BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA
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(Regd. Post)

Appeal No. : 37/2024
Registered on : 30.10.2024
Date of Order : 02.05.2025

In the matter of:

Appeal against the order dated 18.09.2024 passed by CGRF DHBVN Gurugram in complaint no. 4739/2024.

Shri Parveen Satija, Plot No. 179-180, Industrial Estate, Udyog Vihar, Phase-6, Sector-37, Gurugram **Appellant**

Versus

1. The Executive Engineer Operation, DHBVN, City Division, Gurugram
2. The SDO Operation, DHBVN, S/Division Kadipur, Gurugram **Respondent**

Before:
Shri Rakesh Kumar Khanna, Electricity Ombudsman

Present on behalf of Appellant:
Shri Parveen Satija
Shri Aksh Yadav counsel for the appellant

Present on behalf of Respondents:
Shri Raghav Kakkar, Advocate
Shri Shivpartap Singh Thakur, Advocate
Ms. Deepika Bedi, Advocate
Sh. Vipin Yadav, SDO, DHBVN

ORDER

A. Shri Anurag Jain has filed an appeal against the order dated 18.09.2024 passed by CGRF, DHBVNL, Gurugram in complaint No. DH/ CGRF 4739/2024. The appellant has requested the following relief: -

We had filled a complaint with the CGRF Gurgaon dated 12.07.2024 which was admitted as complaint no. 4739/2024 dated 24.07.2024.

The forum has passed an order 212CGRF/GGN dated 26.09.2024 dismissing the case on the ground that the forum has no jurisdiction over the issue/matter filled by us.

Kindly note the following facts for our complaint

1. We had approached to the CGRF with grievance against bill no. 801914873171 dated 15.09.2018 but the forum dismissed the case/complaint stating that same issue was decided by the court but the case in court was against the bill no. 801915472542 dated 21.03.2017 which was totally different from our complaint / grievance.

2. The Forum has admitted our case and was placed for hearing and in 3rd hearing SDO, kadipur has filled his reply vide memo no. 4065 dated 30.08.2024 admitting calculation errors and informed the forum that the consumer is eligible for a refund of Rs. 9,55,988. However, the CGRF has not considered the same while passing the order.

3. Against the above SDO reply, we had submitted our rejoinder on 13.09.2024 as we are not satisfied with above reply. The CGRF, also has not considered our rejoinder and dismissed the / our case.

Now, we would like to submit following facts to ombudsman

4. We have very carefully again looked in to our bills and found that the meter installed during the period April 2015 to September 2017 was defective as it was recording the KVAH units 3 times of our consumption during the normalcy period.

We had submitted the same fact to the CGRF in our rejoinder dated 13.09.2024 but they have not considered these facts.

Meter no.	Period	Months (i)	KWH Consumption (ii)	KVAH raised (iii)	KVAH to be considered	Average KWH / month (ii)/(i)	Average KVAH / month	Remarks
5095743	04/15-09/17	30	1,47,210	359730 (avg 11,991/month)	1,63,566 (refer point 5)	4907	5452 (iv) / (i)	Disputed Meter / Period
17210471	10/17-11/22	62	2,77,995	283710		4483	4575 (iii) / (i)	
5126932	12/22-08/24	21	89,676	90722		4270	4320 (i) / (i)	

5. Further, kindly give your attention to below facts which we have collated from our bills and had already paid to DHBVN.

- Calculation of units billed to us relates to meter Sr. No. 5095743 (April 2015- September 2017)

Particulars	Period	KWH units	KVAH units
Starting Period	04/2015	17375	32488
Ending Period	09/2017	27189	56470
Difference		9814	23982
M.F.		15	15
Units Consumed		147210	359730

The above calculation shows that meter has recorded approximately 3 times more unjustified KVAH.

- The KVAH units which should be considered for billing should be 163566 units (basis 147210 KWH units/ 0.9 PF).
- Calculation of amount in respect of Unit 163566 KVAH &147210 KWH is as under

Particulars	Amount (Rs.)
SOP (163566 UNITS x 6.15/unit)	10,05,930/-
FSA	6,76,581/-
ED	51,474/-
M. Tax	25,737/-
Fixed Charges	2,25,530/-

Total	19,85,253/-
Total of bill raised for the period 4/2015 to 9/2017	48,32,621/-
Excess amount billed to us (4832621-1987085)	28,47,368/-
Amount Adjusted in Sep 2017 Bill	Rs. 21,84,873/-
Balance Amount Refundable / Not Adjusted	Rs. 6,62,495/-

6. Amount again/ wrongly Charged in September 2018 bill = Rs. 11,98,045/- (Also confirmed by SDO in his reply dated 30.08.2024).
7. Late Payment Surcharge billed and paid by us from April 2017 to March 2024 on wrong billing = Rs. 39,97,611/-
8. Thus, Total amount that should be refunded to us is (662495+1198045+3997611) = 58,58,151/-

Thus, it is very clear that wrong billing was raised to us and also excess amount charged which was deposited by us with late payment surcharge UNDER PROTEST vide our letter dated 13.03.2024. Further, you can verify the same with our monthly bill that has an average of about Rs. 40,000 approximately. (All years in past).

In our calculation it has come to the notice that, we have already paid excess total amount of Rs. 58,58,151/- including late payment surcharge to the Department.

Therefore, we request the Hon'ble Ombudsman to request the relevant authority to verify the actual facts to resolve our issue.

Also, we pray to you to look into the matter on basis of above-mentioned data and do necessary justice in our matter for allowing the excess total amount refund of Rs. 58,56,319 along with the interest, as this huge amount has highly impacted on our small business.

B. The appeal was registered on 30.10.2024 as an appeal No. 37/2024 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 26.11.2024.

C. Hearing was held on 26.11.2024, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the respondent SDO requested for short adjournment as engagement of advocate is under process at the LR office. The case is adjourned and respondent SDO is directed to submit point wise reply within 15 days with an advance copy to the appellant. The matter to come up on 17.12.2024.

D. The respondent SDO vide email dated 16.12.2024 has submitted reply, which is reproduced as under:

1. That, the present reply is being filed by Executive Engineer Operation, Dakshin Haryana Bijli Vitran Nigam, City Division, Gurugram (the

"Respondent No. 1"), and the SDO Operation, DHBVN, S/Division Kadipur, Gurugram (the "Respondent No. 2"), having office at City Division, DHBVN, Mehrauli, Gurugram Road, Gurugram-122001 (collectively the "Respondents") to the Appeal filled before the Electricity Ombudsman Haryana bearing Appeal No. 37/2024 (the "Appeal").

2. That, it is most respectfully submitted that no averments, statements, submissions, grounds, contentions, or allegations made by the Appellant in the Appeal shall be admitted or deemed to be admitted for reason of non-traverse or otherwise save and except these are expressly admitted herein.

3. That, it is respectfully submitted that the present Appeal cannot be allowed in favour of the Appellant hereto (reasons for which are explained in detail hereunder) as the Appeal in itself, is devoid of any substance and merit and is made with the mala-fide intention to mislead, misguide and misrepresent this Hon'ble Ombudsman.

