<u>CONSUMER GRIEVANCES REDRESSAL FORUM, SHIMLA</u>

<u>Complaint No 1421/2/08/24 – 1422/202307/20</u>

M/s Morepen Laboratories Ltd

Vs

Himachal Pradesh State Electricity Board Ltd and Ors

<u>BRIEF FACTS OF CASE–</u>

(1) Complaint was originally filed in the year 2008 by M/s Morepen Laboratories Ltd, Village & PO Masulkhana, Tehsil Kasauli, District Solan, HP. At that time, the complaint was filed before the 'Forum for Redressal of Grievances of the Consumers' (or the FRGC) under the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 notified by the HP Electricity Regulatory Commission (or the HPERC) on 23.10.2003. The complaint was decided by the then Ld FRGC on 06.01.2012;

(2) Before the ibid dispute was raised and the complaint was filed before the FRGC in the year 2008, the Complainant had earlier preferred a complaint before the Ld District Consumer Disputes Redressal Forum under Consumer Protection Act, 1986, which was disposed and dismissed on 09.05.2008, with the directions to the Complainant to seek remedy before competent court of law;

(3) Pursuant to the ibid Order passed by the Ld FRGC on 06.01.2012, the Respondent Board filed CWP No 4912 of 2012 before the Hon'ble High Court of Himachal Pradesh and impugned the said Order passed by the Ld FRGC. Correspondingly, the Complainant preferred petition CWP No 9261 of 2012. Vide Orders passed on 11.11.2019, the Hon'ble Court set aside the said impugned Order passed by the Ld Forum (FRGC) and accordingly disposed of the ibid petitions;

(4) While setting aside the ibid impugned Order passed by the Ld Forum (or FRGC), the Hon'ble Court vide ibid Order passed on 11.11.2019, remanded back the matter to the Forum with directions

to adjudicate upon the complaint afresh on the basis of pleadings which are already on record and after hearing the parties and by passing a reasoned and speaking order. For the sake of convenience the relevant extract of the Hon'ble Court's Order are reproduced hereinafter --

"*..... 6. This Writ Petition is accordingly disposed of by setting aside Annexure P-8 i.e. order dated 01.01.2012, passed by the Forum for redressal of grievances of Himachal Pradesh State Electricity Board Consumers. The matter is remanded back to the said Forum with the direction to adjudicate upon the complaint filed before it by the private respondent afresh after hearing all the parties and by passing a reasoned and speaking order. The order shall be passed on the basis of the pleadings which are already on record before the learned Forum.*

7. ….. the petitioner-Board shall not force the respondent to pay any additional disputed sum during the pendency of the complaint before the learned Forum, nor the respondent shall press the petitioner-Board to release money which it has paid to the petitioner during the pendency of the complaint…."

(5) In the ibid complaint filed before the Ld FRGC, Himachal Pradesh State Electricity Board Ltd is the Respondent;

(6) At the time the cause of action arose to the Complainant, the Electricity Act, 1910 and The Electricity (Supply Act), 1948 were in force. On 10th June, 2003, the Electricity Act, 2003 came into existence and under the provisions of this Act, the HP Electricity Regulatory Commission (HPERC) notified various Regulations. On 23.10.2003 the HPERC notified the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 (or the FRGC Regulations). The instant complaint was instituted under these Regulations;

(7) On 23.01.2013, the HPERC repealed the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 and notified the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;

(8) On 21.07.2023, the Respondent for the first time filed an Application before this Forum for re-hearing the complaint in terms of ibid Orders passed by the Hon'ble Court on 11.11.2019. On examination of record, this Forum could not find any Notice that

may have been received in the matter nor could it find any other Application for rehearing the matter that may have been filed by any party before any previous Forum. In the Interim Order passed by this Forum on 04.08.2023, the Respondent had attributed the reason for the non-filing of Application in the matter as 'non-posting of permanent incumbent in concerned office of Respondent for a few years', which was taken on record. Further in compliance to Interim Orders of this Forum passed on 04.08.2023, the present Secretary of this Forum gave written submission on 23.08.2023 (placed on record), that "*….no any Notice have been received in this office as per record…*". Forum also observes that there is nothing on record to show that original complaint file / record may have previously been called by the Ld Ombudsman or the Hon'ble Court. In view of the afore stated position, the previous Forums as well as this Forum continued to remain oblivious of the ibid Order passed by the Hon'ble Court;

