forum proceeds to determine the validity of both the Demand Notice dated 16.12.2021 for Rs 57,37,500/= (Annexure-C6) and Notice also dated 16.12.2021 (Annexure-C5) containing therein directions by the Respondent for getting the Contract Demand sanctioned;

(8) The main issue which has been raised by the Complainant is that the Demand Notice dated 16.12.2021 (Annexure-C6) has been raised by the Respondent HPSEBL by giving retrospective effect to amended code 3.10 of HP Electricity Supply Code (Second Amendment) Regulations, 2018 notified on 31.07.2018;

(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 dated 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 dated 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."

<u>Un-Quote</u>

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

<u>Quote</u>

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."*

<u>Un-Quote</u>

(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 had sought Temporary revision of Contract Demand in October, 2017 and thereafter it had not revised or applied afresh for this Temporary Contract Demand (in KVA or MVA). Even after the advent of the Supply Code 2nd Amendment notified on 31.07.2018, the Complainant failed to revise or apply afresh for the

fresh Temporary Contract Demand as per the amended provisions for reasons best known to him. The Permanent reduction of Contract Demand from 10000 kVA to 8500 kVA in respect of the Complainant was however applied for by the Complainant and sanctioned by the Respondent HPSEBL only on 29.12.2021 (Annexure C-8). Consequently, the Respondent HPSEBL raised the demand of Rs 57,37,500/= to the Complainant on account of Supply Code 2nd Amendment, 2018 only for those periods 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 cannot be held to be applied retrospectively by the Respondent HPSEBL. During the course of the arguments, the Complainant argued that no prior Notice for revision of Contract Demand was given by the Respondent which amounts to deficiency in service and violation of principles of natural justice etc. This Forum is not inclined to accept this argument of violation of principles of natural justice / deficiency in service raised by the Complainant, for the simple reason that raising a monetary Demand based on Statute, Regulations / Codes notified and on Tariff Orders passed by the Ld HPERC, cannot be held to be against the principles of natural justice / deficiency in service especially in the facts and circumstances of the case. 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 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 demand (in Rs) as per amended provisions of the Code as done in the present case. The pleas of the Complainant are devoid of any substance and therefore not tenable on this count. Further, vide Judgment dated 05.10.2021 delivered by the Hon'ble Apex Court in Civil Appeal 7235 of 2009 titled M/s Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd and Ors, it has been held that deficiency in service will exist, if the consumer disputes the correctness of the claim and not for raising a monetary demand (in Rs) due to short billing. The instant complaint is one 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. There is no requirement of prior intimation by the Respondent to comply with the amendments. 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. The onus to exercise vigil especially in respect of change in law affecting the consumer, has not been exercised by the consumer Complainant, who ought to have appropriately revised its Contract Demand in pursuance to the Supply Code 2nd Amendments, 2018. There is also no requirement under the Supply Code of prior intimation by the HPSEBL to the consumers. 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-6;

(14) 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 after

01.04.2019 by way of impugned Demand Notice on 16.12.2021 for the consumption of electricity done in the financial years after 01.04.2019 based on the 2^{nd} Amendment to the Supply Code notified on 31.07.2018. This Forum is not inclined to accept the arguments extended by the Complainant. There is no force in the argument of the Complainant that amended provisions of Code 3.10 of Supply Code 2^{nd} Amendment, 2018 are not applicable to him and making such applicable amounts to giving retrospective effect to the Supply Code 2^{nd} Amendment, 2018. In view of the foregoing observations, this Forum finds and holds that the monetary demand (in Rs) has not been raised by the Respondent HPSEBL by way of retrospective application of or by giving retrospective effect amended Code 3.10 of the Supply Code 2^{nd} amendment notified on 31.07.2018;

(15) Further with regard to the impugned Demand Notice dated 16.12.2021 for Rs 57,37,500/= (Annexure C-6), as is evident from record, this Forum observes that the Respondent HPSEBL has applied the provisions of Code 3.10 of second (2^{nd}) amendment notified on 31.07.2018 (effective 01.04.2019) only for a period of 6 months instead of for the whole year in respect of the financial years arising beyond 01.04.2019, especially when the Complainant has failed to revise his Contract Demand (in kVA or MVA) either on Temporary or on Permanent basis. The action of the Respondent is only partial with regard to the express provisions of Himachal Pradesh Electricity Supply Code (Second Amendment) Regulations, 2018 dated 31.07.2018;

(16) 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. Forum finds no fault with the impugned Demand Notice issued by the Respondent HPSEBL

which has 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 is found in the Demand Notice dated 16.12.2021 for Rs 57,37,500/= (Annexure C-6) and consequently in Notice also dated 16.12.2021 (Annexure C-5) with regard to directions given by the respondent HPSEBL to the Complainant for getting the Contract demand sanctioned. The Complainant eventually applied for the revised Permanent Contract Demand (in kVA or MVA) which was sanctioned by the Respondent HPSEBL on 29.12.2021 (Annexure-C8).

In aforesaid terms, the present 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/-	Sd/-
Vikas Gupta	**Tushar Gupta**
(Member)	**(Chairperson)**

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09

No. CGRF/Complaint No. 1434/2/22/11 Complaint No.: 1434/2/22/11

Date of Admission: -07.04.2022

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

In ref:-

M/s Ultratech Cement Ltd.
Vill Tikkari Bagheri PO
Bagheri tehsil Nalagarh Distt Solan **Complainant**

V/s.

HPSEBL & Others. **Respondents**

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

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

3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Joghon, Tehsil Nalagarh (HP). **Respondents**

Final hearing:- 30.09.2022

Present for:-

Complainant 1. Sh. Raman Jamalta, Advocate vice Sh. Suneel Mohan Goel, Advocate

Respondent 1. Sh. Anil God, Advocate,
2. Er. Manoj Rana, Junior Engineer.

Date of Decision: - 17.10.2022

Notice

Registered
CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.
No.CGRF/Complaint No. . 1434/2/22/11 **Dated:-**

M/s Ultratech Cement Ltd.
Vill Tikkari Bagheri PO
Bagheri tehsil Nalagarh Distt Solan **Complainant**

V/s.

HPSEBL & Others. **Respondents**

Complaint No. . 1434/2/22/11

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

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

3. The Assistant Executive Engineer,
   Electrical Sub-Division HPSEBL,
   Joghon, Tehsil Nalagarh (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.