4. The main reliefs sought by the Appellant against the Respondents are reproduced as under:

   a. *Therefore, we request the Hon'ble Ombudsman to request the relevant authority to verify the actual facts to resolve our issue.*
   b. *Also, we pray to you to look into the matter on the basis of the above-mentioned data and do the necessary justice in our matter for allowing the excess total amount refund of Rs. 58,56,319 along with the interest, as this huge amount has highly impacted our small business.*

Brief facts of the case:

5. The true and correct facts for adjudication of the present Appeal are stated as under:

   i. That, the Appellant is the owner of Plot no. 179/180, Industrial Estate, Udyog Vihar, Phase-VI, Sector-37, Gurugram, and has been using the Electricity LT-industrial connection bearing Account No. 8019160000 (Old Account No. 12214C2UZC010168), K. No. 2113048075 and has paid the bill up to July 2017.

   ii. That, the Respondents have issued a bill dated March 21, 2017, for an amount of Rs 31,60,701/- (Rupees Thirty-One Lakh Sixty Thousand Seven Hundred One only) for a period from January 30, 2017 to March 21, 2017.

   iii. That, it is most respectfully submitted that, due to some clerical mistake, the bill dated March 21, 2017 of Rs. 31,60,701/- (Rupees

Thirty-One Lakh Sixty Thousand Seven Hundred One only) has been issued to the Appellant. However, the same has been rectified after the Appellant raised the issue with the Respondents and the bill was corrected to Rs. 10,54,691/- (Rupees Ten Lakh Fifty-Four Thousand Six Hundred Ninety-One only).

iv. Thereafter, the Appellant had agreed to deposit the above said bill amount in instalment of Rs 1,00,000/- (Rupees One Lakh Only) per month. Accordingly, the Appellant has deposited Rs. 1,10,000/- (Rupees One Lakh Ten Thousand Only), with the Respondents. Thereafter, the Appellant refused to deposit the bill amount intentionally and deliberately to achieve its ulterior motives. This fact is duly recorded in the Order passed by the learned Civil Judge *vide* Judgment dated February 14, 2024.

v. It is pertinent to mention here that the bills raised were as per the Sale Circular no. D-13/2015 dated May 18, 2015 which deals with the change of tariff from Kilo Watt Hours ("KWH") to Kilo Volts Ampere Hours ("KVAH").

vi. That, the Appellant in order gain wrongfully raised false and baseless dispute regarding payment of electricity dues and filed the Civil Suit on September 26, 2017 bearing case no. RBT 617 before the Hon'ble Civil Judge (Junior Division), Gurugram and sought Consequential Relief of Permanent Injunction and Mandatory Injunction.

vii. That, vide Judgment dated February 14, 2024, Hon'ble Civil Judge (Junior Division), Gurugram has extensively dealt with all the issues involved and dismissed the suit. The Hon'ble Court has held that after the circular dated May 18, 2015, the mode of measurement of energy was shifted from KWH to KVAH as is evident from bills on record, wherein, consumption has been mentioned in both the pattern as per electricity drawn by the Appellant. It is pertinent to mention here that as per sale instruction no. 16/2005, the plaintiff was to maintain the Power Factor of his electricity meter not less than 0.9 units and the Appellant nowhere mentioned that he was maintaining the said Power Factor. The relevant portion of the sale instruction no. 16/2005 is reproduced hereunder for ready reference:

"It is obligatory on the part of the industrial, Agriculture consumers and Public Water Works Supply consumers to maintain a minimum power factor 90%. Accordingly, instructions have been issued for such consumers to install LT capacitors so as to maintain the prescribed limits of 90% power factor."

viii. That, the failure on the part of the Appellant to maintain the Power Factor is apparent from the fact that the Appellant in his Appeal has himself shown the table depicting the KWH and KVAH units. The average Power Factor maintained by the Appellant during the period 2015 to 2017 is shown hereunder:

KWH/KVAH = Power factor

1,47,210/359730 = 0.4 (average PF maintained by the Appellant)

The above calculation clearly shows that the Appellant has failed to maintain 90% Power Factor due to which there is spike in the reading of KVAH units period 2015 to 2017.

ix. That, the Appellant raised a baseless dispute that the Appellant was not informed of the latest instructions and change in the tariff pattern. This contention of the Appellant has clearly been dismissed by the Hon'ble Court of Ld. Civil Judge (Junior Division) Gurugram, and it was categorically mentioned in the judgment dated February 14, 2024 that the Circular dated May 18, 2015, was issued by DHBVNL and UHBVNL in the newspaper as well as on their respective websites. As such there was no requirement of separately issuing notices to the consumer of electricity.

x. That, even after the matter was settled by the Civil Court, Gurugram. The Appellant has raised another Complaint bearing Complaint No. 4739/2024 before the Corporate Forum for Redressal of Consumer Grievances ("CGRF"), Dakshin Haryana Bijli Vitran Nigam on July 24, 2024, vide memo no. Ch-1/Forum-4739/GGN/2024 wherein the Appellant sought to reverse and refund the double charged amount along with the surcharge.

xi. Furthermore, the Ld. Forum on September 18, 2024, has closed/rejected the Complaint bearing Complaint No. 4739/2024 and held that the issue has already been decided by the Hon'ble Court. So, this Forum has no jurisdiction to adjudicate upon the case which has already been decided by the Civil Court.

xii. Thereafter, the Appellant has filed the present Appeal bearing Appeal No. 37/2024 on October 30, 2024 against the Order dated September 18, 2024, passed by CGRF, DHBVN, Gurugram, in Complaint No. 4739/2024.

Preliminary Objection

6. That, the Respondents have updated the bill *vide* circular dated May 18, 2015 passed by the Haryana Electricity Regulatory Commission after inviting the public objection and suggestion of various Industries Associations, issued the revised tariff order which is applicable w.e.f. April 1, 2015. The above bill is raised as per circular no. D-13/2015 which provides for the change of tariff from KWH to KVAH.

7. That, it is pertinent to mention here that at the time of getting the new connection by the consumer, it is mandatory to fill up the Application and agreement form in which it is mentioned that the capacitor power factor should be maintained up to 0.9 KVAH and in the present case the Appellant has not maintained the CPF (Capacitor Power Factor).

8. That, the Appellant has also failed to file the present Appeal before the Hon'ble Ombudsman within 30 days from the Order passed by the CGRF, Gurugram. Therefore, the present Appeal is also liable to be dismissed due to delay.

Spike in the reading of KVAH is because the appellant failed to maintain the power factor

9. That, the Appellant is provided with a commercial electricity connection and all the commercial consumers are required to maintain high Power Factor for efficient use of the electricity and minimising losses. Due to increased losses in the electricity usage by the consumers engaged in commercial activities it has been decided by almost all states that to reduce the losses the billing should done on the basis of KVAH as the KWH only measures the actual energy used (real power), while KVAH measures the total apparent power drawn, including both the useful real power and the reactive power which is not doing any work, resulting in a higher KVAH value compared to KWH due to the inefficiency caused by the low Power Factor. In other words, a low Power Factor means you are drawing more power from the grid than you are actually using for work, which is reflected in a larger KVAH reading compared to the KWH reading.

10. That, in the present case the Appellant has failed to maintain high Power Factor which has which resulted in higher reading of KVAH in the meter used by the Appellant. The meter of the Appellant was checked on April 06, 2015 by the authorized officials and the meter was working properly without any defect. It is pertinent to mention here that the meter reading on April 06, 2015 is duly recorded and it can clearly be seen from the meter reading record that the reading of KVAH was 32412.7 units which is more than twice the reading of KWH i.e. 17354.2 units.

11. That, the Appellant kept on enjoying the services provided by the state electricity department and has not addressed even a single letter to the Respondents regarding the difference in the reading of KWH and KVAH. It was only after the tariff rules were changed and it was decided to charge the commercial consumers on the basis of KVAH reading that the Appellant has raised the present issue. Furthermore, the reasonableness of the rates as per tariff or the formula provided for computation in the tariff, which is statutory in nature, cannot be challenged by the Appellant in any manner whatsoever.

12. That, the Appellant cannot be allowed to take advantage of its own negligence and failure to maintain the Power Factor which has resultantly caused more losses and apparently drawn more power than required. The failure on the part of the Appellant is clear and evident from the bare perusal of the consumption data of the meter used by the Appellant. The difference in the reading of KVAH and KWH can clearly be seen therein. The variation in the recording of the reading of KVAH and KWH.

13. That, the Hon'ble Appellate Tribunal for Electricity in the case of *Prime Ispat Ltd. vs Chhattisgarh State Electricity Regulatory Commission, Appeal No.263 of 2014* vide judgment dated April 10, 2015 has clearly held that the tariff based on the KVAH reading of the meter is valid and the consumer cannot be granted the relief on the basis of difference between the reading of KVAH and KWH. The relevant extract of the judgment dated April 10, 2015 is reproduced hereunder for the ready reference:

"8.9 Now we explain the advantage of High Power Factor and KVAH billing as under:

(a) Higher the Power Factor, lower is the Load Current and thereby Technical Losses of the transmission lines i.e. I^2R losses will be reduced considerably.

