

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Uttaranchal Iron and Ispat Ltd.
Plot no. 3, 4, 5 & 6, UPSIDC Industrial Area,
Jasodharpur, P.O. Kalalghati, Kotdwara,
Distt. Pauri Garhwal, Uttarakhand

Vs

1. Managing Director
Uttarakhand Power Corporation Ltd.
VCV Gabar Singh Bhawan,
Kanwali Road, Dehradun
Uttarakhand
2. Superintending Engineer,
Uttarakhand Power Corporation Ltd.
VCV Gabar Singh Bhawan,
Kanwali Road, Dehradun
Uttarakhand
3. The Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corporation Ltd.
Kotdwara, Distt. Pauri Garhwal,
Uttarakhand

Representation no. 24/2020

Order

Dated: 10.02.2021

Being aggrieved with Consumer Grievance Redressal Forum, Srinagar zone (hereinafter referred to as Forum) order dated 25.08.2020 in their complaint no. 20/2019-20 before the said Forum against Uttarakhand Power Corporation Ltd. through its Managing Director, SE (Commercial) and Executive Engineer, Electricity Distribution Division, Kotdwar, M/s Uttaranchal Iron and Steel Ltd., UPSIDC Industrial Area, Jasodharpur, Kotdwar, Distt. Pauri has preferred this appeal for the following reliefs from Hon'ble Ombudsman.

2. For quashing or reducing the demand charged of Rs. 2,85,29,840.00 from the total arrears of electricity dues of Rs. 6,62,26,629.00 as well as for refixation of 12 installments of the remaining outstanding dues of Rs. 3,76,96,789.00 and reducing and deleting the LPS out of the total arrears shown in the OM dated 26.12.2019 and 27.12.2019 as well as recovery notice dated 04.09.2020 and recalculating the actual arrears.
3. The appellant has submitted their para wise assertions as follows

1.	Assailing order dated 26.12.2019 and 27.12.2019 (Annexure 1 and 2) for 12 installments for realization of Rs. 6,62,26,629.00 and impugned Forum order dated 25.08.2020 (Annexure 3) and section 3 notice dated 04.09.2020 (Annexure 4) for Rs. 7,45,80,164.00 ending 08/2020 under Dues Recovery Act, 1958.
2	Above orders are challenged on the grounds that demand charges Rs. 2,85,29,840.00 for the disconnection period September 2016 to August 2017 are included in the total dues of Rs. 6,62,26,629.00. Section 3 notice dated 04.09.2020 is also challenged on the same grounds.
3	Appellant's request for reducing the said demand charges has been refused by respondent vide order dated 13.12.2019 and threatened disconnection if first installment is not paid on or before 25.01.2020. Prayer was made to the respondents for monthly installments of Rs. 25 lakhs be made after reducing the said demand charges but the respondents fixed monthly installments of Rs. 55,88,186.00 along with delayed payment surcharge and not reduced the demand charges. This is appeal to Ombudsman under section 42(6) of the Act, 2003.
4	Brief facts of the case narrated in the following paras.
5	No observation. Sh. Pradeep Kumar authorized to plead the case (Annexure 5)
6	No observation. Connection no 909 for 6000 KVA
7	Board of Directors changed in the year 2013. MOU dated 15.04.2013 signed for payment of Rs. 5.20 crores to the new directors by the outgoing directors to pay off electricity dues, bank dues, commercial taxes and income tax etc. (Annexure

	6)
8	The earlier directors failed to obey the MOU dated 15.04.2013 and not paid Rs. 5.20 crores to the company so company started facing financial crisis.
9	As per arbitration clause of MOU dated 15.04.2013 upon non-payment of Rs. 5.20 crores by the outgoing directors. Application was moved to the Hon'ble High Court for appointment of Arbitrator which is still pending and due to this court litigation the appellant company is facing financial crisis. [It is clarified that in consideration of their arbitration writ no. 121 of 2018 the Hon'ble High Court of Uttarakhand has already appointed an Arbitrator vide order dated 24.09.2020.]
10	Due to shortage of funds company failed to pay electricity arrears of few months as also other liabilities as well as monthly bills so arrears were accumulated and may be more than for 5 crores approximately.
11	Supply was disconnected in first week of September 2016 arbitrarily without any notice as required under section 56(1) of Electricity Act 2003. So, the industrial unit was closed down and no production was done from September 2016 to August 2017 due to illegal disconnection and due to extreme shortage of funds bank installments could not be paid and bank started recovery proceedings.
12	By August 2017 due to illegal disconnection the outstanding dues mounted to Rs. 5.10 crores. No explanation by the respondents for these dues since the company wanted to run its industry and start production they requested the respondents to restore the supply but they referred the inflated arrears of Rs. 5.10 crores to collector for recovery as arrears of land revenue. The Collector issued recovery citation against the company which was later kept in abeyance by the Hon'ble High Court of Uttarakhand upon challenging the same by the appellant company.
13	Since the appellant had no option but to take supply from the respondent, the sole licensee they were requested to allow payment of Rs. 5.10 crores in easy monthly installments. The company also gave undertaking that in addition to

