



BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA
Haryana Electricity Regulatory Commission
Bays No. 33 - 36, Sector – 4, Panchkula-134109
Telephone No. 0172-2572299; Website: - herc.nic.in
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(Regd. Post)

Appeal No : 97/2023
Registered on : 18.10.2023
Date of Order : 23.01.2024

In the matter of: -

Appeal under Section 42 (6) of the Electricity Act 2003 read with Regulation 2.48 B and 3.16 of HERC (Forum and Ombudsman) Regulation, 2020 against the order dated 25.08.2023 passed by CGRF DHBVNL, Gurugram in case No. DH/CGRF-4540/2023.

M/s Indraprastha Gas Limited, BSNL Office, Near Rajesh Pilot
Chowk, Sector-19, Rewari

Appellant

Versus

1. The Executive Engineer Operation, DHBVN, Dharuhera
2. The SDO Operation, Sub Division DHBVN, Dharuhera

Respondent

Before:

Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Sapan Dhir, Advocate

Present on behalf of Respondents:

Ms. Sonia Madan, Advocate

ORDER

A. M/s Indraprastha Gas Limited Ram Pal has filed an appeal through Shri Sapan Dhir, Advocate against the order dated 25.08.2023 passed by CGRF UHBVNL in case No. 4540/2023. The appellant has requested the following relief: -

1. That the present Appeal is filed before this Hon'ble Authority under Section 42 (6) of the Electricity Act, 2003 against the impugned illegal demand raised by respondent No. 1 vide impugned letter dated 14.03.2023 & the impugned order dated 25.08.2023 passed by respondent No. 2-the Corporate Forum for Redressal of Consumer Grievances for redressal of grievances of the consumers constituted in Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as 'DHBVN') according to the guidelines by the State Commission in Complaint No. 4540/2023.
2. That the Appellant herein Indraprastha Gas Limited is registered under Companies Act, 1956 having its registered office at IGL Bhawan, Plot No. 4, Community Centre, Sec-9, R.K Puram, New Delhi- 22. The Petitioner is engaged in the business of providing clean energy solutions to the people

of Rewari, Dharuhera via India supplying Compressed Natural Gas (CNG) as vehicular fuel through its CNG stations and Piped Natural Gas (PNG) to Domestic, Industrial, and Commercial customers. The Petitioner, a public utility company was established in the year 1998 as a joint venture company between GAIL (India) Limited, Bharat Petroleum Corporation Limited and the Government of Delhi to lay, build and operate the City Gas Distribution (CGD) network in Delhi and adjoining areas such as Faridabad, Gurugram, Noida, Ghaziabad, Rewari Etc. The Petitioner Company was set up to comply with the direction& of the Hon'ble Supreme Court of India regarding expansion of CNG network in Delhi, passed in the matter of M.C. Mehta vs. Union of India and Others (W.P.(C) No. 13029/1985). The direction was issued for introduction of an alternate fuel in the form of CNG to mitigate pollution levels in the City and its implementation monitoring is being done by Environment Pollution (Prevention & Control) Authority. The present Appeal is being filed through the Authorized Representative of the Appellant Company, Mr. Pyare Lal Gupta who is authorized to represent, act, appear, plead and also sign and execute the Appeal, documents and papers on behalf of the Appellant Company vide authorization letter dated 03.10.2023 and is competent to file this present Appeal before this Ld. Authority.

3. That the appellant is a public utility company catering to the needs of more than 15,50,000 domestic as well as industrial consumers around Delhi NCR region by supplying natural gas in the form of CNG to transport sector and PNG to Industrial, Commercial and Domestic sector. It will not be out of place to mention that the appellant is manufacturing and supplying the essential commodity (i.e. CNG and PNG) to general public and any hinderance to such supply of essential commodity directly impacts the day to day life of general public and is against the public interest.
4. That in year 2017, in order to meet the increasing demand for CNG in the newly designated geographical area of Rewari, Appellant opened a facility for providing CNG for Light Commercial Vehicles (hereinafter referred as "LCV") at the CGS, Rajpura Dharuhera. Further, to facilitate the said supply of CNG to CGS Rajpura Dharuhera, one compressor and associated equipment were duly installed on the premises.
5. That the Respondent No. 1 herein is a state-owned power distribution utility Company which is responsible for distribution and transmission of

electricity in state of Haryana. Respondent No. 1 is an independent statutory body corporate formed under the provision of the Haryana Electricity Reform Act, 1997 to reform the production and transmission of electricity in state of Haryana.

6. That the Appellant has setup a facility for providing CNG for the Light Commercial Vehicle (hereinafter referred as "LCV") at the CGS, Rajpura Dharuhera. Further, to facilitate the said supply of CNG to CGS Rajpura Dharuhera, one compressor and associated equipment were duly installed on the premises.
7. That before installation of the compressor and other equipment, the Appellant calculated, for the operation of CGS plant for which an electricity load of approximately around 10 KWH per month will be required, agreeing upon the requirement of the consumption of the Electricity, the Respondent No. 1 agreed to supply electricity at a certain rate, per KWH unit, accordingly, the Respondent No. 1 installed a meter at Appellant's CGS plant to precisely record the electricity supplied to the Appellant, based on the usage of electricity in the said plant at Rajpura Dharuhera..
8. That as per the consumption of the Electricity, the Respondent No. 1 agreed to supply electricity at a certain rate, per KWH unit, accordingly, the Respondent No. 1 installed a meter at Appellant's CGS plant to precisely record the electricity supplied to the Appellant, based on the usage of electricity in the said plant at Rajpura Dharuhera.
9. That based on the usage of the Electricity supplied and its usage the Respondent No. 1 used to raise the invoices on monthly basis, as per the reading recorded in the said electric meter. Accordingly, for the same the Appellant used to pay the said invoices within the stipulated time mentioned in the invoices.
10. That around November, 2019, the Appellant was in need of an enhanced load of electricity, accordingly, the Appellant requested Respondent No. 1 to increase the load from 10 KWH to 100 KWH, which was increased by the said Respondent on request of Appellant and a new meter was installed, however, it is pertinent to mention here that the electricity that was being utilized by the Appellant was around 26KWH which was very less than the estimated usage of 100 KWH.