(b) Due to increase of Power Factor (nearer to one), the consumer's demand charges will be reduced and also the KVAH billing will also be correspondingly reduced.

(c) The Higher Power Factor will reduce the demand on the system and improve the systems Voltage.

(d) Increases the available transmission and distribution system capacity.

(e) The improvement in Power Factor will reduce the licensee's expenditure on Power Purchase and thereby the consumers will be benefited with lower tariff.

8.10 In view of the above, most of the States are changing their billing system from KWH to KVAH billing system.

8.11 The learned counsel of the Appellant has contended that due to KVAH billing, bill amount has been increased and thereby the Appellant burdened with higher power bill. We do not find any merit in the contention for the following reasons:

$$\text{Because Power Factor} = \frac{KWH}{KVAH}$$

If Power Factor is unity, then KWH = KVAH

In the instant case, the Power Factor is less than unity and hence the consumption recorded in respect of KVAH is high compared to KWH consumption.

Further, the power factor surcharge/ rebate will not be there in KVAH billing.

Thus, the KVAH based billing will drive the consumers to reach unity power factor and thereby the system performance will be improved and also reactive power drawal from the system will be minimised and thereby better system voltages for the tail end consumers also."

14. Therefore, the contention of the Appellant that there is defect in the reading of the meter in recording the units of KWH and KVAH is completely baseless and misconceived. The Appellant is abusing the process of law by raising frivolous dispute. The Hon'ble Court of Ld. Civil Judge (Junior Division) Gurugram, has also highlighted the importance of billing on the bases of KVAH units. The relevant extract of the judgment dated February 14, 2024 is reproduced hereunder for ready reference:

"12. …Thus, before proceeding further with the case, it is essential to pen down the difference between KWH and KVAH pattern. It is submitted by the learned counsel for the defendant department that the scientific rationale for introducing KVAH billing is that the KVAH based billing will drive the consumers, to reach unity power factor (by installing requisite apparatus) and thereby the system performance will be improved and also reactive power drawn from the system will be minimized and thereby enabling better system voltages for the tail end consumers. Therefore, in case the power factor is less than unity i.e., the consumer failed to maintain the power factor resulting in line losses, the consumption recorded in

respect of KVAH would be higher as compared to KWH consumption. Thus, in order to minimize the lines losses (which ultimately are passed on to the consumers in the form of higher tariff) and further to maintain the grid stability, KVAH billing was introduced by the department. After notification dated 18.5.2015, the mode of measurement of energy was shifted from KWH to KVAH as is evident from bills on record wherein consumption has been mentioned in both the pattern and demand has been. Here it is pertinent to mention that as per sale instruction no. 8/2009, the plaintiff was to maintain range of power factor of his electricity meter not less than 0.9 units."

The appellant is abusing the process of law and has approached this forum with unclean hands.

15. That, the Appellant has approached this Forum to achieve its ulterior motive to gain wrongfully by misrepresenting the facts as the matter is technical in nature and is related to the recording of KWH and KVAH units in the electrical meter used by the Appellant. The genuineness of the dispute raised by the Appellant can be seen from the fact that the Appellant has prayed for clarity of facts and has inflated the amount by falsely calculating the surcharge amount only to tilt the case in his favour. It is pertinent to note here that the Respondent are officials of public entity which works for providing electricity to the public at large. The Appellant is habitual of forum hunting and is approaching different judicial forums only to usurp the public money which will only cause unnecessary burden on the public exchequer.

16. That, the Appellant raised a baseless dispute before the Civil Judge (Jr. Div.) on the ground that the Appellant was not informed of the latest instructions and change in the tariff pattern. This contention of the Appellant has clearly been dismissed by the Hon'ble Court of Ld. Civil Judge (Junior Division) Gurugram, and it was categorically mentioned in the judgment dated February 14, 2024 that the Circular dated May 18, 2015, was issued by DHBVNL and UHBVNL in the newspaper as well as on their respective websites. As such there was no requirement of separately issuing notices to the consumer of electricity. The relevant extract of the judgment dated February 14, 2024 is reproduced hereunder for ready reference:

"13. So far question arises that the plaintiff was not served notice before imposing charges under KVAH scheme is concerned, in this regard, the public notice was issued by DHBVNL and UHBVNL in the newspaper as well as on their respective websites. As such there was no requirement of separately issuing notices to the consumer of electricity. Thus, the said

contention raised by Id. counsel for the respondent are turned down. No illegality is found in the procedure adopted by the defendant department so as to grant any relief in favour of plaintiff. Hence, plaintiff is not entitled any decree for declaration, permanent injunction or mandatory injunction as prayed for."

17. That, in the case of Dalip Singh v. State of Uttar Pradesh and others, (2010) 2 S*CC 114* the Apex Court held that the litigants who take shelter of falsehood should not be granted any kind of relief. The relevant portion of the judgment is reproduced hereunder for the kind perusal of this Hon'ble Court:

"1. For many centuries Indian society cherished two basic values of life i.e."satya" (truth) and "ahinsa" (non- violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice- delivery system which was in vogue in the pre independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(Emphasis Supplied)

18. Therefore, the aforementioned facts clearly depicts that the Appellant has taken the shelter of falsehood by intentionally manipulating the facts to procure favourable Order from this Forum. The Appellant cannot be allowed to take the advantages of its own wrong. Hence, the present Appeal deserves to be dismissed on this sole ground. The appellant has wrongly calculated only to inflate the refundable amount.

The appellant has wrongly calculated on to inflate the refundable amount

19. That, the Appellant has wrongly calculated the amount which is refundable. The Appellant has calculated the amount based upon his misconception by taking the standard Power Factor of 0.9, which is not the case in this matter. This fact is beyond doubt that the Appellant has

failed to maintain the Power Factor and has thus drawn more electrical power due to which the KVAH reading is more than the KWH units. This issue has already been stated in detail in this reply.

20. That, the Respondents have already given detailed calculation of the amount which is refundable to the Appellant in the reply filed before the CGRF, Gurugram.

21. That, the issue raised by the Appellant regarding double charging of Rs. 1198045/- (Eleven Lakh Ninety Eight Thousand and Forty Five Only) has been considered by the Respondents and the surcharge amount charged thereupon has duly been accounted for while calculating the total refundable amount i.e. Rs. 955988/- (Nine Lakh Fifty Five Thousand Nine Hundred Eighty Eight Only). This is amount has also been recorded by the CGRF, Gurugram, vide Order dated September 18, 2024. The Respondents have already initiated the process of refund. The Respondents have considered every issue raised by the Appellant and has acted swiftly wherever the was any scope of the correction in the billing amount and have made sure that no undue harassment is caused to the Appellant.

22. That, apart from the aforementioned refundable nothing is to paid to the Appellant. All other contentions raised by the Appellant are misconceived, baseless, false and against the settled law. Furthermore, the dispute raised by the Appellant is in violation of the instructions of the Nigam. Therefore, the present Appeal in the light of the aforementioned facts stated herein in this reply needs to be dismissed as it is devoid of any merit and has been filed only usurp the public money.

E. Hearing was held on 17.12.2024, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the appellant submitted that reply has just been received yesterday and requested for short adjournment to study and respond on the same. The appellant is directed to submit rejoinder if any, within 10 days with an advance copy to the respondent. Acceding to the request of the appellant, the matter to come up on 21.01.2025.

F. The appellant vide email dated 20.01.2025 has submitted reply/written arguments, which is reproduced as under:

1. At the outset, all allegation and averments leveled against the answering opposite party are denied save to those that are expressly and categorically admitted herein. Further, the applicant is put to strict proof as to the rest of the contentions. That the appellant is the owner of plot

number 179/180, Industrial estate, Udyog Vihar, Phase VI, Sector 37 Gurugram.