(9) Before the aforementioned dispute / litigation arose, this Forum briefly delves into the relevant facts / events –

(10) Two Agreements for Supply of Electricity were executed between the Complainant and Respondent in the years 1989 and 1993, and respective electricity connections were released to the Complainant in these years;

(11) With regard to the electricity connection released in the year 1989, an Office Order dated 11.05.1989, for sanction of load **(Annexure P4)** was issued by the Respondent's office of Superintending Engineer, Operation Circle, HPSEB, Solan. Thereafter, an Application and Agreement (**Annexure P5**) was executed in the year 1989 between the Complainant and the Respondent Himachal Pradesh State Electricity Board;

(12) With regard to the electricity connection released in the year 1993, another Office Order dated 01.10.1993 was issued, by the same office of Respondent, for the sanction of load **(Annexure P9)** against another industrial unit of the Complainant namely Unit-II.

Thereafter, an Application and Agreement (**Annexure P10**) was executed in the year 1993 between the Complainant and the Respondent for a new electricity connection to the said industrial Unit-II and the electricity connection was released against this Unit-II on 18.12.1993 (**Annexure P11**);

(13) Thereafter monetary demand for Rs 19,84,000/= was raised upon the Complainant by the Respondent on 23.06.2001 (**Annexure P14**) for the period from April 1997 to May 2000 which was to be charged in the bills of the Complainant;

(14) This was done at the behest of an Audit Report / Audit observation **(Annexure P15** in Hindi language**)** and at the behest of a Sales Circular dated 11/04/2001 **(Annexure R2).** The Audit had pointed out that both the Units of the drugs manufacturing Company were located at the same place and the Articles of Association and Memorandum of Association and the Sales Tax Numbers of the Company were also the same and accordingly both the electricity connections were in fact one with total load of 689.73 KW. As a result of bi-furcating the said electricity connections into two, both these electricity connections had been treated as Medium Industrial Supply (MIS) instead of one connection as Large Industrial Supply (LS-II). Accordingly, the billing of the said two electricity connections was done under the MIS category of Tariff notified by the Respondent Board, instead of the LS category. Thus less billing of the consumer had taken place to the tune of Rs 19.84 lacs for the period from April 1997 to May 2000. Inquiry and Report were sought by the Audit in this regard;

(15) The Complainant being aggrieved by the ibid Demand Notice dated 23.06.2001 for Rs 19,84,000/= (**Annexure P14**) pertaining to the period from April 1997 to May 2000, filed the instant complaint in the year 2008 and impugned the said Demand Notice;

COMPLAINANT –

(16) That the Unit-I and Unit-II established by the Complainant Company are separately registered entities with the Government of

Himachal Pradesh, are physically separate having independent and separate manufacturing processes and located on separate premises bearing separate Khasra Numbers;

(17) That in respect of the said Unit-I and Unit-II, the Complainant Company has executed with the Respondent Board independent Application and Agreements having separate sanctioned connected loads (kW), and accordingly connections have been released by the Respondent with separate electricity lines, transformers, meter and metering arrangements and were being billed separately under MS category of Tariff as was applicable to both the units during the period 4/97 to 5/2000 and all the energy bills stands duly paid by the complainant company;

(18) That the Complainant never applied for clubbing of load in respect of its Unit-1 and Unit-Il (being separately used). At the time of release of electric connection for Unit-1 and Unit-II, both the premises have been duly inspected, checked and verified by the concerned officials of the Respondent as well as by the Chief Electrical Inspector, Govt. of HP. Shimla. The Respondent is now estopped from taking the plea of clubbing of load and also from changing the category from MS to LS-II due to their own acts, conducts and acquiescence;

(19) That the Board is not competent in view of provisions contained under section 22-B of the Indian Electricity Act, 1910 (as was in force prior to the Act of 2003) to club the loads of Unit-l and Unit-II of the complainant company retrospectively. Apart from this, the board is not competent to order the clubbing of loads with retrospective effect and the order of the State Government under section 22-B of the Indian Electricity Act, 1910 for clubbing of load can only be prospective;

(20) The acts of the Respondent for changing the category for the purposes of levy of tariff from "M.S." to "LS are wrong, illegal, unjustified, arbitrary, unwarranted and void. The demand by the Respondent for Rs 19,84,000/- for the period April 1997 to May