11. That further, when the new meter was installed, the initial reading of meter was 31 KWH, however, it was observed by Appellant that even after enhancement of electricity load, the meter reading did not increase and the same invoice of around Rs. 16,000/- to Rs. 18,000/- was being issued by Respondent No. 1.
12. That it is apparent that the new meter that was installed by the Respondent No. 1 was faulty and it was recording wrong reading for the usage of the electricity by the Appellant, regarding the same Appellant made numerous communications to the said Respondent and brought to the said Respondent's notice.
13. That from time and again the Appellant kept on following up on the issue regarding the faulty meter raised by the Appellant, however, no heed was paid to the said request made by the Appellant. Being aggrieved by inactions of Respondent No. 1, Appellant was constrained to issue a letter on 24.12.2021 *inter alia* stating that for last 6 months, Appellant is paying the charges for electricity on an average usage basis and further requested you to fix the electric meter and raise the invoice on actual usage basis, however, after receiving the said letter, the said Respondent only gave false assurances that meter will be fixed, but no action was ever taken by the said Respondent Further, Appellant kept on sending several intimations and visits to office of Respondent No. 1, but all the request by Appellant to fix the meter went to deaf ears.
14. That on 14.03.2023, the Appellant was in utter shock and surprised by the letter dated 14.03.2023 received from the Respondent No. 1 along with the audit report dated 09.03.2023 attached stating that as per the audit conducted by the said Respondent, it was found that the account of the Appellant i.e. 4164481000, was assessed less than the actual amount and raised arrears of Rs. 97,51,464/- to be paid by Appellant. Further, in the said letter you also stated that the Appellant should file its objections, if any, within 7 days from receipt of said letter.

It is important to mention here that the Audit report dated 09.03.2023 clearly states that the average bills previously raised by Respondent No. 1 were incorrect and the meter was found defective.
15. That the Respondent No. 1, instead of fixing the faulty meter, raised a demand based on the usage of electricity in full capacity i.e. 100kW and also levied variable cost on the basis of taking maximum unit consumption per day i.e., 1600 units which is higher than the Appellant's

average unit consumption based on number and type of equipment's drawing the electricity.

16. That on 20.03.2023, Appellant while raising the objections vide its letter dated 20.03.2023 to aforementioned audit report and the letter dated 14.03.2023 issued by Respondent No. 1 *inter alia* stated that Appellant was getting average bill from March, 2020 due to faulty meter, which was informed to the said Respondent from time and again, however, no action was ever taken by you to fix the faulty meter.
17. That in response to the abovesaid letter dated 20.03.2023, respondent No. 1 DHBVN sent another letter dated 22.03.2023 to the appellant intimating that only fixed charges have been levied in the electricity bill and no energy consumption charges have been taken out therein. Vide this letter, the respondent DHBVN threatened the appellant for disconnection of the supply to the appellant.
18. That thereafter vide letter dated 04.04.2023, the appellant once again requested the respondent DHBVN for reconsidering the matter and revising the assessment.
19. That in the meantime, on 18.04.2023, Appellant after estimating the electricity consumption, filed a request for reduction of electricity load from 100 KWH to 6 KWH vide Transaction ID No. 239170 dated 18.04.2023. However, vide letter dated 24.04.2023, while citing the reason for the pending half margin as pointed out in the audit report dated 09.03.2023, Respondent No. 1 rejected the said request of the appellant qua reduction in load of electricity and directed Appellant to pay the pending illegal liability of Rs. 97,51,464/- within three days.
20. That even thereafter, an electricity bill no. 416441947100 dated 06.06.2023 for the period from 01.05.2023 to 30.05.2023 was issued with revised demand by the respondent DHBVN by including therein the abovesaid illegal demand of Rs. 9753105.08.
21. That being aggrieved by this unjust situation created by the Respondent inactions, the Appellant had to file a grievance, with respondent No. 2-the Consumer Grievances Redressal Forum, Gurugram (CGRF), constituted by the respondent under section 42 (5) of Electricity Act, 2003, seeking resolution for the discrepancies and deficiency in services provided by Respondent No. 1 to Appellant, which has directed to deposit the amount charged through half margin by the SDO (OP).

22. That upon notice, respondent No. 1 DHBVN submitted its two replies dated 25.07.2023 and 14.08.2023 in response to the the said Complaint made to Consumer Grievances Redressal Forum (CGRF). A copy of the reply dated 25.07.2023 was supplied to the appellant, however, no copy of the reply dated 14.08.2023 has been served upon the appellant either by respondent No. 1 or by respondent No. 2.
23. That thereafter, respondent No. 2-CGRF, vide the impugned order dated 25.08.2023, which was served upon the Appellant only on 07.09.2023 vide letter dated 05.09.2023, despite specifically observing about the failure/gross negligence of the officers of Respondent No. 1 and directing disciplinary action against them, has illegally and arbitrarily disposed of the said complaint of the appellant by directing it to deposit the amount charged through half margin.
24. That it will not be out of place to mention here that the Ld. CGRF vide order dated 25.08.2023 while rejecting the submission made by the appellant herein that the amount that is being charged by the Respondent is beyond 2 years' limitation under the Electricity Act, 2005, held that the period of limitation will start from the 'date due' i.e. date on which mistake was detected by the Respondent. The relevant para of the impugned order is retired herein for your ready referral:

“The complainant argued that he is not at fault and the amount charged by the SDO is related to last 3 years and the amount is not recoverable as per electricity act. The SDO argued that by treating the words "first due" to means the date of detection of mistake, would dilute the mandate of the 2 years limitation act provided by section 56 (2), since a mistake may be detected any point of time. The amount charged to the complainant is related energy charges which is payable.

The Forum observed and decided to dispose off the case with direction to complainant to deposit the amount charged through half margin by the SDO (OP) being the amount chargeable. The case is closed.”

25. That it is also pertinent to mention here that the Respondent No. 1 got the knowledge about the faulty meter installed at the premises of the Appellant in and around March, 2020 i.e. the date from which the Respondent No. 1 started issuing the invoices on average basis. Further, the appellant most respectfully states that the issuance of average bill by the Respondent No. 1 itself shows admission on part of the said Respondent that there was some fault in the meter due which they were not issuing the bill as per actual usage of electricity. Furthermore, not only that the appellant orally informed the Respondent No. 1 about

mistake in bill which are being issued on average basis, but also the Appellant herein wrote letter dated 24.12.2021 *inter alia* stating that for last 6 months, Appellant is paying the charges for electricity on an average usage basis and further requested you to fix the electric meter and raise the invoice on actual usage basis, however, no head was ever paid by the said Respondent to such requests of the Appellant even after getting the knowledge of mistake/negligence by the Respondent No. 1.