2. That the appellant has obtained an electricity connection bearing Account number 8019160000 from the DHBVN for NDS category and has been paying on the bills regularly as and when raised by the DHBVN.

3. The appellant has always paid all the bills regularly and there are no Dues Pending against the appellant.

4. That the appellant received a bill for the month of March 2017 amounting to Rs. 31,60,701/-. The appellant was shocked and surprised to receive a bill for such a huge amount as the appellant has always paid all the bills regularly and on time. The DHBVN along with the bills did not issue any calculation or any notice prior to issuing of this bill or demanding of the amount.

5. That the appellant and visited the office of the DHBVN and after various requests the DHBVN corrected the bill Rupees 10,54,691/-. The appellant is also not liable to pay this amount as this amount is baseless and charged to appellant without any basis.

6. The appellant deposited an amount of Rs.1,00,000 on 25.03.2017 and Rs. 1,50,000 on 27.07.2017 under protest and unwillingly as he was under the threat of disconnection.

7. The appellant had filed a complaint before CGRF which was dismissed by the honorable CGRF on account of jurisdiction.

8. That the DHBVN thereafter withdrew the previous demand of Rs. 10,54,691/- and again imposed a new demand of Rs.11,98,045 + Rs.10,54,691= Rs.2252736 There is no calculation on part of the DHBVN that how this new amount has been imposed by the DHBVN.

9. That the DHBVN has imposed this demand amount without affording any reasonable opportunity of being heard and without providing any calculations or without issuing any notice prior to issuing of this bill, which is against the department's own set of principles and rules.

10. That the appellant had no other option but to deposit this amount of Rs. 58,55,105/- under protest and unwillingly as the power supply was disconnected.

11. That the instant case/demand is in two parts

    A. April 2015 to January 2017 (118783 KVAH units)

    B. January 2017 to March 2017 (424245 KVAH units)

12. April 2015 to January 2017

12(a) That DHBVN has contended that the billing amount for the period of April 2015 to January 2017 has been revised to KVAH basis as per Sale circular bearing no. D-13/2015. It is submitted that this sale circular was issued on May 18, 2015, and had to be applied from April 2015.

12(b) However, the concerned office of the DHBVN did not comply with the sale circular till 2017 and there is no explanation or reasoning from the officers regarding this delay. The appellant cannot be made to suffer on account of lapses and illegality on account of officers of DHBVN.

12(c) That the concerned officials had to implement the KVAH tariff from the date of circular itself and the officials now to hide their own lapses cannot issue the tariff retrospectively. The appellant runs a business and the cost also includes electricity charges. After calculating all the expenditure the appellant/consumer charges its customers for product and services. Now since the concerned officers did not follow this circular in May 2015 itself therefore now the appellant has no way to cover this additional expenditure of electricity either from its customers or otherwise. The appellant should not be made to suffer losses because of fault and delay on behalf of the officers of DHBVN.

12(d) That also the concerned officials have very falsely put up the case that the said change in tariff were notified in newspapers. However, no record of the same has been filed by DHBVN till date anywhere at any point of time. This is merely a false contention just to escape the ambit of law.

INSTRUCTION NO. 5.33 of the sales manual reads as follows "Notice to consumers before debiting short assessment (SC 22/2006): The short assessment or penalty pointed out either by the Audit or by the Revenue Section shall be charged only after giving 7 days notice for any objection particularly in respect of HT consumers and LT Industrial consumers.

While serving such notice the complete detail of reasons/basis for charging of assessment / penalty, period of assessment, the applicable tariff/ rates and the complete calculation will be supplied.

After receiving the reply from the consumer the SDO will consider and decide the same by passing a speaking order within 7 days in consultation / concurrence of the audit party where ever necessary. In case, the consumer fails to give any reply or does not respond to the notice within the scheduled time, the amount may be charged through sundry charges and allowance register.

A copy of the details of charges must be attached with the first energy bill in which the amount has been debited. Any officer/official found violating the instructions shall face disciplinary action."

The DHBVN officials have themselves admitted through their silence to have violated this sale circular and snatching away the right of an honest consumer.

12(e) Also the DHBVN had firstly imposed a corrected the bill amount to Rs. 10,54,691/- and then again imposed an amount of Rs.11,98,045+ Rs. 10,54,691= 2252736 on 15.09.2018 for the same period. The DHBVN cannot arbitrarily impose any amount whenever they deem fit without any notice or reasoning.

12(f) That in complete violation of principle of natural justice no prior notice was ever given to the consumer or publication was ever made at any point of time for change of billing and no calculations were provided. In their reply the concerned officials are completely silent on this fact. The DHBVN cannot arbitrarily charge any amount as they seem fit from any point of time without any basis.

12(g) That the bills of the plaintiff showed hugely excessive KVAH units from April 2015 to January 2017, which is not possible. It is pertinent here to mention that during this period the units in the meter were only recorded in KWH units and the DHBVN has wrongly calculated the KVAH units. The DHBVN did not convert the units into KVAH as per the specified formula and have instead demanded these arbitrary KVAH units for the period.

13. January 2017 to March 2017 (424245 KVAH units)

13(a) That it is submitted that the meter of the appellant became faulty from a long time and remained faulty till October 2017. The bills of the plaintiff are also showing the status as faulty from January 2017 till October 2017(till change of meter).

13(b) That in the bills issued by the DHBVN the status of the meter has been clearly shown as faulty(F) from January 2017 itself, and status of the meter has been itself shown as faulty (F) till October 2017. However, in the entire proceeding of this case the concerned officials of DHBVN have hidden this fact and have tried to conceal it from the hon'ble forum and hon'ble ombudsman. Since the documents of DHBVN themselves had held the meter to be faulty therefore the rules and circular applicable to faulty meter should have been applied. Also, the status of the meter became accurate (A) as soon as the meter was replaced with a new electricity meter, which clearly shows that the meter of the Appellant was faulty. The meter of the appellant should have been replaced within seven days, but the DHBVN did not replace the meter.

As per Sales Circular No. D-28/2013 and sale manual instruction no. 4.14 "The defective meter shall be replaced by the licensee within 7 days of its being so established on checking. The burnt meter (if cause attributable to consumer) shall be replaced within 24 hours of payment of charges by the consumer."

13(c) However, the DHBVN officials did not replace the faulty/defective/burnt meter and are now issuing these huge bills only to save their own skin and hide their own lapses.

13(d) That the officials of the DHBVN have repeatedly mentioned low power factor but have very clearly hidden the reason for the same. It is clear that the so called low power factor was because of the faulty meter. The power factor of the appellant got corrected itself as soon as the faulty meter of the appellant was replaced with a new electricity meter. Therefore the entire story of a low power factor is a falsified one. Though in their reply the concerned officials repeatedly mention low power factor but have very cleverly hidden the actual reason for the same that is faulty meter. Therefore from the data of the power factor also it is clear that the meter of the appellant is actually the faulty meter.

13(e) That the DHBVN officials in their M.T -1 report dated 20.09.2017 have themselves mentioned that the meter of the appellant is faulty by way of it being burnt. This report clearly mentions the reason for the meter being faulty i.e. the meter being burnt. The report

further shows that the reading of the meter are also not available for the reason of it being burnt.

13(f) Thus it is clear that the meter of the appellant remained faulty on account of being burnt. The DHBVN officials have very cleverly hidden this fact and document from the forum as well as hon'ble ombudsman.

13(d) That the KVAH readings for the period of January 2017 to March 2017 is hugely excessive. For almost 22 months (from April 2015 to January 2017) the KVAH units are 1,18,783 i.e almost five thousand for hundred units (5400) per month but then surprisingly from January 2017 to March 2017 (for 3 months) the units are 4,24,245 KVAH units i.e almost one lakh fourty one thousand four hundred fifteen units per month (1,41,415) which is impossible. It is impossible for the appellant to consume several lakhs of units in a single month when his average consumption is merely few thousand units per month.