2000 through letter dated 23.06 2001 (**Annexure P14**) is bad in eyes of law;

(21) That recovery/demand of the alleged amount for Rs. 19,84,000/- (**Annexure P14**) has become time barred in view of the provisions contained in section 56(2) of the Electricity Act 2003 wherein no sum due from any consumer shall be recoverable after the period of 2 years from the date when such sum became first due. The alleged amount of Rs 19.84.000/- pertains to the period 4/97 to 5/2000 as per the letter dated 23.06.2001 issued by the respondents and the alleged amount was never previously shown, demanded and reflected in the previous monthly energy bills and the demand of the same was never raised/created through any notice and letters etc. Thus, the Respondents have contravened the provisions of section 56(2) of the Electricity Act. 2003. The alleged demand is thus time barred, unrecoverable and is wrong, illegal and without any justification;

(22) The Complainant has prayed for Order by the Forum for holding the impugned demand of Rs 19,84,000/= raised by Respondent on 23.06.2001 (**Annexure P14**) as not payable by the Complainant and further for directing Respondent for not realizing and recovering the same.

RESPONDENT –

(23) That it is denied that there are two separate units of the Complainant Company at the spot. Both the units are one which is proved from **Annexure R2**. The Complainant had applied for two electricity meters for the Industries, hence two meters were given. Otherwise the relevant factor for billing is total load;

(24) That the Respondent in its policy has made three categories under Industrial Units ie Small power, Medium Supply and Large supply, for charging the energy consumption and this classification has been done on the basis of total connected load. Under the policy of the Board/ Government, the tariff rates are different. The complainant had withheld the material facts while obtaining second connection.

If one owner of the industry is allowed to take different electrical connections in the industrial unit, in that case the connected load of all the meters is to be counted. Otherwise the very purpose of the policy of classification of consumers would be defeated. In its Annual Report for the year 1999-2000, the Complainant has shown the electricity charges at rate of 2.15 and thus proclaimed itself to be a big industry/ company;

(25) That the complainant is governed by the clause (A) 2 of the Sales Circular **(Annexure R2)**. Being same company new connection was not at all required to have been given a separate treatment. Rather the same should have been treated as extension of load and the total load ought to have been taken into consideration;

(26) That the Complainant cannot take the advantage benefit of the retrospective or prospective effect of the Electricity Act since this liability has accrued due to its own. mischief and omission;

(27) That the Complainant has misinterpreted the relevant provisions of section 56(2) of the Electricity Act, 2003. In the instant case the demand has been raised within reasonable time ie, within two years from the date it was pointed in the audit report **(Annexure R1** in Hindi language**)** and the Board had issued Sales Circular No. 05/2001 on 11/04/2001 **(Annexure R2)** where in all the industries having two connections in the same premises shall be clubbed.

(28) Respondent has prayed for dismissal of complaint.

ORDER

(29) This Forum has examined the relevant provisions of the Electricity Act, 2003, , The Electricity Act, 1910 and The Electricity (Supply Act), 1948, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 (or the FRGC Regulations) and the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013

(or the CGRF Regulations) and amendments thereto, the Tariffs notified by the Respondent and record as facts along with pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

(30) At the outset, this Forum observes that the Complainant by way of its written submissions has dwelled upon the applicability of section 22-B of the Indian Electricity Act, 1910 and on section 56(2) of the Electricity Act, 2003 in the instant matter --

(31) With regard to the written submission made by the Complainant on the lack of powers of the Respondent Board under provisions contained in section 22-B of the Indian Electricity Act, 1910, this Forum from perusal of the statute observes that as a matter of fact the Board under sub-section 79 (j) of the Electricity (Supply) Act, 1948, was vested with powers to make Regulations. Under Section 49 of the Act, the Board was vested with powers for the supply of electricity on such terms and conditions as the Board thinks fit and for framing and fixing tariffs;

(32) With regard to the written submission of the Complainant on the applicability of section 56(2) of the Electricity Act, 2003 to the impugned monetary demand, Forum observes that the 2003 Act is clearly not applicable to the said monetary demand, such having been enacted on 10.06.2003, much after the cause of action arose to the Complainant or advent of the impugned monetary demand raised by the Respondent on 23.06.2001;