26. That it will not be out of place to mention here that due to arbitrary and illegal disconnection of electricity by the Respondent No. 1, the Appellant is constrained to run the CGS plant by generating electricity through their generators, which consume the natural gas, however, the generation of electricity through said generators is not only costly but also only limited supply of electricity is generated from such generators.
27. That since the appellant was in process of filing the appeal before this Hon'ble Authority and also requesting respondent No. 1 to regularise its connection w.e.f. 24.03.2020 till 15.05.2023 despite multiple reminders. However, even before expiry of said period of 30 days given to the Appellant to approach this Hon'ble Authority, Respondent No. 1, in blatant violation of principles of natural justice, illegally and malafidely disconnected the electricity connection of the Appellant on 28.09.2023 and that too after the sun-set. This has malafidely been done by respondent No. 1 in order to arm-twist the Appellant for extorting the monies illegally from it. Respondent No. 1 illegally and arbitrarily disconnected the electricity supply to the Appellant and starting harassing Appellant to pay the unlawful and exorbitant amount which was illegally raised by Respondent No. 1.
28. That it is to be kindly noted that IGL is serving public interest by supplying essential commodity i.e. natural gas to transport, domestic, industrial and commercial customers and as such disconnection is highly exaggerated action taken by DHVBN totally disregarding due process of law.
29. Aggrieved by the malafide actions of the Respondent, the Appellant herein was constrained to issue a legal notice to the Respondent on 29.09.2023 *via* e-mail as well as courier *inter alia* directing them to re-connect the electricity supply to the Appellant at its CGS plant, Dharuhera. Further, in the said legal notice, the Appellant also requested the Respondent to issue a revised electricity bill based on the actual consumption of

electricity by the Appellant. However, no heed was paid by the Respondent to the said legal notice dated 29.09.2023.

30. That as per the aforementioned action of the Respondent No. 1, it is evident from the several previous invoices issued by the Respondent No. 1 that the average consumption of electricity, when the CGS plant of Appellant is working at full capacity, is around 10 KWH per month, higher load of 100 kwh was taken due to safety equipment installed in premises of the Appellant, which do not run on daily basis because they are kept for emergency if any but due to unjustified and arbitrary invoices raised by the said Respondent, without it being based on any reasonable calculation, the said Respondent kept on paying you the invoice amount on time, without there being any delay.
31. That due to gross negligence by Respondent No. 1, Appellant has been forced to pay the arbitrary and unjustified amount without any factual basis and is being mortified and undue influence is being put upon Appellant to bear the losses due to admitted mistakes on part of Respondent No. 1, which even respondent No. 2 has also not considered/dealt with at all, while passing the impugned order dated 25.08.2023. It is most respectfully submitted that Appellant reserve its rights to initiate appropriate legal proceedings seeking refund of extra amount paid to Respondent for arbitrary and illegal invoices raised by them.
32. That ultimately aggrieved by the above-mentioned facts, the Appellant is approaching this Ld. Forum for redressal of his grievance on the following grounds:
 - a) That the impugned demand letter dated 14.03.2023 and the impugned order dated 25.08.2023 of the respondents are not justified due to the merit and factual aspect of the case;
 - b) That the impugned demand letter dated 14.03.2023 and the impugned order dated 25.08.2023 of the respondents are erroneous, contrary to law applicable in the present case;
 - c) That the Appellant has always paid the invoices raised by the Respondent;
 - d) That the Appellant vide letter dated 18.04.2023 requested the Respondent reduction of electricity load from 100 KWH to 6 KWH, which was also illegally rejected;

- e) That the meter installed by the Respondent in the premises of the Appellant was not in operation since Nov, 2020 which was intimated to the Respondent on numerous occasions;
- f) That in the month of March 2023 as per the regular audit conducted by the Respondent on the premises of the Appellant found that the meter installed is defective;
- g) That the invoice raised by the Respondent is based on the wrong computation which is not sustainable in the eyes of law and the average bill raised by the defendant is based on the defective meter;
- h) That on numerous occasions the Appellant requested the Respondent and its concerned department to reduce the sanctioned load, regarding which the same no heed was paid by the Respondent and further raised the invoices on more than the average consumption;
- i) That the Appellant is not shying away from paying the bills but the same need to be according to the reduced load of electricity.

Prayer

It is most respectfully prayed that the records of this case be summoned and this Hon'ble Authority may kindly be pleased to: -

- a. Allow this appeal under Section 42 (6) of the Electricity Act, 2003 read with Regulation 2.48 (B) and 3.16 of Haryana Electricity Regulatory Commission Notification.
- b. Quash/set aside the impugned order dated 25.08.2023 passed by respondent no. 2 - Consumer Grievances Redressal Forum and the impugned illegal and arbitrary demand of Rs. 97,51,464/- raised by respondent no. 1 vide impugned letter dated 14.03.2023.
- c. Issue an appropriate order or direction directing the respondents to re-consider and accordingly revise the electricity bills to be paid by the appellant by deducting therefrom the abovesaid illegal and arbitrary demand of Rs. 97,51,464/- on reduced electricity load of 6 kWh, by accepting the request of the appellant for reduction of electricity load from 100 kwh to 6 kWh.
- d. Issue an appropriate order or direction, on an interim basis, directing the respondents to immediately restore the electric connection in question of the appellant, during the pendency of the present petition.

- e. Issue an ex-parte ad-interim order staying the operation of the abovesaid illegal demand raised by respondent no. 1 vide impugned letter dated 14.03.2023 & the impugned order dated 25.08.2023 passed by respondent no. 2, during the pendency of the present petition.
- f. Issue such other order or direction in favour of the appellant, which this hon'ble authority may deem fit and proper in the facts and circumstances of the case.
- B.** The appeal was registered on 18.10.2023 as an appeal No. 97/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 28.11.2023.
- C.** Hearing was held 28.11.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the respondent submitted that she has been engaged recently. Further, submitted that the appellant has filed a CWP in the Hon'ble Punjab and Haryana High Court and the appeal is beyond the jurisdiction of this forum. Per contra, the counsel for the appellant submitted that the respondent may be directed to file reply. Both the parties agree to be heard on 30.11.2023. The respondent is directed to file reply by 29.11.2023 with an advance copy to the appellant. The matter was adjourned for hearing on 30.11.2023.
- D.** The counsel for the respondent SDO vide email dated 29.11.2023 has submitted reply which is as under: -
1. The present reply is being filed through Ashish Mittal working as SDO/Operations, Sub-Division Jonawas (hereinafter referred to as 'Respondent No. 1'), who is competent to file the present reply as well as fully conversant with the facts and circumstances of the case on the basis of knowledge derived from the record. All submissions are made in the alternative and without prejudice to each other. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.
 2. By way of present representation, the Appellant has sought to set aside the impugned order dated 25.08.2023 vide which Ld. Corporate CGRF upheld the recovery to be made from the Appellant for an amount of Rs. 97,51,464/- as the bill was being generated on zero consumption basis since November 2020 and the accounts needs to be overhauled after detection of the fact that the meter was not recording the actual consumption.