13(h) In reply of the DHBVN 5 (viii) the DHBVN has themselves admitted that there is unreasonable spike in units and have attributed this spike to unjustified reasons where as in reality the meter of the appellant was actually faulty.

13(i) Thus from the above facts it is clear that the meter of the appellant remained faulty and the appellant was issued wrongly calculated bills and the rules regarding faulty meter were not followed by the DHBVN officials.

HERC Regulation No. HERC/29/2014 (Electricity Supply Code) Bill of consumer whose premises are found locked at the time of meter reading/ meter defective/ dead stop: (SC 28/2013):

6.9 Procedure for billing under special circumstances

6.9.1 Billing in case of defective/sticky/dead stop/burnt meter

(1) In case of defective/sticky/dead stop /burnt meter, the consumer, during the period of defective meter, shall be billed provisionally in the following manner.

(a) On the basis of the consumption recorded during corresponding period of previous year when the meter was functional and recording correctly.

(b) In case the same is not available, then on the basis of average

consumption of the past 6 months immediately preceding the date of the meter being found/reported defective.

(c) If period of installation of meter is less than six months, then the consumer shall be billed on the basis of average consumption of the period from the date of installation of the meter to the date of the meter being found/reported defective.

(d) In case no previous correct consumption data is available, owing to new connection or otherwise, the consumer shall be billed provisionally for the units as mentioned in the table below……."

13(j) However, from the bills and their own M.T-1 report the DHBVN officials were aware that the meter of the appellant had become faulty but yet the DHBVN did not follow the prescribed rules, regulations and circulars.

14. Power factor

14(a) In their entire reply the DHBVN have repeatedly stressed upon power factor or specifically non- maintenance of power factor. The electricity connection of the appellant is of NDS category only. The same fact can also be rechecked through the bills. The category of the appellant is not industrial category as is very clear from the records. The DHBVN has failed to show as to how maintenance or non-maintenance of power factor is applicable to the applicant.

14(d) That in the sale circular D-13/2015 also the NDS, LT (industry), H.T (industry) connections are separately mentioned.

14(c) As per sale instruction NO.16/2005 power factor, shunt capacitor etc. are only applicable on industrial, Agriculture consumers and Public Water Works Supply consumers whereas the category of connection of the appellant is of NDS category.

14(d) Also as per sale instruction SECTION – V TARIFFS INSTRUCTION NO. 5.1 of the sales manual Power factor is not applicable in case of NDS consumers. Thus the DHBVN cannot take the falsified stand of power factor in case of the appellant.

14(e) Thus the stand of the DHBVN regarding non-maintenance of power factor is not tenable in the eyes of law.

15. Jurisdiction

15(a) **Section 42 of the Indian Electricity Act,2003 reads as follows:**

……

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

15(b) In the instant case the forum is Consumer grievances redressal forum, DHBVN, Gurugram against whose order the present appeal is preferred. Also the appellate ombudsman is Electricity ombudsman, Haryana, Haryana electricity supply commission.

15 (c) It is a matter of fact that the civil suit filed by the appellant/plaintiff bearing case no. CS/3323/2017 was Dismissed by the hon'ble civil court (CJ), J.D, Gurugram. However that suit has no bearing on the jurisdiction of C.G.R.F and now the hon'ble ombudsman

Section 42 (8) of the Indian electricity act reads as follows

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

15(d) Thus it is clear that the authority of the CGRF and the Ombudsman is without prejudice to any other right. Meaning thereby that these forums/ombudsman are separate from any other right in court or otherwise which the appellant may have. Thus, the forum had every jurisdiction to entertain the complaint of the appellant as the civil court and CGRF/Ombudsman are two separate departments and have no bearing on each other.

15(e) That Also there is no law, rule or regulation that the appellant cannot approach both the civil court and the forum.

15(f) Also when the appellant had filed the civil suit against the DHBVN, the DHBVN had only imposed the amount of Rs.10,54,691/- on the appellant. The appellant had only challenged Rs.10,54,691/-

before the hon'ble civil court and the judgement has also been delivered only on the amount of Rs.10,54,691/- and no other amount.

15(g) Without any prejudice to the stand of the appellant it is submitted but now the DHBVN have themselves admitted that the amount of Rs.10,54,691/- is wrong and have admitted that due to some clerical, calculation and other errors wrong amount was charged. The DHBVN after filing of the suit have imposed an amount of Rs.11,98,045+Rs. 10,54,691= 2252736 on the appellant.

15(h) This amount of Rs.11,98,045+ Rs. 10,54,691= 2252736 was neither challenged before the hon'ble civil court nor the hon'ble civil court has passed any judgement, order or observation on the amount of Rs.11,98,045+ Rs. 10,54,691= 2252736. As a matter of fact, during the entire proceeding there is no mention of this amount of Rs.11,98,045+ Rs.10,54,691= 2252736. Also, the amount charged, its calculation, its notice, its time and date of charging are entirely different from the previous amount. The amount of Rs.11,98,045+ Rs. 10,54,691= 2252736 is an entirely new amount which was challenged before the hon'ble CGRF and now the hon'ble Ombudsman. Therefore, the question of jurisdiction does not arise.

15(i) Also, on one hand the DHBVN claim that the matter has been decided by the hon'ble Civil Court and on the other hand even after decision of the civil court the DHBVN are charging different amount than was ordered in the judgement. It is clear that the cause of action of Rs. 22,52,736/- is different from the civil court's judgement.

15(j) Therefore, since as per section 42 (8) of the Indian electricity act the appellant right to approach the forum/ombudsman is without prejudice to any other right and Also the amount of Rs.11,98,045+ Rs. 10,54,691= 2252736 charged, its calculation, its notice, its reasoning, its time and dated of charging are entirely different from the previous amount. So, the amount of Rs.11,98,045+ Rs. 10,54,691= 2252736 is an entirely new amount which was challenged before the hon'ble CGRF and now the hon'ble Ombudsman and has not been challenged before civil or any other

court. So, the hon'ble forum / ombudsman has jurisdiction to entertain the complaint and appeal.

16. That the DHBVN while calculating the demanded amount in their own notices have only deducted the amount for the units and have not deducted the FSA and other charges. It is submitted that while charging the amount for units for the period of April 2015 to March 2017, the DHBVN charged the FSA and other charges but while calculating the refundable units the DHBVN did not deduct the FSA, tax and other charges, which has apart from the facts stated above has rendered their entire calculations as null and void.

Para wise reply

1. Para no. 1 of the reply is matter of record and needs no reply.
2. Para no. 2. Of the reply is wrong and its contents are specifically denied. It is submitted that the DHBVN is bound by their reply, pleadings, contentions and silence to averments.
3. Para no. 3. Of the reply is wrong and its contents are specifically denied. It is submitted that the appellant has a very strong case and the appeal of the appellant is based on strong facts and legal basis.
4. Para no. 4 of the reply is matter of record.
5. (i) Para no. (i) of the reply is matter of record to the extent of ownership of plot and connection account no. it is wrong and denied that the appellant has an LT industrial connection, it is submitted that the appellant has an NDS electricity connection.

   (ii) Para no. (ii) of the reply is wrong and its contents are specifically denied. It is submitted that the bill is wrong and illegal, and the appellant is not liable to pay the same.

   (iii) Para no. (iii) of the reply is wrong and its contents are specifically denied. It is submitted that the bill is wrong and illegal.

   (iv) Para no. (iv) of the reply is wrong and its contents are specifically denied. It is submitted that the appellant has deposited this amount of Rs.1,00,000 on 25.03.2017 and Rs.1,50,000 on 27.07.2017 unwillingly and under protest. The appellant is not liable to pay any additional amount to the DHBVN.

   (v) Para no. (v) of the reply is wrong and its contents are specifically denied. It is submitted that the contents of preliminary submissions may be read as part and parcel of this reply also.