(33) Thus, the Forum does not find any relevance in the foregoing written submissions made by the Complainant on the applicability of afore mentioned section 22-B of the 1910 Act or on section 56(2) of the 2003 Act in the instant matter. This Forum holds these submissions as not tenable and accordingly rejects these;

(34) During the final hearing and arguments stage, the Ld Counsel for Complainant re-iterated almost all of the written contentions raised

by it. However, the Ld Counsel emphasized that it did not wish to press on the applicability of Section 56(2) of the Electricity Act. 2003 in the instant matter;

(35) During the aforesaid final hearing and arguments stage, the Ld Counsel for Complainant placed on record various judgements passed by the Hon’ble Apex Court and other Courts –

(a) Judgement passed on 16.05.2008 by the Hon’ble Apex Court, in Civil Appeals No 1001, 102-06 and 3309 of 2007 titled Kusumam Hotels Private Limited Vs Kerela State Electricity Board and Ors;

(b) Judgement passed on 19.03.2009 by the Hon’ble Apex Court in Civil Appeal No 3492 of 2006 titled Binani Zinc Limited Vs Kerela State Electricity Board and Ors;

(c) Judgement passed on 19.11.2013 by the Hon’ble Punjab & Haryana High Court in CWP No 10858 of 2000 titled M/s Kundan Mill Board and Paper Mills & Anr Vs Punjab State Electricity Board, Patial & Ors.

(36) Now the Forum proceeds to delve into the matter in greater detail--

(37) The Forum from record finds that the instant matter is squarely limited to determining the legal validity and the correctness of the action of the Respondent to raise a single monetary demand to the Complainant, against its two electricity connections for two Industrial Units, by clubbing the connected loads (in kW) of the two Units at the instance of an Audit observation and by relying on a Sales Circular dated 11/04/2001 **(Annexure R2)**. Accordingly this Forum proceeds to determine the legal validity and correctness of the said action of the Respondent--

(38) This Forum observes that apart from the Report / observation of Audit **(Annexure P15 / Annexure R1** in Hindi language**)** and the Sales Circular dated 11/04/2001 **(Annexure R2)**, the Respondent has no-where evoked any relevant provisions of the statute under which the impugned action of the Respondent to club the loads of

two separate industrial units in the name of same Company, may have taken place. Forum observes from record, that apart from the said Sales Circular**,** there is nothing on record to show that the relevant statute at any time or any Order of the Board at the time of releasing the ibid electricity connections, prohibited in any way, the releasing of two separate connections in the name of the same company or person in adjacent premises or contiguous establishments;

(39) This Forum further observes that the impugned monetary demand of Rs 19,84,000/= raised upon the Complainant by the Respondent on 23.06.2001 (**Annexure P14**) was calculated based upon the tariffs notified by the Respondent Board before the year 2001 **(Annexure P17, Annexure P18, Annexure P19)**. It is pertinent to mention here that at that time, it was the Respondent Board which notified these tariffs. These tariffs were for various categories of consumers and specified therein the rates / tariffs to be recovered from the consumer of electricity falling in a category and not from multiple consumers or group of consumers under a particular category;

(40) A consumer is distinctly identified by a consumer ID after an Agreement for Supply is executed between it and the Board. The Agreement to Supply carries the details of the consumer, Connected Load (and/or Contract Demand), the category of tariff applicable, the voltage at which the Supply is to be given etc. After a consumer ID is created, bills (or demands) based upon the conditions of the Agreement and applicable tariff, are raised for the recovery of dues payable by the consumer for the electricity consumed and other items;

(41) This Forum further observes that the ibid impugned monetary demand was raised by the Respondent after the issuance of the Sales Circular on 11/04/2001 **(Annexure R2)** by it, which was with regard to clubbing of loads. Thus, the said monetary demand was raised by the Respondent after the advent of the said Sales Circular;

(42) The Forum further observes that the instant matter is not one with regard to monetary demand against any new electricity supply connection under Section 49 of the Electricity (Supply) Act, 1948, but is one with regard to already existing electricity supply connections released in the years 1989 and 1993. Thus, the monetary demand dated 23.06.2001 (**Annexure P14**) was raised upon the Complainant after the advent of the ibid Sales Circular, by simply clubbing the existing loads of already existing two separate supplies or two separate electricity connections released in the years 1989;