3. The Appellant is seeking revision of electricity bills to be paid by the Appellant considering reduced load of 6 KWH and accepting the request of the Appellant for reduction of electricity load from 100 KWH to 6KWH. The Appellant has further sought direction to the Respondent to immediately restore the electricity connection in question.
4. That at the outset, it is submitted that the Appellant has also approached the Hon'ble High Court of Punjab and Haryana by way of a Writ Petition numbered as CWP 24575 of 2023 seeking the similar relief as is sought in the present appeal. The reliefs sought in the Writ Petition, though not maintainable, are reproduced hereunder for ready reference –

Prayer

It is most respectfully prayed that the records of this case be summoned and this Hon'ble Court may kindly be pleased to: -

- a. *Issue a writ, order or direction in the nature of certiorari, whereby quashing the impugned order dated 25.08.2023 passed by respondent no. 2- consumer grievances redressal forum and the impugned illegal and arbitrary demand of Rs. 97,51,464/- raised by respondent no. 1 vide impugned letter dated 14.03.2023.*
- b. *Issue a writ, order or direction in the nature of mandamus directing the respondents to reconsider and accordingly revise the electricity bills to be paid by the petitioner by deducting therefrom the abovesaid illegal and arbitrary demand of Rs. 97,51,464/- on reduced electricity load of 6 kwh, by accepting the request of the petitioner for reduction of electricity load from 100 kwh to 6 kwh and also directing them to restore the electricity connection of the petitioner forthwith.*
- c. *Issue a writ, order or direction in the nature of mandamus directing respondent no. 3 to hear and decide the appeal filed by the petitioner before it, forthwith.*
- d. *Issue an ex-parte ad-interim order staying the operation of the abovesaid illegal demand raised by respondent no. 1 vide impugned letter dated 14.03.2023 & the impugned order dated 25.08.2023 passed by respondent no. 2 and from taking any other coercive action against the petitioner pursuant to the said illegal demand, during the pendency of the present petition.*

- e. *Issue such other order or direction in favour of the petitioner, which this Hon'ble authority may deem fit and proper in the facts and circumstances of the case.*
- f. *Exempt the petitioner from filing certified/original copies of annexures p-1 to p-13 and permit it to file true typed/translated/photo copies thereof.*
- g. *Dispense with the petitioner from advance service of summons upon the respondents.*
- h. *Allow this writ petition with costs."*

The foregoing Prayer Clause of the Writ Petition establishes that the relief sought is the similar as is sought in the Appeal/ Representation. It is humbly submitted that law doesn't contemplate multiple adjudications of the same dispute and contrary or inconsistent decisions on the same issues, facts and law between the parties. There cannot be more than one adjudication of the very same dispute. If the cause of action (being that bundle of facts material and germane to the arising of the dispute) and/or the issues (factual and legal) are not severable distinctly, in such cases, only one adjudication is permissible. It is pertinent here to refer to Regulation 3.18 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020

"3.18 No representation to the Ombudsman shall lie unless:

(iv) The representation by the complainant, in respect of the same grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority; a decree or award or a final order has not been passed by any such court, tribunal, arbitrator or authority."

Therefore, in such circumstances, the doctrine of Res sub-judice is required to be applied and the present appeal may only be adjudicated after the withdrawal of the Writ Petition pending adjudication before the Hon'ble High Court of Punjab and Haryana after obtaining consent of the Appellant conceding to the jurisdiction of this Hon'ble Forum and the present representation/ appeal being the appropriate remedy for adjudication of present issue. The Petitioner's action of invoking jurisdiction of multiple forums, in order to obtain the relief in some way or the other, is liable to be deprecated.

- 5. Before advertent to the contentions of the Appellant on merits, the Respondent sets out hereunder a brief background of the instant Appeal which would amply establish that the Ld. CGRF had rightly dismissed the relief sought by the Appellant –

Brief Background: -

1. Indraprastha Gas Ltd. (herein referred to as 'Appellant') is a consumer of DHBVN bearing account no. 4164481000 having a CGS plant under S/Divn. DHBVN, Dharuhera (Respondent No. 1). Initially the Appellant applied for an electricity load of 10KWH per month and the same was approved by Respondent No. 1, thereby installing a meter at Appellant's CGS plant.
2. In November, 2019, the Appellant requested the Respondent No. 1 to increase the load from 10 KWH to 100 KWH. The aforesaid request of the Appellant was approved by Respondent No. 1 and the connection was released by the operation team on 24.02.2020 as per DHBVN Sale Circular D-22/2-14 and D-1/2019. In regard to this, intimation was sent to the Xen, M&P team, DHBVN Bhiwani in order to regularise the connection of the Appellant.
3. However due to CTs of meter being in open position, the reading could not be recorded and the bills of the Appellant were charged on zero consumption basis and only fixed charges were levied on the Appellant's account. In an audit conducted by the Audit team of Respondent, it was observed that the reading of the meter installed at the premises of the Appellant seems to be incorrect. Regarding the same, Respondent No. 1 inspected the premises of the Appellant on 15.03.2023 wherein it was observed that all the 3 CTs were in open position and hence, the reading could not be recorded. The same is evident from the Inspection Report dated 15.03.2023.
4. In view of the foregoing, the Appellant was charged Half Margin 67/2022 dated 09.03.2023 amounting to Rs. 97,51,464/- against zero consumption bill. The Appellant was duly informed in this regard vide notice dated 14.03.2023. It is pertinent to mention herein that the aforesaid amount has been charged as per the Sale Circular No. D-28/2013 dated 19.06.2013 issued by Respondent No. 1.

Bill raised by the Respondent is in terms of the circular, valid and perfectly legal –

5. The premises of the Appellant had the electricity connection under the category of HT industry fed through industrial feeder (urban mode). As per the Sales Circular No. D-28/2013 dated 19.06.2013 issued by Respondent No. 1, when any consumer under the said category is billed in case of event where no previous correct consumption data is available, the estimated no. of units for HT industry in kWh has to be taken as 480

kWh/48000 kVAh per month, meaning thereby, estimated no. of units consumed in a day comes out to be 1578 kVAh. It is relevant to mention that the reading was not recordable for the period of 911 days, i.e., from 01.09.2020 to 01.03.2020. Therefore, the total number of units consumed for 911 nos. of days for which the reading was not recordable is calculated to be 1437633 kVAh. As per the Sale Circular No. D-14/2022 dated 17.05.2022, the tariff per kVAh is Rs. 6.65, which makes the total amount to be charged for 1437633 kVAh comes out to be Rs. 95,60,259/. Further, as per the Sale Circular No. D-32/2021 dated 20.08.2021, 2% Panchayat Tax shall be applicable on the electricity bill charged. The said 2% amount on Rs. 95,60,259/- comes to Rs. 1,91,205/-. Therefore, the amount levied by Respondent No. 2 is being calculated as Rs. 97,51,464/- (Rs. 95,60,259/- + Rs. 1,91,205/-). Thus, the provisional bill issued after the detection that the meter reading was not being recorded due to open CTs is valid, legal and in terms of the circular of the Respondent.