(vi) Para no. (vi) of the reply is wrong and its contents are specifically denied. It is submitted that the contents of preliminary submissions may be read as part and parcel of this reply also. It is further submitted that the civil suit and the instant complaint/appeal or on different amount and subject matter.

(vii) Para no. (vii) of the reply is wrong and its contents are specifically denied. It is submitted that the DHBVN officials are themselves in violation of various sale circular and the sale instruction 16/2005 is not applicable on the appellant. It is submitted that the contents of preliminary submissions may be read as part and parcel of this reply also.

(viii) Para no. (viii) of the reply is wrong and its contents are specifically denied. It is submitted that the DHBVN have themselves admitted that there is spike in readings from 2015 to 2017. As detailed above the DHBVN have hidden and concealed the fact about meter being faulty/burnt. The appellant cannot be made to pay the wrong bills on the basis on spiked readings of faulty meter. It is submitted that the contents of preliminary submissions may be read as part and parcel of this reply also.

(ix) Para no. (ix) of the reply is wrong and its contents are specifically denied. It is submitted that there is no record anywhere of any newspaper etc. or intimation to the consumers. The officials of the DHBVN are trying to hide their own lapses and delay. The civil court case and the complaint/appeal are on different amounts and cause of action. It is submitted that the contents of preliminary submissions may be read as part and parcel of this reply also.

(x) Para no. (x) of the reply is wrong and its contents are specifically denied. The civil court case and the complaint/appeal are on different amounts and cause of action. This matter of Rs.11,98,045+ Rs. 10,54,691= 2252736 was never settled by civil court. It is submitted that the contents of preliminary submissions may be read as part and parcel of this reply also.

(xi) Para no. (xi) of the reply is wrong and its contents are specifically denied. The civil court case and the complaint/appeal are on different amounts and cause of action. This matter of Rs.11,98,045+ Rs. 10,54,691= 2252736 was never settled by civil court. The hon'ble CGRF has wrongly decided the complaint

without appreciating relevant facts and contentions of the appellant.

(xii) Para no. (xii) of the reply is matter of record

Reply to preliminary Objections

6. Para no. 6. Of the reply is wrong and its contents are specifically denied. It is submitted that no documents for any such objection has been submitted and no rule regulation or circulars have been followed.

7. Para no. 7. Of the reply is wrong and its contents are specifically denied. It is submitted that the application form is with the defendants but the defendants have not attached any such application form. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

8. Para no. 8. Of the reply is wrong and its contents are specifically denied. It is submitted that as per Electricity Supply Code Regulation No. HERC/29/201415

15. Complaints redressal system

"(2) Any consumer aggrieved by the order of the Forum, non implementation of the order of the Forum by the distribution licensee and non-disposal of complaint by the Forum within the prescribed period may lodge his complaint with the Electricity Ombudsman within 30 days from the date of receipt of order of the Forum. The Electricity Ombudsman shall pass the award within 3 months from the date of receipt of the complaint."

The appellant received the order of the forum on 26/09/2024 and had duly filed the appeal on 23/10/2024 within the stipulated time of 30 days.

9. Para no. 9. Of the reply is wrong and its contents are specifically denied. It is submitted that the contents of this para are definitions and explanatory in nature without any documents are evidence for support. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

10. Para no. 10. Of the reply is wrong and its contents are specifically denied. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

11. Para no. 11. Of the reply is wrong and its contents are specifically denied. It is submitted that it is the duty of DHBVN to issue proper bills and maintain meter and other apparatus. The DHBVN officials are shying away from their own responsibility. The appellant always paid the bills

regularly and on time. The appellant also never informed the appellant regarding the change in billing so, how can the appellant know?. As stated above it is the duty of the DHBVN not only to issue proper bills but also to change the faulty meter on time. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

12. Para no. 12. Of the reply is wrong and its contents are specifically denied. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

13. Para no. 13. Of the reply is wrong and its contents are specifically denied. It is submitted that the instant case and its facts are entirely different from the one discussed in this para. In the instant case the meter of the appellant was faulty, also no notice or calculation was issued before adding any amount, the tariff was imposed almost after two years retrospectively (on the own fault of DHBVN) and no knowledge was given to consumers for change in tariff. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

14. Para no. 14. Of the reply is wrong and its contents are specifically denied. It is submitted that the judgement of the civil court is on a different cause of action and on a different amount. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

15. Para no. 15. Of the reply is wrong and its contents are specifically denied. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

16. Para no. 16. Of the reply is wrong and its contents are specifically denied. It is submitted that the judgement of the civil court is on a different cause of action and on a different amount. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

17. Para no. 17. Of the reply is wrong and its contents are specifically denied. It is submitted that the instant case and its facts are entirely different from the one discussed in this para. In the instant case the meter of the appellant was faulty, also no notice or calculation was issued before adding any amount, the tariff was imposed almost after two years retrospectively (on the own fault of DHBVN) and no knowledge was given to consumers for change in tariff. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

18. Para no. 18. Of the reply is wrong and its contents are specifically denied. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also. The appellant has presented true and genuine facts before the hon'ble ombudsman and the appeal is liable to be allowed.

19. Para no. 19. Of the reply is wrong and its contents are specifically denied. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

20. Para no. 20. Of the reply is wrong and its contents are specifically denied. It is submitted that the DHBVN have failed to disclose even a single document for the fact that they ever provided any calculation to the appellant prior to or at the time of demanding the amount. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

21. Para no. 21. Of the reply is wrong and its contents are specifically denied. It is submitted that the amount recovered by the DHBVN is wrong and false and is liable to be refunded along with interest. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

22. Para no. 22. Of the reply is wrong and its contents are specifically denied. It is submitted that the contents of the preliminary submissions may be read as part and parcel of this para also.

G. Hearing was held on 21.01.2025, as scheduled. The respondent was present during the hearing through video conferencing and none was present on behalf of appellant. At the outset, the respondent submitted that reply has just been received and requested for short adjournment to study and respond on the same. The respondent is directed to submit reply on the rejoinder if any, within 10 days with an advance copy to the appellant. Acceding to the request of the respondent, the matter to come up on 25.02.2025.

H. Hearing was held on 25.02.2025, as scheduled. Both the parties were present during the hearing through video conferencing. During the hearing, the counsel for the respondent requested for short adjournment to file reply in response to rejoinder. The respondent is directed to submit reply on the rejoinder and addendum reply/written arguments if any, within 7 days with an advance copy to the appellant.

Acceding to the request of the respondent, the matter to come up on 13.03.2025.

I. The respondent counsel vide email dated 12.03.2025 has submitted reply to the rejoinder which is reproduced as under:-

MOST RESPECTFULLY SHOWETH:

1. That, the present Reply to the Rejoinder is being filed by Executive Engineer Operation, Dakshin Haryana Bijli Vitran Nigam, City Division, Gurugram(the "Respondent No. 1"), and the SDO Operation, DHBVN, S/Division Kadipur, Gurugram(the "Respondent No. 2"), having office at City Division, DHBVN, Mehrauli, Gurugram Road, Gurugram-122001 (collectively the "Respondents") to the Rejoinder filled before the Electricity Ombudsman Haryana bearing Appeal No. 37/2024 (the "Appeal").
2. That, it is most respectfully submitted that no averments, statements, submissions, grounds, contentions, or allegations made by the Appellant in the Rejoinder shall be admitted or deemed to be admitted for reason of non-traverse or otherwise save and except these are expressly admitted herein.
3. That, it is respectfully submitted that the present Appeal cannot be allowed in favour of the Appellant hereto (reasons for which are explained in detail hereunder) as the Appeal in itself, is devoid of any substance and merit and is made with the mala-fide intention to mislead, misguide and misrepresent this Hon'ble Ombudsman.
4. That, the Appellant has raised two fold objection in the Rejoinder that the Respondent has not sent any notice for the recovery of the dues or the change in tariff to be recovered from the Appellant. The other objection raised by the Appellant is that the meter was faulty due to which there is surge in the reading of KVAH units. Both the objections raised by the Appellant are false and baseless and are specifically denied.
5. That, the Appellant raised a baseless objection that no notice was given with regard to change in tariff and recovery of dues according to the KVAH units. The Appellant has already raised this contention before the Civil Judge (Jr. Div.) on the ground that the Appellant was not informed of the latest instructions and change in the tariff pattern. This contention of the Appellant has clearly been dismissed by the Hon'ble Court of Ld. Civil Judge (Junior Division) Gurugram, and it was categorically mentioned in the judgment dated February 14, 2024 that the Circular dated May 18, 2015, was issued by DHBVNL and UHBVNL in the newspaper as well as on their respective websites. As such there was no requirement of separately issuing

notices to the consumer of electricity. The relevant extract of the judgment dated February 14, 2024 is reproduced hereunder for ready reference:

