CONSUMER GRIEVANCES REDRESSAL FORUM, SHIMLA

Complaint No 1454/202404/06

M/s Divyadhan Consultants Pvt. Ltd.
Vs
HP State Electricity Board Limited and ors

Brief Facts of Case–

(1) Complaint has been filed under regulation 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 by M/s Divyadhan Consultant Pvt. Ltd. Vill Kalyanpur, P.O and Tehsil Baddi, Distt. Solan-173205, bearing Consumer ID No 100012002946;

(2) Complainant is a Large Industrial Power Supply (LIPS) Consumer of the Respondent HP State Electricity Board Ltd who is a distribution licensee;

(3) As per Complainant it is entitled to rebate from 26.10.2019 to 25.10.2022 as available to new industries in accordance with Tariff Order passed by the Ld HPERC for Financial Year FY2019-20. Complainant is primarily aggrieved by the disallowance of the said rebates by the Respondent.

Complainant -

(4) That the Respondent has contravened the provisions of Tariff Order in respect of rebate available to existing units on expansion;

(5) That it has set up new industrial unit and commenced production since 26/10/2019 and that power load of 958 kW was released in its favor **(Annexure C1).** The date of commencement of production is verified in letter dated 17.12.2019 by Deputy Director of Industries SWCA Baddi;

(6) That as notified in tariff for FY2019-20, it became eligible for rebate @ 15% for 3 years i.e up to 25.10.2022 **(Annexure C2)** which became available to new units that came into production after 01.07.2019;

(7) That the Respondent in its bills has given rebate @10% for wrong period only upto 05.06.2021 whereas its entitlement is up to 25.10.2022;

(8) That vide its letter to Respondent dated 01.04.2024 **(Annexure C3),** refund against the said rebate calculated by it as Rs 39,68,302.06 was demanded along with Interest. It also wrote letter dated 16.04.2024 **(Annexure C8)**;

(9) In addition to the said rebate amount, it is also entitled to consequential refund of Electricity Duty and Interest on amount excess billed as per clause 5.7.3 of the Supply Code, 2009;

(10) Per Rejoinder: That Respondent is incorrect in stating that the Unit was purchased by the Complainant from Himalaya Fibres as it was not a direct purchase. Complainant is an auction buyer of the unit purchased from the bank under the SARFAESI Act, who started commercial production on 26.10.2019 which is supported by Udyog Aadhar Memorandum **Annexure C10.** Fresh GST and Income Tax numbers have also been allotted to Complainant. Respondent has not denied that the Complainant was given a new connection and therefore it is entitled to rebates in accordance with the Tariff Order. The load has also been verified by the Chief Electrical Inspector;

(11) Complainant has attached additional documents in its Rejoinder: Essentiality Certificate dated 01.10.2016 issued by GoHP is at **Annexure C5**, Additional Investment and cost is at **Annexure C6**, PAC dated 31.07.2017 is at **Annexure C7**, load sanction letter by Respondent dated 21.09.2017 is at **Annexure C8** and Office Order dated 25.07.2019 sanctioning contract demand to full value as contained in PAC is at **Annexure C9**;

(12) The Complainant has sought relief in terms of refund of rebate amount of Rs 39,68,302.06 upto 25.10.2022 along with Electricity Duty and Interest.

Respondent-

(13) That the Complainant is not a new enterprise for the reason that the Complainant has purchased unit on 31.03.2016 under the SARFAESI Act from M/s Himalaya Fibres;

(14) That the Complainant has made out its case for rebate on the misconstruction of expression 'new industry'. Complainant is not a new enterprise and therefore calculation sheet is baseless and claim of Complainant is not sustainable as per Tariff Orders;

(15) That Respondent has issued PAC, Load sanctions;

(16) That because Complainant is not a new enterprise, Rebate already granted upto 05.06.2021 will be debited in upcoming bills;

(17) That Complainant's contention for rebate on electricity duty cannot be given. Moreover clause 5.7.3 of Supply Code is not attracted for the purpose of Interest;

(18) On foregoing grounds, the Respondent has prayed for dismissing the complaint.

ORDER

(19) 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 the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 (or the CGRF Regulations), HP Electricity Supply Code, 2009 and amendments thereto, various Tariff Order passed by the Ld HPERC and record as facts along with pleadings of the parties. In the matter, during the course of final hearing in the matter, Forum had sought Sale Certificate from the Complainant and the Complainant's consumer record from the Respondent. Accordingly Complainant submitted the Certificate dated 04.05.2016 and Respondent submitted the relevant consumer record, which are taken on record. 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;

(20) At the outset Forum finds that while the Complainant / Authorized Representative for Complainant has stated on record that the Respondent has contravened the provisions of Tariff Order in respect of rebate available to existing units on expansion, it has in the same breath built and filed the instant complaint for allowing rebate available to new units. Forum also finds that the Complainant has referred to **Annexure C1, Annexure C2** as some documents dated 26.10.2019, however, Forum has instead found two bills attached dated 17.01.2020 and 10.07.2021 in their place. The Forum also could not find the letter dated 16.04.2024 mentioned as **Annexure C8** in the complaint. In the Rejoinder Annexure C8 is further stated to enclose some other document. Forum observes that the Complainant / Authorized Representative for Complainant have filed the complaint in a shoddy manner. Forum further observes that it is for the Complainant to correctly present and effectively prove its case;