Para-Wise Reply to the Appeal

1. The contents of this para, being reference to the Appeal filed by the Appellant under Section 42 (6) of the Electricity Act, 2003 against the demand raised by Respondent No. 1 vide letter dated 14.03.2023 and impugned order dated 25.08.2023 passed by the Corporate CGRF, are a matter of record.
2. The contents of this para, being reference to the address and business of the Appellant, are a matter subject to verification.
3. The contents of this para, being reference to details of Appellant business, are the subject matter of verification.
4. The contents of this para, being reference to details of Appellant business, are the subject matter of verification.
5. The contents of this para, being reference to Respondent No.1, are a matter of record.
6. The contents of this para are the subject matter of verification.
7. The contents of this para, being reference to the supply of electricity at the Appellant's CGS plant by Respondent No. 1, are a matter of record.
8. The contents of this para, being reference to installation of meter at Appellant's CGS plant, are a matter of record.
9. The contents of this para, being reference to monthly invoices raised by Respondent No. 1 as per the reading of the meter, are a matter of record.

10. The contents of this para, being reference to Appellant's request to extend the electricity load from 10 KWH to 100 KWH, are a matter of record.
11. The contents of this para, being reference to the installation of new meter on account of increased electricity load, are a matter of record.
12. The contents of this para are wrong, incorrect and hence, denied. It is denied that the new meter installed by Respondent No. 1 was defective. It is further denied that in regard to the same Appellant made numerous communications to Respondent No. 1. It is pertinent to mention here that no such communication with regard to the new meter being defective has been received by Respondent No. 1. The meter was not recording consumption owing to CT being left open and not because there was some defect in the meter.
13. The contents of this para are wrong, incorrect and hence, denied. It is denied that the Appellant kept on following up on the issue regarding the faulty meter raised by the Appellant. No such issue was raised by the Appellant. It is further denied that false assurances were given by Respondent No.1. The contentions raised by the Appellant are false and unsubstantiated.
14. The contents of this para, being reference to the Respondent's notice dated 14.03.2023 along with the Audit Report dated 09.03.2023, are a matter of record. It is being reiterated that the 3 CTs were found in open position after the inspection conducted by M&P team on 15.03.2023 due to which no reading could be recorded from the new meter. Therefore, in accordance with the Sale Circular No. D-28/2013 dated 19.06.2013 issued by Respondent No. 1, the Appellant was billed for arrears for an amount of Rs. 97,51,464/-. Further, it is denied that the Audit Report dated 09.03.2023 states that the average bills previously raised by Respondent No. 1 were incorrect. The Audit Report dated 09.03.2023 states as herein below: -

“During the course of audit, it has been observed that the reading of the above consumer was recorded same i.e., 31 of every month since nov. 2020 to onward. Which seems meter defective. As an when audit party point out the same and JE area in charge reported that no parodical checking carried out by M&P wing after repeated request. However, it has also intimated by JE that meter seen smoky no reading readable, and a letter also written to Zen M&P division Bhiwani vide this office Memo no. 5686 dated 5/9/22 (copy attached) so audit has observed that account of

the consumer was to be overhauled in view of nigam sale circular D28/2013 (provisionally). So same is here by overhauled as detailed attached.

So you are requested to charge amount of Rs. 9751464/- only after due verification of record.

Total Amount Involved Rs. 9751464/-

Remarks-1 Half margin framed on the basis of record made available to audit.”

15. The contents of this para are wrong, incorrect and hence, denied. It is denied that Respondent No. 1 raised a demand based on the usage of electricity in full capacity. It is further denied that Respondent No. 1 levied variable cost on the basis of taking maximum consumption per day. It is being reiterated that the amount levied is in accordance with the Sale Circular No. D-28/2013 dated 19.06.2013 issued by Respondent No. 1. The premises of the Appellant had the electricity connection under the category of HT industry fed through industrial feeder (urban mode). As per the aforesaid Sale Circular dated 19.06.2013, when any consumer under the said category is billed in case of no previous correct consumption data being available, the estimated no. of units for HT industrial supply (continuous process industry) in kWh has to be taken as 480 kWh/48000 kVAh per month, meaning thereby, estimated no. of units consumed in a day comes out to be 1578 kVAh. It is relevant to mention that the reading was not recordable for the period of 911 days, i.e., from 01.09.2020 to 01.03.2020. Therefore, the total number of units consumed for 911 nos. of days for which the reading was not recordable is calculated to be 1437633 kVAh. As per the Sale Circular No. D-14/2022 dated 17.05.2022, the tariff per kVAh is Rs. 6.65, which makes the total amount to be charged for 1437633 kVAh comes out to be Rs. 95,60,259/. Further, as per the Sale Circular No. D-32/2021 dated 20.08.2021, 2% Panchayat Tax shall be applicable on the electricity bill charged. The said 2% amount on Rs. 95,60,259/- comes to Rs. 1,91,205/-. Therefore, the amount levied by Respondent No. 2 is being calculated as Rs. 97,51,464/- (Rs. 95,60,259/- + Rs. 1,91,205/-) and hence, the Appellant is liable to pay the aforesaid amount.
16. The contents of this para, being reference to the Appellant's letter dated 20.03.2023, is a matter of record. However, it is denied that no action was even taken by the Respondent to fix the faulty meter. It is pertinent to

mention here that the meter was not recording consumption owing to CT being left open and not because there was some defect in the meter.

17. The contents of this para, being reference to the letter dated 22.03.2023 of Respondent No. 1, is a matter of record. However, it is denied that Respondent No. 1 threatened the Appellant for disconnection of the supply to the Appellant. The amount of Rs. 97,51,464/- is correct and liable to be charged from the Appellant. The same is evident from the foregoing submissions made by Respondent No. 1.
18. The contents of this para are wrong, incorrect and hence, denied. It is denied that the Appellant vide letter dated 04.04.2023 requested Respondent No. 1 for reconsidering the matter and revising the assessment. It is relevant to mention here that no such letter was ever received by Respondent No. 1.
19. The contents of this para, being reference to Appellant's request dated 18.04.2023 to reduce the electricity load, is a matter of record. However, the said request was rejected as the payment of half margin was still pending for the Appellant's account. The said request was duly responded upon by the Respondent vide letter dated 24.04.2023.
20. The content of this para, to the extent it states that an electricity bill no. 41661947100 dated 06.06.2023 was raised with revised demand of Rs. 97,53,105.08, are a matter of record. However, it is denied that the revised demand was raised by Respondent No. 1 was illegal. Detailed submissions in this regard have already been made in the foregoing paragraphs and not being reiterated for the sake of brevity.
21. The contents of this para, being reference to the complaint filed by the Appellant before the Ld. Corporate CGRF, are a matter of record.
22. The contents of this para, being reference the two replies dated 25.07.2023 and 14.08.2023 filed by Respondent No. 1, are a matter of record.
23. The contents of this para insofar as it refers to the order dated 25.08.2023 passed by Respondent No. 2-Ld. CGRF, are a matter of record. However, it is denied that the said order was served upon the Appellant on 07.09.2023. It is further denied that the Ld. CGRF has illegally and arbitrarily disposed off the complainant of the Appellant.
24. The contents of this para are wrong, incorrect and hence, denied. The Ld. CGRF has rightly held that the period of limitation will start from the 'due

date' i.e., on which mistake was detected by the Respondent. In response to the Appellant's contention that the recovery of the said amount beyond the period of last two years is not tenable, the Respondent submits that as per Section 56(2) of the Electricity Act, the sum due on account of the negligence of a person to pay for electricity would not be recoverable after the period of two years from when such sum becomes "first due". Meaning thereby, despite the fact that the liability would have arisen on consumption, electricity charges would not become "first due" until the bill has been issued. Reliance in this regard has been placed on the judgement of *M/S Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.*, Civil Appeal No. 7235/2009 in which the Hon'ble Supreme Court categorically stated as herein below: -