> "13. So far question arises that the plaintiff was not served notice before imposing charges under KVAH scheme is concerned, in this regard, the public notice was issued by DHBVNL and UHBVNL in the newspaper as well as on their respective websites. As such there was no requirement of separately issuing notices to the consumer of electricity. Thus, the said contention raised by Id. counsel for the respondent are turned down. No illegality is found in the procedure adopted by the defendant department so as to grant any relief in favour of plaintiff. Hence, plaintiff is not entitled any decree for declaration, permanent injunction or mandatory injunction as prayed for."

6. Further, the issue raised by the Appellant regarding double charging of Rs.1198045/-(Eleven Lakh Ninety Eight Thousand and Forty Five Only) has been considered by the Respondents and the surcharge amount charged thereupon has duly been accounted for while calculating the total refundable amount i.e. Rs. 955988/- (Nine Lakh Fifty Five Thousand Nine Hundred Eighty Eight Only). This is amount has also been recorded by the CGRF, Gurugram, vide Order dated September 18, 2024. The Respondents have already initiated the process of refund. The Respondents have considered every issue raised by the Appellant and has acted swiftly wherever the was any scope of the correction in the billing amount and have made sure that no undue harassment is caused to the Appellant.

THE APPELLANT IS TAKING MOONSHINE DEFENCE BY VAGUELY STATING THAT THE METER WAS FAULTY

7. That, the Appellant has falsely contended that the meter was faulty due to which the units recorded were not accurate. The contention of the Appellant is completely vague, false and misconceived as the meter was not faulty as was recording the units consumed by the Appellant accurately. Further, there is no difference in the units consumed and units billed by the Respondent. If the contention raised by the Appellant was true then there must have been some difference in the units consumed and units billed by the Respondent, which is not the case in the present matter. The bills of the Appellant showing accurate measurement of the units consumed and units billed by the Respondent along with a bill of faulty meter demonstrating the difference in units is annexed as Annexure R-1(colly).

8. That, the Appellant has falsely stated that the meter was replaced by the Respondent as the meter was faulty. The Appellant has concealed the

substantial fact that the meter was replaced because the meter was burnt not faulty. A copy of the inspection report mentioning that the meter was burnt is annexed as Annexure R-2.

BRIEF FACTS:

9. The true and correct facts for adjudication of the present Appeal are stated as under:

(i) That, the Appellant is the owner of Plot no. 179/180, Industrial Estate, Udyog Vihar, Phase-VI, Sector-37, Gurugram, and has been using the Electricity LT-industrial connection bearing Account No. 8019160000 (Old Account No. 12214C2UZC010168), K.No. 2113048075 and has paid the bill up to July 2017.

(ii) That, the Respondents have issued a bill dated March 21, 2017, for an amount of Rs 31,60,701/- (Rupees Thirty-One Lakh Sixty Thousand Seven Hundred One only) for a period from January 30, 2017 to March 21, 2017. A copy of the Bill dated March 21, 2017 is annexed as hereto Annexure R-1 in the Reply.

(iii) That, it is most respectfully submitted that, due to some clerical mistake, the bill dated March 21, 2017 of Rs. 31,60,701/- (Rupees Thirty-One Lakh Sixty Thousand Seven Hundred One only)has been issued to the Appellant. However, the same has been rectified after the Appellant raised the issue with the Respondents and the bill was corrected to Rs. 10:54,691/- (Rupees Ten Lakh Fifty-Four Thousand Six Hundred Ninety-One only). A copy of the corrected Bill dated March 21, 2017 is annexed as hereto Annexure R-2in the Reply.

(iv) It is pertinent to mention here that the bills raised were as per the Sale Circular no. D-13/2015 dated May 18, 2015 which deals with the change of tariff from Kilo Watt Hours ("KWH") to Kilo Volts Ampere Hours ("KVAH"). A copy of Sale Circular no. D-13/2015 dated May 18, 2015 is annexed as Annexure R-3in the Reply.

(v) That, the failure on the part of the Appellant to maintain the Power Factor is apparent from the fact that the Appellant in his Appeal has himself shown the table depicting the KWH and KVAH units. The average Power Factor maintained by the Appellant during the period 2015 to 2017 is shown hereunder:

KWH/KVAH Power factor

1,47,210/359730 = 0.4 (average PF maintained by the Appellant)

The above calculation clearly shows that the Appellant has failed to maintain 90% Power Factor due to which there is spike in the reading of KVAH units period 2015 to 2017.

(vi) That, the Appellant raised a baseless dispute that the Appellant was not informed of the latest instructions and change in the tariff pattern. This contention of the Appellant has clearly been dismissed by the Hon'ble Court of Ld. Civil Judge (Junior Division) Gurugram, and it was categorically mentioned in the judgment dated February 14, 2024 that the Circular dated May 18, 2015, was issued by DHBVNL and UHBVNL in the newspaper as well as on their respective websites. As such there was no requirement of separately issuing notices to the consumer of electricity.

A copy of the Judgement passed by the Hon'ble Civil Judge (Junior Division) Gurugram on February 14, 2024 has been annexed as Annexure R-5.

(vii) That, in the present case, the Appellant has failed to maintain high Power Factor which has which resulted in higher reading of KVAH in the meter used by the Appellant. The meter of the Appellant was checked on April 06, 2015 by the authorized officials and the meter was working properly without any defect. It is pertinent to mention here that the meter reading on April 06, 2015 is duly recorded and it can clearly be seen from the meter reading record that the reading of KVAH was 32412.7 units which is more than twice the reading of KWH i.e. 17354.2 units. A copy of the meter reading report dated April 06, 2015 is annexed as Annexure R-8in the Reply.

(viii) That, the Appellant cannot be allowed to take advantage of its own negligence and failure to maintain the Power Factor which has resultantly caused more losses and apparently drawn more power than required. The failure on the part of the Appellant is clear and evident from the bare perusal of the consumption data of the meter used by the Appellant. The difference in the reading of KVAH and KWH can clearly be seen therein. The variation in the recording of the reading of KVAH and KWH. A copy of the consumption data of Appellant is annexed as Annexure R-9 in the Reply.

10. That, in the Appeal no. 19/2021 filed by Sh. Sanjay Sethi, Manager, Sanjay Public School, Sector-12, Panchkulavide Order dated June 28, 2021 has

held that the, Licencee can recover its legitimate dues even after two years. The relevant extract of the Order is reproduced hereunder for ready reference:

"In view of the foregoing facts and circumstance, it has come forth that the Licensee may recover its legitimate dues even after the period of two years from the date of discovery of mistake by taking resource to any remedy available in for recovery, but is barred from taking recourse to disconnection of supply of electricity under sub section (2) of Section 56 of the Electricity Act. Therefore, the net sundry charges of Rs. 381547/- is rightly recoverable from the consumer. Hence, I find no merit to interference with the order under appeal."

11. That, apart from the aforementioned refundable nothing is to paid to the Appellant. All other contentions raised by the Appellant are misconceived, baseless, false and against the settled law. Furthermore, the dispute raised by the Appellant is in violation of the instructions of the Nigam. Therefore, the present Appeal in the light of the aforementioned facts stated herein in this reply needs to be dismissed as it is devoid of any merit and has been filed only usurp the public money.