(43) The aforementioned electricity supply connections already stood released to the Complainant's Unit-II in the year 1993 and another unit earlier in 1989 after duly executing Agreements for Supply by the Respondent Board. This Forum does not find anything on record to show that before the impugned monetary demand was raised by the Respondent in the year 2001, there may have been a change in the contracting status between parties by way of re-aligning of Supply Agreements for the fulfillment of any condition of clubbing of load at a later date. In-fact, the Forum does not find any condition imbedded in these Agreements that may cast upon the parties, any obligation to club loads at a later date against future separate electricity connections. There is also nothing on record that may suggest that the load clubbing may have become necessary so as to align contracts with the statute or change in statute. Further, the Forum also does not find anything on record which may show that the Respondent before raising the said monetary demand may have prevailed upon the Complainant for realigning the two executed Agreements into one or that the Complainant may have at any time consented or requested to clubbing of loads, thus enabling the Respondent to raise the impugned monetary demand;

(44) This Forum further observes that the said Agreements were rightly or wrongly executed and the electricity connections were rightly or wrongly released in the year 1989 and in the year 1993 by the Respondent on contiguous premises of the Complainant and

thereafter the Complainant continued to receive electricity supply. The action of the Respondent to execute the ibid Agreements against new and separate electricity connections, was not seen by it to be wrong or invalid at the time these Agreements were being executed nor at any time between the period of the said connections and the date of the ibid Sales circular. It is only after the ibid Audit Report /Observations and after the advent of the said Sales Circular in the year 2001 that the Respondent may have perceived its action of releasing two separate electricity connections to the Complainant as wrong, overlooking and not appreciating the fact that in the matter parties were originally bound by two separate Agreements;

(45) This Forum further observes that the Respondent has relied upon clause (A) 2 of the Sales Circular No. 05/2001 dated 11/04/2001 **(Annexure R2)** to support its case. On bare perusal of this clause, the Forum finds that the underlying condition specified in the clause is clearly in respect of an existing consumer who applies for a new connection. The Forum is of the considered opinion that this new connection has to be after the advent of this Sales circular, whereas, the instant case is one where the Complainant is an existing consumer who was not applying for a new third electricity connection after the advent of the ibid Sales Circular. Both the electricity connections in the name of the Complainant, already stood released to the Complainant after duly executing Agreements much before the said Sales Circular was issued by the Respondent. Thus the Respondent's reliance on clause (A) 2 of the Sales Circular in no way supports the case of the Respondent and the Forum holds this clause as clearly not applicable to the Complainant;

(46) The Forum from perusal of the remaining clauses of the ibid Sales Circular dated 11/04/2001 **(Annexure R2)** also does not find any clause which may support the case of the Respondent. In this matter, the Complainant has clearly stated that it had not applied for the clubbing of the loads. This fact not having been disputed by the Respondent, the clauses in the Sales Circular pertaining to clubbing

of loads at the behest of request by the Complainant are thus also not applicable in the instant case. Thus, this Forum is of the considered opinion that any attempt to make any clause of the Sales Circular applicable for already existing connections without consent of the Complainant would without doubt imply giving retrospective effect to the Sales Circular;

(47) It thus becomes clear, that the Respondent has wrongly relied upon this Sales Circular to raise the impugned monetary demand, which was clearly not applicable to the Complainant at the time the impugned demand was raised;

(48) On further delving into the matter, the Forum observes that the two Agreements for new electricity connections executed in the years 1989 and 1993 have not been denied by either party. The Forum is of the considered opinion that at the time the Agreement for Unit-II was executed in the year 1993, the Respondent was at liberty to insist for a Supplementary Agreement or for an Agreement for extension of load to the existing electricity connection which was clearly not done by it. The fact undoubtedly remains that rightly or wrongly, two separate Agreements for new electricity connections were still executed in the years 1989 and 1993 between parties, and two separate connections released. There is nothing on record that may prove any mala-fide on the part of either party. It can thus not be inferred that the Agreements were not executed consciously by the Respondent or were in any way wrong, or bad in the eyes of law at the time these were executed;

(49) The Forum rejects as baseless the submissions made by the Respondent that the complainant had withheld the material facts while obtaining second connection and that in its Annual Report for the year 1999-2000, the Complainant has shown the electricity charges at rate of 2.15 and thus proclaimed itself to be a big industry/ company. The Forum is clear in its view that Respondent has no-where in its Reply established mala-fide while the said Annual Report of the Complainant is its internal matter;