11. *In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. There were (i) what is the meaning to be ascribed to the term "first due" in Section 56 (2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.*

12. *On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption.....*

13. *Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56 (2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).*'

25. The contents of this para are wrong, incorrect and hence, denied. It is denied that Respondent No. 1 had the knowledge about the faulty meter installed at the premises of the Appellant. In regard to the no actual

consumption being recorded in the meter, Respondent No. 1 got the knowledge after the audit was done by Respondent No. 1. It is further denied that issuance of average bill by Respondent No. 1 itself shows admission on part of Respondent No. 1 that the meter was not recording actual consumption. It is relevant to mention herein that the account of the Appellant was billed on zero consumption basis and a fixed charge were charged on the said account by Respondent No. 1. It is denied that the Appellant is paying the charges for electricity on average usage basis. It was time and again communicated to the Appellant that the Appellant's account was charged with fixed charges and no charges were levied as per the electricity usage of the Appellant.

26. The contents of this para are wrong, incorrect and hence, denied. The averments made by the Appellant have no credence in the eyes of law. It is relevant to mention here that the Appellant has failed to adduce any evidence to substantiate its averment made in the instant para.
27. The contents of this para are wrong, incorrect and hence, denied. It is denied that the Appellant has requested Respondent No. 1 to regularise the connection w.e.f. 24.03.2020 till 15.05.2023 despite multiple reminders. It is further denied that Respondent No. 1 illegally and malafidely disconnected the electricity connection of the Appellant on 28.09.2023 after the sun-set and harassed Appellant to pay the unlawful and exorbitant amount. The amount raised by Respondent No. 1 is valid and hence, recoverable from the Appellant.
28. The contents of this para are wrong, incorrect and hence, denied. It is denied that the disconnection of electricity is highly exaggerated action taken by Respondent No. 1 totally disregarding due process of law. Since, the amount due was not paid by the Appellant, Respondent No. 1 was bound to take such adverse action.
29. The contents of this para are wrong, incorrect and hence, denied. The Appellant failed to pay the amount chargeable as per the electricity bill dated 06.06.2023 and therefore, the electricity connection cannot be re-connected. Further, it is submitted that there is no fault in the aforesaid bill dated 06.06.2023 and therefore, no revised bill can be issued based on the actual consumption of electricity by the Appellant.
30. The contents of this para are wrong, incorrect and hence, denied.

31. The contents of this para are wrong, incorrect and hence, denied. It is denied that due to the gross negligence of Respondent No. 1, the Appellant has been forced to pay the arbitrary and unjustified amount without any basis. Detailed submission in regard to the amount chargeable has already been made in the foregoing paras and not being reiterated for the sake of brevity.
32. The contents of this para are wrong, incorrect and hence, denied. The sub para wise submission is being made as hereinbelow: -
- a) The contents of this sub-para are wrong, incorrect and hence, denied. The demand of Respondent No. 1 for the amount in dispute is valid and justified as stated in the foregoing paras.
 - b) The contents of this sub-para are wrong, incorrect and hence, denied. It is denied that the demand letter 14.03.2023 and the impugned order dated 25.08.2023 of the Respondents are erroneous, contrary to law applicable in the present case
 - c) The contents of this sub-para are wrong, incorrect and hence, denied. The Claimant has failed to pay the electricity bill dated 06.06.2023. Instead of paying the electricity bill, the Appellant raised this unnecessary issue before the Ld. Corporate CGRF and the Hon'ble Electricity Ombudsman.
 - d) The contents of this sub-para are wrong, incorrect and hence, denied. It is denied that the Appellant's request dated 18.04.2023 for reduction of electricity load from 100 KWH to 6 KWH was illegally rejected. It is pertinent to mention here that the said request was rejected on the ground that the dues were not paid by the Appellant.
 - e) The contents of this sub-para are wrong, incorrect and hence, denied. It is denied that the default of the meter was intimated by the Appellant to the Respondent on numerous occasions.
 - f) The contents of this sub-para are wrong, incorrect and hence, denied. It is important to mention that it was not stated in the Audit Report dated 09.03.2023 that the meter was defective. The aforesaid Audit Report states that "*which seems meter defective*", meaning thereby, it was after the inspection done by the M&P team on 15.03.2023, it became clear that the CTs were in open position due to which readings were not recorded in the meter.

- g) The contents of this sub-para are wrong, incorrect and hence, denied. The computation has been duly explained in Preliminary submissions and Para no. 15 of the Para-wise reply to the Appeal.
- h) The contents of this sub-para are wrong, incorrect and hence, denied. It is denied that on numerous occasions the Appellant requested the Respondent to reduce the sanctioned load. It is relevant to mention that the Appellant only requested vide letter dated 18.04.2023 to reduce the electricity load from 100 KWH to 6 KWH. The said demand however, could not be acceded to as the Appellant failed to clear the arrears of the electricity consumption. It is further denied that Respondent No. 1 raised the invoices more than the average consumption. The Appellant failed to adduce any evidence with respect to the averment so made.
- i) The contents of this sub-para are wrong, incorrect and hence, denied. The Appellant is unnecessarily dragging the matter wasting the time of this Hon'ble Forum. The dispute amount is valid and justified in the eyes of law. Therefore, the Appellant is liable to pay the said amount.

Prayer:

It is, therefore, most respectfully prayed that in view of facts and submissions made hereinabove, the present Appeal filed by the Appellant being devoid of merits is liable to be dismissed with exemplary costs.

E. Hearing was held on 30.11.2023, as scheduled. Both the parties were present during the hearing through video conferencing. Ld. Counsel for the Respondent, Ms. Sonia Madan submitted that they have filed reply to the Appeal which was also served to the Appellant. Ld. Counsel for the Appellant, Mr. Sapan Dhir admitted that the Reply filed by the Respondent has been received and requested time to file replication to the same. Ms. Madan however, mentioned that the Appellant has also approached the Hon'ble High Court of Punjab and Haryana by way of a Writ Petition (CWP 24575 of 2023) seeking the similar relief as is sought in the present appeal. She referred to Regulation 3.18 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 and stated that the present appeal can only be heard after the withdrawal of the Writ Petition pending adjudication before the Hon'ble High Court of Punjab and Haryana and after obtaining consent of the Appellant conceding to the jurisdiction of this Hon'ble Forum as the appropriate remedy for adjudication of issue involved.