J. Hearing was held on 13.03.2025, as scheduled. Both the parties were present during the hearing through video conferencing. During the hearing, the respondent counsel has submitted the reply to the rejoinder filed by the appellant which has been received by the appellant. Further, Respondent Counsel has submitted that surcharge amount of Rs. 955988/- (Nine Lakh Fifty Five Thousand Nine Hundred Eighty Eight Only) has been adjusted which will be reflected in the next month bill. Additionally, respondent SDO has intimated the same matter has been decided by Hon'ble Civil Court vide case no. RBT-617 dated 14.02.2024 in favour of respondent. As per contra, the appellant counsel has requested for one week time to file the further reply on submission of respondent.

Accordingly, the matter is adjourned and shall now be heard on 08.04.2025.

K. Vide letter dated 27.03.2025, Sh. Parveen Satija has submitted that DHBVN Bill No. 801912988670 dated 13.03.2025 in which the DHBVN has adjusted Rs. 9,55,988/-.

L. Hearing was rescheduled on 23.04.2025 instead of 08.04.2025. Both the parties were present through video conferencing. During the last hearing, the appellant counsel was directed to file the further reply on submission of respondent within

one week but till date no reply was received from the appellant. During the hearing, the appellant counsel intimated that the no reply shall be filed against the respondent rejoinder. Further, appellant counsel intimated that final reply will be discussed during argument. Respondent counsel requested for another date for arguments.

Accordingly, the matter is adjourned and shall now be heard on 01.05.2025.

M. Hearing was held on 01.05.2025, as scheduled. Both the parties were present during the hearing through video conferencing. During the hearing, Counsel of the appellant contended for jurisdiction issue as raised by respondent in hearing dated 01.05.2025. Appellant counsel referred as under"-

15.Jurisdiction

15(a) Section 42 of the Indian Electricity Act,2003 reads as follows:

.....

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licensee, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

15(b) In the instant case the forum is Consumer grievances redressal forum, DHBVN, Gurugram against whose order the present appeal is preferred. Also the appellate ombudsman is Electricity ombudsman, Haryana, Haryana electricity supply commission.

15 (c) It is a matter of fact that the civil suit filed by the appellant/plaintiff bearing case no. CS/3323/2017 was Dismissed by the hon'ble civil court (CJ), J.D, Gurugram. However that suit has no bearing on the jurisdiction of C.G.R.F and now the hon'ble ombudsman

Section 42 (8) of the Indian electricity act reads as follows

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

15(d) Thus it is clear that the authority of the CGRF and the Ombudsman is without prejudice to any other right. Meaning thereby that these forums/ombudsman are separate from any other right in court or otherwise which the appellant may have. Thus, the forum had every jurisdiction to entertain the complaint of the appellant as the civil court and CGRF/Ombudsman are two separate departments and have no bearing on each other.

15(e) That Also there is no law, rule or regulation that the appellant cannot approach both the civil court and the forum.

15(f) Also when the appellant had filed the civil suit against the DHBVN, the DHBVN had only imposed the amount of Rs.10,54,691/- on the appellant. The appellant had only challenged Rs.10,54,691/- before the hon'ble civil court and the judgement has also been delivered only on the amount of Rs.10,54,691/- and no other amount.

15(g) Without any prejudice to the stand of the appellant it is submitted but now the DHBVN have themselves admitted that the amount of Rs.10,54,691/- is wrong and have admitted that due to some clerical, calculation and other errors wrong amount was charged. The DHBVN after filing of the suit have imposed an amount of Rs.11,98,045+Rs. 10,54,691= 2252736 on the appellant.

15(h) This amount of Rs.11,98,045+ Rs. 10,54,691= 2252736 was neither challenged before the hon'ble civil court nor the hon'ble civil court has passed any judgement, order or observation on the amount of Rs.11,98,045+ Rs. 10,54,691= 2252736. As a matter of fact, during the entire proceeding there is no mention of this amount of Rs.11,98,045+ Rs.10,54,691= 2252736. Also, the amount charged, its calculation, its notice, its time and date of charging are entirely different from the previous amount. The amount of Rs.11,98,045+ Rs. 10,54,691= 2252736 is an entirely new amount which was challenged before the hon'ble CGRF and now the hon'ble Ombudsman. Therefore, the question of jurisdiction does not arise.

Further, the respondent counsel explained that the issues raised under points no. 1, 3, and 4 in the appeal/complaint previously submitted before the CGRF and Ombudsman have already been addressed and resolved by the Hon'ble Civil Court in Case No. RBT-617, dated 14.02.2024. However, the only outstanding issue at point no. 2 has also now been resolved, as the respondent has already approved a total refund of Rs. 9,55,988/- in accordance with Memo No. 4065 dated 30.08.2024. The respondent counsel also submitted an electricity bill dated 27.07.2017 amounting to Rs. 11.48 lakh, which is a correct bill, and another bill dated 21.01.2025 amounting to Rs. 93,249/-, which is based on a faulty meter to offset the claim of appellant regarding defective meter from April, 2015 to September 2017. The higher KVAH consumption recorded during this period is attributed to the appellant failure to maintain the appropriate power factor, for which the appellant is solely responsible. The appellant counsel argued that the appellant should not be held liable for the surcharge levied on what he claims to be an incorrect bill issued by the department. He further contended that any interest should only be applied on the bill after 30.08.2024.

Decision

After hearing both the parties and going through the record made available on file, it is decided that the issue of jurisdiction raised by the appellant counsel has been considered and allowed, as the matters raised before the Hon'ble Court and the CGRF/Ombudsman pertain to billing for different periods. However, upon thorough study of the documents submitted by both the appellant and the respondent, and after detailed deliberations during the hearing, it is decided that refund of Rs. 9,95,988/- for which the appellant is eligible has already been allowed by the respondent SDO and it is concluded that the refund of Rs. 9,95,988/–, to which the appellant is entitled, has already been approved by the respondent SDO. Regarding contentions of appellant for imposing an amount of Rs. 11,98,045/- in bill on 15.09.2018 it is clear from sundry at annexure D that appellant was earlier billed on KVAH units from 2015 to 2017 by applying power factor of 0.9 on KWH reading. However, KVAH reading was available from 2015 to 2017 therefore appellant was billed on actual KVAH units and an additional amount of Rs. 11,98,045/- was charged. Further, the appellant request for waiver of interest on his bills cannot be considered, as a late payment surcharge of Rs. 4,75,592/– has already been waived by the respondent in favor of the appellant.

The high consumption of KVAH units from 2015 to 2017 is attributed to the appellant failure to maintain the required power factor, for which he is

responsible. The respondent has correctly applied the applicable tariff to calculate the payable amount. Since the refund of Rs. 9,95,988/– has already been reflected in the bill dated 24.03.2025, no further adjustments can be permitted in favor of the appellant. As far as contentions of appellant counsel regarding late replacement of burnt meter is concerned, it is ordered that Xen/Operation, City Division, Gurugram should take action against the delinquent officer/official as per HERC Standard of performance of Distribution Licensee and determination of compensation Regulation, 2020.

The instant appeal is disposed of accordingly.

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

Given under my hand on 2nd May, 2025.

Sd/-

(Rakesh Kumar Khanna)
Electricity Ombudsman, Haryana

Dated:02.05.2025

CC-

Memo. No.268-74/HERC/EO/Appeal No. 37/2024 Dated:02.05.2025

1. Shri Parveen Satija, Plot No. 179-180, Industrial Estate, Udyog Vihar, Phase-6, Sector-37, Gurugram
2. The Managing Director, DHBVN, Vidyut Sadan, Vidyut Nagar, Hisar
3. Legal Remembrancer, Haryana Power Utilities, Sec- 6, Panchkula
4. The Chief Engineer Operation, DHBVN, Delhi Zone
5. The Superintending Engineer Operation, DHBVN, Gurugram-I
6. The Executive Engineer Operation, DHBVN, City Division, Gurugram
7. The SDO Operation, CCC Kadipur, DHBVN, Gurugram