(50) Once it is established that the Sales Circular dated 11.04.2001 **(Annexure R2)** had wrongly been made applicable to the Complainant, that there is nothing on record to show any provision in the statute that may prevent separate electricity connections to a contiguous establishment in the name of same Company or person, that any one of the Agreements executed between parties has not been rescinded or cancelled and thus both Agreements against different consumers albeit in the name of same Company, stood on ground at the time of raising the impugned monetary demand, that the tariff rates are applicable only in respect of a consumer and not group of consumers, then the only conclusion that can be drawn is that a single monetary demand cannot be created against two separate consumers by clubbing their loads existing under separate Agreements, even if in the name of same person or company;

(51) Further, the Forum is convinced that in the instant matter it is immaterial whether Articles of Association and Memorandum of Association and the Sales Tax Numbers of the Company or the electricity connections which were released, were in the name of the same Company (or owner) or not, or that the contiguous units were not separated by any means or that these may have been manufacturing the same product etc. The fact remains that separate Agreements for supply of electricity were executed in different times and the parties are bound by these. Thus, under the given facts and circumstances of the matter the Forum holds that these electricity connections were separate, already existing at the time of issuance of the Sales Circular dated 11/04/2001 **(Annexure R2)** and could not have been clubbed other than under the due process of law or on mutual Agreement between parties on request by the Complainant;

(52) The Complainant de-facto exists as two separate consumers with two separate consumer IDs. The action of the Respondent is one where the two separate consumers would always entail a single bill, which is not the case here. Distinction exists here towards the two

conditions which seemingly have been mistaken by the Respondents i.e when the electricity connections are applied for and when the electricity connections stand released or already exist with different consumer IDs. Having the effect of combined Tariff/ Billing/ demand can therefore exist only after the Agreements against all consumer IDs but one are rescinded or cancelled, permanently disconnected and subsequently merged or clubbed into one single Agreement / Entity, which is not the case here;

(53) Further on proposition of law, it is settled that all laws are prospective, subject to enactment of an express provision or intendment to the contrary. Effect to a statute or an Order can be given from the date of the Order ie prospectively and not from an anterior date i.e retrospectively;

(54) In the instant matter, Respondent herein was not exercising any powers under the statute to club loads of two separate electricity supplies of the Complainant but had exercised its statutory powers to issue Orders / Circulars / Directions. This Forum does not find any powers in the 1948 Act which may have been vested with the Respondent to issue Orders / Circulars / Directions with retrospective effect. Therefore, the Sales Circular dated 11/04/2001 **(Annexure R2)** could only have been given prospective effect in the hands of the Respondent;

(55) Therefore, this Forum concludes and holds that the Sales Circular dated 11/04/2001 **(Annexure R2)** in toto, was clearly not applicable to the Complainant at the time the monetary demand was raised. In the statute being the 1948 Act, no powers were available to the Board to issue Orders / Circulars / Directions with retrospective effect. The instant matter is also not one where any aligning of the executed Agreements with the statute, may have arisen or become necessary. The Forum agrees with the contention of the Complainant and holds that to give effect to the said Sales Circular, in the manner as has been done by the Respondent, clearly amounts to giving retrospective effect to the said Sales Circular, which is not within its

powers to do so. The stated proposition of law has clearly been laid out in the ibid Judgments cited in paras supra passed by the Hon'ble Apex Court on 16.05.2008 and 19.03.2009 respectively, wherein other Judgments have also been referred to. Thus, the action of the Respondent of fastening a monetary demand upon the Complainant by clubbing the two electricity connections of the Complainant existing under separate Agreements by wrongly interpreting the Sales Circular dated 11/04/2001 **(Annexure R2)** clearly does not sustain in the eyes of the law;

(56) Further, with regard to the reliance of the Respondent on the Audit Report / Observation, Forum finds that the Audit while overlooking the fact of the existing Agreements ibid and while also overlooking the fact that at the time there was no statute to enable clubbing of loads, had also wrongly perceived less billing to the Respondent on a faulty premise of release of electricity connections under the Medium Industries Supply (MS) category instead of Large Industries Supply (LS) category. This was a perceived monetary loss loss by the Audit for the reason that the tariff rates at that time may have been higher for the LS category. However, the Audit failed to appreciate the fact that while such rates at that time may have been higher, it may not be a condition in the future and at that time such would entail reversion to the previous category. In the opinion of the Forum, this would be an absurd outcome. The Forum thus holds that such a basis for perceiving less billing by the Respondent is simply faulty;