Regulation 3.18 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 reads as under –

“3.18 No representation to the Ombudsman shall lie unless:

(iv) The representation by the complainant, in respect of the same grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority; a decree or award or a final order has not been passed by any such court, tribunal, arbitrator or authority.”

Ld. Counsel for the Appellant, however stated that he needs to file replication to the preliminary objection taken by the Respondent and shall be permitted to do the same. He mentioned that he is occupied owing to the upcoming elections of the Bar Association of the Hon'ble High Court and next date shall be fixed after 16.12.2023.

Considering the request of the Counsel or the Appellant, the matter was adjourned for 21.12.2023 for consideration on the Preliminary Objection raised by the Respondent. The appellant may file its replication within a period of 2 weeks with an advance copy to the Respondent.

F. Hearing was held on 21.12.2023, as scheduled. Counsel for the respondent was present during the hearing through video conferencing. None appeared on behalf of appellant. The matter was adjourned for hearing on 23.01.2024.

G. The counsel for the appellant vide email dated 23.01.2024 has submitted rejoinder on reply filed by the respondents, which is reproduced as under:

1. That the contents of this para of the reply are denied for want of knowledge.
2. That the contents of this para of the reply do not call for any rejoinder being matter of record.
3. That the contents of this para of the reply are denied as incorrect and rather misleading and misinterpreting the reliefs claimed herein by the appellant, as is clear from a bare perusal of the prayers/reliefs claimed by the appellant herein in this appeal.
4. That the contents of this para of the reply are admitted to the extent that the appellant has also filed CWP-24575/2023 before the Hon'ble High Court. Rest of the whole para is denied as incorrect, baseless and vague. The appellant has also the remedy under Article 226 of the Constitution of India before the Hon'ble High Court against the illegal act and conduct of the respondents and that is why, the Hon'ble High Court has issued notice of motion in the said writ petition to the respondents, whom have

to file reply there as yet. Because of the respondents' illegal act and conduct towards the appellant, the appellant is suffering a lot by running their CGS plant by generating electricity through their generators, which is not only costly, but only limited supply is generated from such generators, which would ultimately affect a large number of its consumers.

It is pertinent to mention here that the appellant is currently supplying gas from CGS Dharuhera to all the CNG stations located in Rewari, Dharuhera and some part of Gurugram, for which average withdrawal of gas on daily basis is almost 170000 scmd. In domestic and industrial segment, the appellant is supplying gas to more than 50 industries in Dharuhera Region and approx. 3000 household are consuming natural gas that sums up around 50000 scmd gas on daily basis. As per PNGRB guidelines, odorant must be mixed with natural gas before supplying to city network as natural gas is odorless in nature, hence the appellant has installed a odorization unit as CGS Dharuhera, where it injects smelling agent in natural gas so that any leakage in household or industry can be identified by sniffing. Odorisation unit requires electricity supply to run 1.5 kW motor for injection of odorant in natural gas. Now the appellant is operating odorant unit on gas generator which we need to keep it operationalized 24X7. In case of breakdown of generator, there might be lead to stoppage of odorization in gas. Electricity connection is required for flood lights in premises keeping in view the safety and securities of assets. The appellant had laid steel pipeline in city for supplying gas to CNG stations and other industries. As per PNGRB guidelines, integrity of steel pipeline needs to be maintained by installing PCP (permanent cathodic protection) system for which electricity supply is required. The appellant is not able to keep the PCP unit in operation due to disconnection of electricity supply. Furthermore, scada system is being installed at CGS for immediate closure of valve in case of any emergency. Electricity supply is required for efficient operation of scada system, which the appellant is unable to do because of supply disconnection. Therefore, the appellant humbly craves that its electric connection be immediately restored.

5. That the contents of this para are denied as incorrect, baseless and vague as false background has been stated in its sub-paras and therefore, sub-para wise reply to this para is as under: -

1. That the contents of this sub-para of the reply are admitted being matter of record.
2. That the contents of this sub-para of the reply are admitted being matter of record.
- 3-4 That the contents of this sub-para of the reply are denied as incorrect. It is denied that the reading could not be recorded due to CTs of meter being in open position. It was only an after-thought. Had it been so, why the respondents have waited for three years. Infact, the meter installed by them was faulty, which did not record proper reading, qua which the appellant has been requesting the respondents throughout to check, but no heed was paid by them. The appellant cannot be penalize for the fault of the respondents. Admittedly, no inspection was conducted of the premises/electric connection of the appellant prior to 15.03.2023. Even the alleged inspection allegedly conducted by the respondents is totally a bogus inspection and is an after thought just to save their skin from the action for their own faults. It is pertinent to mention herein that even after the complaint of the Appellant vide letter dated 24.12.2021, no action was taken by the respondent. In fact, no such inspection was carried out nor the appellant has been joined in any such alleged inspection. In this regard, for the sake of brevity, the submissions made in the main appeal be read in rejoinder to these sub-paras also.
5. That the contents of this sub-para of the reply are denied as incorrect, baseless and vague. It is denied that the bill raised by the respondent is valid and perfectly legal. The alleged Circular dated 19.06.2013 is not applicable in the instant case as there is no fault on the part of the appellant regarding availability of previous correct consumption. Admittedly, the meter installed by the respondents is faulty and that is why, the respondents were sending average bills, without correcting the meter for getting its proper reading despite numerous requests by the appellant since the year 2020. Likewise, the other alleged circulars are also not applicable in the instant case. The allegation of the respondent that meter reading was not being recorded due to open CTs is only an after-thought and that too, after a period of three years. For the

sake of brevity, the submissions made in the main appeal be read in rejoinder to this sub-para also.

Para wise Rejoinder: -

- 1-11 That the contents of these paras of the reply do not call for the any rejoinder. However, it is respectfully submitted that the averments made in the appeal by the appellant regarding wrong reading of the meter have not been denied by the respondents.
- 12-13 That the contents of these paras of the reply are denied as incorrect, baseless and vague and those of these paras of the appeal are reiterated. It is denied that the new meter installed was not defective. The Audit Report dated 09.03.2023 itself specifically mentions that the meter was defective. It is also denied that no communication with regard to the new meter being defective has been received by the respondents. The letter dated 24.12.2021 (Annexure P-A-2) has been received by them, which has not been denied in these paras by the respondents. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to these paras also.
- 14 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. The alleged inspection dated 15.03.2023 was an after thought by the respondents just to save their skin from their fault. As stated earlier, the appellant cannot be penalized for the fault of the respondents and as such, it is not liable to pay the alleged exaggerated amount of Rs. 97,51,464/-. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.
- 15 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. The alleged Circulars and calculations mentioned in this para by the respondents are not applicable in the instant case as there is no fault on the part of the appellant. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.