(21) During the course of hearing in the matter, Forum observes that the Complainant informed that its case was regarding rebate for new industries and had accordingly argued the matter. Forum therefore proceeds to determine the matter for rebates as may be available to new industries --

(22) Before the Forum delves into the issue of rebate raised by the instant Complainant who is a Large Industrial Power Supply consumers (LIPS), it is imperative to reproduce for sake of clarity the provisions of rebates contained under Schedule – 'Large Industrial Power Supply (LIPS)' in Tariff Order passed on 29.06.2019 for FY 2019-20 by the Ld HPERC, which has also been relied upon by the Complainant -

(a) Tariff Order passed on 29.06.2019 by the Ld HPERC for FY 2019-20 (applicable w.e.f 01.07.2019 to 31.05.2020) --

Quote

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3. Two part Tariff
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b) Energy charge (Charges-2)
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***Note**:
a. For existing industrial consumers, a rebate of 15% on energy charges shall be applicable for additional power consumption beyond the level of FY 2018-19
b. For new industries which have come into production between 1.04.2018 to 30.06.2019, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of 3 years
c. For new industries coming into production after 01.07.2019 the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years
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c) Demand Charge (Charges-3)
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4. Peak load charges (PLC)
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Un-Quote

(23) Now coming to the Complainant's entitlement for rebate applicable for 'New Industries' with regard to Tariff Order passed by the Ld HPERC for FY 2019-20 —

(24) In the matter, briefly its Complainant's contention by way of arguments that it is entitled to rebate as applicable for new industries in accordance with Tariff Order for FY 2019-20 passed by the Ld HPERC. Amongst its various arguments is that it had purchased the Industry through auction from bank and not from M/s Himalaya Fibres, that its electricity connection given by the Respondent is a new one, that fresh GST and Income Tax numbers have been allotted to it and that it commenced production since 26/10/2019 and therefore it qualifies as a new industry for the purpose of eligibility of rebate under the Tariff Order;

(25) Forum observes that the instant matter can be decided by simply determining whether the Complainant's industry is a new one or not;

(26) Forum from perusal of the provisions of Tariff Order, reproduced in paras supra, passed by the Ld HPERC on 29.06.2019 for FY 2019-20, finds that rebates are allowed for 'new industries' which came into production between 01.04.2018 to 30.06.2019 or after 01.07.2019. Here the Complainant has stated that it came into production from 26.10.2019 which is not disputed by the Respondent;

(27) Forum from examination of the Tariff Order passed by the Ld HPERC finds that the expression 'New Industry' has not been defined;

(28) Respondent has contended that Complainant's Industry is not a new enterprise which was purchased in March 2016 under the SARFAESI Act;

(29) Forum from examination of record at **Annexure C3** / Rejoinder **Annexure C6**, finds that there was sale of assets of M/s Himalaya Fibres which were taken over after purchase in auction by the Complainant;

(30) Thereafter, as observed from record, Forum finds that the Complainant applied for fresh electricity connection in the year 2017 which was released by the Respondent in March 2018;

(31) Forum observes that in the Tariff Order for FY 2019-20, the rebate is clearly against new industries and not for an acquired industry. The Complainant's industry was acquired from a bank under auction sale. Complainant has no-where denied that the industry was not earlier in the name of M/s Himalaya Fibres. Further, Complainant's Industry may have come into production on 26.10.2019 however, merely the fact of its coming into production cannot categorize or

qualify the Complainant's Industry to be a new one. Only once it is established that a consumer's Industry is a new one then the condition of production date as specified in the Tariff Order shall come into consideration. The fact of the New Industry shall have to be established to avail rebates admissible to new industries. Untenable arguments by the Complainant accompanied with irrelevant record certainly does not establish Complainant's Industry as a new one. Thus on the basis of record and foregoing discussion, Forum holds that the Complainant's Industry had earlier existed in the name of M/s Himalaya Fibres which was later taken over / purchased by the Complainant through an auction and thus the Industry is not a new one;

(32) Further, in context of the electricity sector, distinction exists between a new connection/consumer and a new industry. Whereas a new Industry results into a new connection/consumer, however converse may not be true. Thus, a new electricity connection availed by a consumer qualifies it to be a new consumer of the Respondent and certainly not a New Industry. Here, Complainant may have availed a new connection and become a new consumer of the Respondent however, such cannot entitle it to assume the status of new industry. The acquired industry may be a new one for the Complainant, however in the given system the industry already existed before its acquisition by the Complainant and therefore the Complainant's Industry cannot be held to be a new one. The fact of the New Industry has to be established on record which the Complainant has failed to do. Similarly other arguments given by the Complainant do not and cannot make the acquired industry to assume the status of a new industry;