(57) The Forum also finds from bare perusal of the concluding para of the Audit observation **(Annexure P15 / Annexure R1** in Hindi language**)**, that the said observation by the Audit had clearly sought detailed inquiry into the matter, reasons for separate metering and action with regard to recovery of the Rs 19.84 lacs from the consumer. There is nothing on record which may show any Reply based upon statute from the side of the Respondent, which may have either validated the Audit Report / Observations or refuted it. On the

contrary there is acquiescence by way of raising the impugned monetary demand. The correctness and statutory validity of the Audit Report / Observation ought to have been got ascertained before its acceptance by the Respondent. In the Judgement passed on 19.11.2013 by the Hon'ble Punjab & Haryana High Court, referred to in paras supra, , wherein Judgement of Division bench of the Court in Mohar Singh Vs State of Punjab, 2001(1) PLJ 179 has also been referred to, it has clearly been observed by the Court that Audit objection is only an opinion and cannot by itself be justification for raising supplementary bill. Liability cannot be fastened on a party merely on the basis of audit note. This Forum is convinced that any Report or observation by an Audit is subject to its acceptance based upon its correctness and statutory validity and accordingly this Forum clearly holds the action of the Respondent to even consider the clubbing of two electricity connections existing under separate Agreements, and consequently fastening a monetary demand upon the Complainant at the instance of an Audit observation **(Annexure R1)**, as wrong and untenable;

(58) From foregoing discussion, this Forum is convinced that apart from the ibid Sales Circular, the said impugned monetary demand (**Annexure P14**), was wrongly based upon the ibid Report / observation of Audit. This Forum has already held in paras supra that the Sales Circular (**Annexure R2)** had been given retrospective effect and had wrongly been made applicable to the Complainant. The Sales Circular could only entail prospective effect. Further, the Audit observation / Report (**Annexure P15 / Annexure R1** in Hindi language**)** was in itself wrong to suggest monetary loss to the Respondent due to non-clubbing of loads of each electricity connection and further the action of Respondent was wrong to rely upon the same. Thus, the Forum holds that no monetary demand could have been fastened upon the Complainant and the action of the Respondent to do so is ab-initio wrong;

(59) In view of foregoing, the Forum concludes and holds that the action of Respondent to raise impugned monetary demand dated 23.06.2001 for Rs 19,84,000/= upon the Complainant (**Annexure P14**), is bad in the eyes of law and otherwise also wrong and thus cannot sustain ab-initio. The impugned monetary demand (**Annexure P14**), is accordingly set aside;

On aforesaid terms, the complaint is **Allowed** and is disposed accordingly.

Parties are left to bear their own costs.

Order is announced before the parties present today on 10.10.2023 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: 10.10.2023
Shimla

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

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 1421/2/08/024-1422/202307/20
Date of Admission:-26.07.2023
Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member
Sh. Anil Kumar Sharma, Member

In ref:-

M/s Morepen Laboratories Ltd. (Unit-II),
VPO Masulkhana, Tehsil Kasauli,
Distt. Solan (HP). **Complainant**

V/s.

HPSEBL & Others.

Respondents

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

2. The Assistant Executive Engineer,
Electrical Sub-Division
HPSEBL, Kasauli,
District Solan (H.P.) **Respondents**

Final hearing:-10.10.2023.

<u>Counsels:-</u>

Complainant 1. Sh. O.C. Sharma, Advocate/Sh. Rakesh Bansal A.R.

Respondent 1. Sh. Rajesh Kashyap, Advocate.
2. Sh. Kamlesh Saklani, U.S Law

Date of Decision: -10.10.2023.

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1421/2/08/024-1422/202307/20 Dated:-

M/s Morepen Laboratories Ltd. (Unit-II),
VPO Masulkhana,Tehsil,Kasauli,
District Solan (HP). **Complainant**

V/s.

HPSEBL & Others. **Respondents**

Complaint No. 1421/2/08/024-1422/202307/20

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

2. The Assistant Executive Engineer,
Electrical Sub-Division
HPSEBL, Kasauli,
District Solan (H.P.)

Respondents

The Certified copy of final order dated 10.10.2023 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.