- 16 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. From a perusal of records, it is clear that the appellant informed the respondents about the faulty meter vide its letter dated 24.12.2021, but the respondents did not take any action. The allegation regarding CT being left open is an after-thought. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.
- 17 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. The respondents have illegally disconnected the electric connection of the appellant, what to talk of threatening. It is denied that the amount of Rs. 97,51,464/- is correct and liable to be charged from the appellant. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.
- 18 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. It is denied that the respondents have not received the letter dated 04.04.2023. A bare perusal of the three letters dated 24.12.2021, 20.03.2023 & 04.04.2023 would clearly shows that the same person of the respondents had received all the three letters. As such, the respondents are making false averments that they have not received communications from the appellant. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.
- 19-20 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of these paras of the appeal are reiterated. It is denied that the revised demand is legal. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to these paras also.
- 21-22 That the contents of this para of the reply do not call for any rejoinder.

- 23 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.
- 24 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. The alleged demand raised by the appellant is beyond the limitation and cannot be made. Section 56 (2) & the judgement referred in this para of the reply are not applicable in the instant case as the facts therein are totally different from the instant case. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.
- 25 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. It is denied that respondents had no knowledge about the faulty meter and that they got knowledge after the audit only. The falsity of this allegation on the part of the respondents is proved from a bare perusal of the letter dated 24.12.2021. It is also denied that the appellant is not paying the charges for electricity on average usage basis. It is denied that the appellant was time and again communicated that its account was charged with fixed charges and no charges were levied as per its electricity usage. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also.
- 26-32 That the contents of this para of the reply are denied as incorrect, baseless and vague and those of this para of the appeal are reiterated. For the sake of brevity, the submissions made in the preceding paragraphs of this rejoinder and the averments made in the main appeal be read in rejoinder to this para also. In view of the submissions made above, it is, therefore, respectfully prayed that the instant appeal filed by the appellant be allowed and the reliefs sought therein may kindly be granted, in the interest of justice.

It is further prayed that this Hon'ble Authority may kindly be pleased to direct the respondents to restore the electric connection of the appellant forthwith, in the interest of justice.

H. Hearing was held today, as scheduled. Both the parties were present during the hearing through video conferencing. The matter was taken up for hearing on 23.01.2024. During the hearing dated 30.11.2023, a preliminary issue was raised by the Respondent with respect to hearing of the present appeal in view of the pendency of the similar issue before the Hon'ble Punjab and Haryana High Court.

Ms. Madan, Ld. Counsel for the Respondent submitted that although the Respondents have submitted their reply on merits of the dispute to the Appeal filed by the Appellant yet a preliminary issue with respect to tenability of hearing of the matter on merits has to be considered first. Attention was drawn to Interim Order dated 30.11.2023 wherein the preliminary objection was taken note of and the Appellant was asked to respond to the same. Pursuant thereto, two adjournments were sought by the counsel for the Appellant. Accordingly, the matter was adjourned for hearing on 23.01.2024.

In the hearing dated 23.01.2024, Ld. Counsel for the Respondent submitted that they have received Rejoinder filed by the Appellant through email 2 hours before the hearing today but the Appellant has not addressed the preliminary issue raised by them. It was urged by the counsel for the Respondent that the Appellant has also approached the Hon'ble High Court of Punjab and Haryana by way of a Writ Petition (CWP 24575 of 2023) seeking the similar relief as is sought in the present appeal. Reference was made to Regulation 3.18 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 and stated that the present appeal can only be heard after the withdrawal of the Writ Petition pending adjudication before the Hon'ble High Court of Punjab and Haryana or after obtaining consent of the Appellant conceding to the jurisdiction of this Hon'ble Forum as the appropriate remedy for adjudication of issue involved. It was mentioned that after the issue was raised during hearing dated 30.11.2023, the matter was listed before the Hon'ble Punjab and Haryana High Court. However, the Appellant had sought the adjournment in the said proceedings. The Appellant cannot be permitted to choose two forums in respect of the same subject-matter for the same relief.

Mr. Sapan Dhir, Ld. Counsel for the Appellant submitted that he is ready to argue the matter on merits. On the issue of tenability of hearing of the present appeal in view of the similar issue being subjudice before the Hon'ble High Court,

it was conceded that in the writ petition filed before the Hon'ble High Court, similar reliefs have been prayed as is sought in the present appeal. He however, categorically refused to pursue one of the remedy and stated that he will not withdraw the writ petition.

Regulation 3.18 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 reads as under –

“3.18 No representation to the Ombudsman shall lie unless:

(iv) The representation by the complainant, in respect of the same grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority; a decree or award or a final order has not been passed by any such court, tribunal, arbitrator or authority.”

As per section 42 (6) of the Electricity Act, 2003, a forum is established for the redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission, and accordingly, HERC in exercise of its statutory function under Section 181 of the Electricity Act, 2003 made under the authority of delegated legislation has notified Forum and Ombudsman Regulations have been notified by HERC. All the proceedings conducted by this office are therefore, regulated by the Forum and Ombudsman Regulations. In view of Regulation 3.18 of Forum and Ombudsman Regulations, 2020, the present appeal cannot remain in view of the similar issue being *subjudice* before the Hon'ble High Court of Punjab and Haryana in CWP 24575 of 2023. The counsel for the Appellant was specifically asked whether he wishes to pursue the present appeal after withdrawal of the writ petition before the Hon'ble High Court, which was categorically refused by the counsel for the Appellant by stating that he will not withdraw the writ petition. In view thereof, since the issue involved in present appeal is *subjudice* before higher court and the Appellant has refused to concede to the jurisdiction of this forum, the present appeal is disposed off as not tenable.

Both the parties to bear their own costs. File may be consigned to record.

Given under my hand on 23rd January, 2024.

Sd/-

(Virendra Singh)

Electricity Ombudsman, Haryana

Dated: 23rd January, 2024

CC-

Memo. No. 4400-06/HERC/EO/Appeal No. 97/2023

Dated: 25.01.2024

1. M/s Indraprastha Gas Limited, IGL Bhawan, Plot NO. 4, Community Centre, R.K. Puram, Sector 9, New Delhi (Email dhirsapan@gmail.com).

2. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Limited, Vidyut Sadan, Vidyut Nagar, Hisar -125005 (Email md@dhbvn.org.in).
3. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector- 6, Panchkula – 134109 (Email lr@hvpn.org.in).
4. The Chief Engineer 'Operation', DHBVN, Delhi Zone, Delhi (Email ceopdelhi@dhbvn.org.in).
5. The SE, Operation Circle, Rewari (Email seoprewari@dhbvn.org.in).
6. The XEN Operation, DHBVN Dharuhera (Email xenopdharuhera@dhbvn.org.in).
7. The SDO Operation, DHBVN, Dharuhera (Email sdoopdharuhera@dhbvn.org.in).

Appeal No. 97/2023/EO