(33) Forum holds that the Complainant has founded its grievance on faulty premises and on untenable arguments which the Forum rejects;

(34) Thus, on the anvil of the foregoing findings and discussions, Forum concludes and holds that because the Complainant's industry is not a new one thus it is not entitled to the rebate applicable to new industries as provided in the Tariff Order passed by the Ld HPERC. The issue raised by the Complainant with regard to its entitlement for rebate admissible to New Industries is accordingly rejected and disposed;

(35) On the issue of refund of Electricity Duty (ED) raised by the instant Complainant, Forum is inclined to specifically look into the facet of the Electricity Duty –

(36) Forum, from bare perusal the HP Electricity (Duty) Act, 2009 finds that Electricity Duty (ED) is a levy by the Government. This is collected by the Respondent on behalf of the Government on actual consumption of electricity made by consumer or supply of electricity by the licensee in accordance with the HP Electricity (Duty) Act, 2009. No-where in the Tariff Orders passed by the Ld HPERC has the rebate on expansion or excess consumption, been considered to have the net effect of reduction in actual consumption or on reduction of ED. Other-wise also, such a proposition would be absurd for the simple reason that actual consumption remains actual and not nominal and also because the Electricity Duty is the specific domain of the Government as well as property of the government and not the Respondent's or the HPERC's. This Electricity Duty while being applicable on electricity consumption or supply is simply to be calculated on energy charges. Further, the Complainant has no-where shown that it has not consumed the electricity which has been billed to it. Thus any monetary rebate cannot have any effect what-so-ever on reduction of Electricity Duty nor can these entitle the Complainant for its refund;

(37) In view of foregoing, Forum holds that while the Electricity Duty is the specific domain of the Government however, the Complainant is

still not at all eligible for any refund of Electricity Duty by the Respondent that may have arisen from rebates being claimed by it or rebates that may have been passed on to the Complainant by the Respondent or allowed by the HPERC. The arguments and contentions raised by the Complainant for refund of Electricity Duty is thus also rejected and accordingly disposed.

(38) On the contention of Complainant raised for the payment of Interest on the admissible rebate to it in accordance with code 5.7.3 of the HP Electricity Supply Code, 2009, Forum holds that once it is established in paras supra that the Complainant's industry is not a new one and that it is accordingly not entitled for the said rebate as admissible to New Industries, then the contention raised by the Complainant with regard to refund of Interest on rebate clearly does not hold;

(39) Otherwise also, Forum is constrained to observe that ibid code 5.7.3 is in terms of wrong billing and that the mere non-inclusion of rebate by the Respondent in a bill does not make the bill to become erroneous. This rebate is separate and it may be a case that such rebate is paid separately by the Respondent after ascertaining whether the industry is a new one or not. Still further, Forum from examination of Tariff Orders passed by the Ld HPERC and Code / Regulations notified by the HPERC, observes that no provision has been made therein with regard to payment of Interest on the said rebate;

(40) In view of foregoing discussion, Forum holds and concludes that the Complainant is clearly not eligible for any Interest in the instant matter. Thus, the contention raised by the Complainant with regard to refund of Interest on rebate is also rejected by the Forum and is accordingly disposed.

(41) In view of foregoing discussion, Forum finds and holds that there is no contravention of Tariff Orders by the Respondent;

(42) Forum further finds that the Respondent in its submissions has admitted to wrongly paying rebate admissible for new industries. Any rebate for new industries which may have wrongly been given in the past by the Respondent to the Complainant is thus recoverable. Respondent is accordingly directed to recover the same along with Interest in accordance with code 5.7.3 of the HP Electricity Supply Code, 2009;

On aforesaid terms, the complaint is **Dismissed** and disposed accordingly;

Parties are left to bear their own costs.

Order is announced before the parties present today on 28.02.2025 at Shimla in open Forum.

Registry of Forum is directed to supply certified copies of this Order to the parties and the complaint along with this Order be consigned to record room for safe custody.

Date: 28.02.2025
Shimla

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

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 1454/202404/06
Date of Admission:- 20.04.2024
Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member

In ref:-

M/s Divyadhan Consultants Pvt. Ltd.
Vill Kalyanpur,
P.O & Tehsil Baddi 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, HPSEBL
Baddi Distt Solan.

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

Final hearing:- 06.02.2025.

Present for:-

Complainant 1. Sh. Rakesh Bansal, Authorised Representative

Respondent 1. Sh. Kamlesh Saklani, Under Secretary Law
2. Sh. Rajesh Kashyap, Advocate

Date of Decision:- 28.02.2025

<u>**Notice**</u>

Registered

<u>**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.**</u>

No. CGRF/Complaint No. <u>1454/202404/06</u> Dated:-

M/s Divyadhan Consultants Pvt. Ltd.
Vill Kalyanpur,
P.O & Tehsil Baddi Distt. Solan

Complainant

V/s.

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<u>**Complaint No. 1454/202404/06**</u>

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Baddi Distt Solan.

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

The Certified copy of final order dated 28.02.2025 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.

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