	the easy installments they shall pay the regular monthly bills for the current consumption.
14	The respondent corporation for the purpose of settling disputes of the arrears constituted a committee vide order dated 20.05.2017 and the said committee after taking a lenient view recommended recovery of arrears in easy monthly installments. The committee's recommendations were approved by Managing Director of respondent corporation on 28.08.2017.
15	After approval of Managing Director on 28.08.2017, Superintendent Engineer (Commercial) fixed 12 monthly installments for recovery of arrears of Rs. 5.10 crores. Photocopy of Office Memorandum dated 28.08.2017 issued by respondent no. 02 is available as Annexure 7.
16	As per aforesaid OM dated 28.08.2017 the appellant had to pay first four monthly installments of Rs. 25 lakhs each and next four monthly installments till April 2018 of Rs. 40 lakhs each and thereafter as per clause 6 of Electricity Act, 2003 the remaining amounts of arrears was to be paid by the appellant in four equal installments.
17	In compliance of OM dated 28.07.2017 the appellant paid monthly installment of Rs. 25 lakh each till December 2017. So total four installments of Rs. 1 crore was deposited but due to shortage of funds the appellant company was unable to pay fifth installment of Rs. 40 lakhs and therefore, again representation was made for restructuring the remaining installments for Rs. 15 lakhs each in place of Rs. 40 lakhs of each monthly installment. In view of appellant's financial condition the respondent corporation reviewed its earlier OM dated 28.08.2017 and vide their new OM dated 24.10.2018 directed the appellant company to pay arrears of electricity dues to the tune of Rs. 15 lakhs monthly installment till March 2018. So three installments of Rs. 15 lakh each were paid by the appellant in compliance to revised OM dated 24.01.2018. (Annexure 8)
18	It is clear from the aforesaid OM dated 24.01.2018 that after March 2018 the respondents were going to reconsider the case of granting facility of installments in future through its earlier committee. Therefore, on 08.06.2018

	<p>respondent's corporation issued an Office Memorandum wherein power to fix monthly installments to recover arrears was given to the Executive Engineer concerned. The Executive Engineer vide its office order dated 13.06.2018 fixed ten monthly installments of Rs. 30,60,019.00 along with LPS without consulting the appellant. (Annexure 9 & 10)</p> <p>Challenging the authority of Executive Engineer for granting installments the appellants have submitted that OM dated 27.12.2019 issued by Executive Engineer is totally arbitrary and is without jurisdiction and cannot be acted upon by the appellant being void ab-initio photo copy of the circular is enclosed as Annexure no. 10 a</p>
19	In compliance to OM dated 13.06.2018 by respondent no 4 the appellant company anyhow deposited first installment of Rs. 35,42,521.00 and was unable to pay the rest installments due to shortage of funds but to show their bona-fides and honest intention to pay the dues, still continues to pay Rs. 10 lakhs towards monthly installments which were being accepted by the licensee without any demur and the respondents had not disconnected the supply till June 2019 and thus the appellant company was running its factory properly.
20	In the month of July 2019 the connection was suddenly disconnected without any notice or intimation, so production in the company stopped.
21	On appellant company's request for restoration of supply the respondent directed them to deposit Rs. 50 lakhs in one go so Rs. 50 lakhs were deposited on 27.07.2019 and connection was restored and the appellant company again started running the industry.
22	In compliance to OM dated 13.06.2018 the appellant company continued to pay Rs. 10 lakhs monthly installments till November 2019 apart from paying regular monthly bills of current consumption but the connection was disconnected for the first time in July 2019 which was restored on 22.07.2019 after depositing Rs. 50 lakhs.
23	Being aggrieved by disconnection on 03.12.2019 the appellant company vide letter 11.12.2019 requested the respondents to restore electricity and further

	<p>prayed for waiver of demand charges during the period September 2016 to August 2017 because during the said period no electricity was consumed and also no demand was registered in the meter. Therefore, realization of demand charges to the tune of Rs. 2,85,29,840.00 including delayed payment surcharge (Rs. 1,58,48,640.00) was wholly illegal and arbitrary and due to imposition of this illegal demand charges the total outstanding dues against the appellant came to be an enormous amount but the respondents refused vide their letter 19.12.2019 to restore the supply until and unless the arrears are cleared. Photocopy of letter 11.12.2019 and 19.12.2019 are enclosed as Annexure 11 and 12.</p>
24	<p>The petitioner vide their letter dated 18.12.2019 requested the Hon'ble Chief Minister to direct the respondent corporation suitably so that they may be able to clear the outstanding dues and may run their factory but so far according to them the respondents have not cooperated them (Annexure 13)</p>
25	<p>The appellant company vide their letter dated 24.12.2019 again requested the respondents that they were ready to pay the outstanding dues of Rs. 6,62,26,629.00 in easy installments of Rs. 25,00,000.00 per month (Annexure 14)</p>
26	<p>In consideration of their representation dated 24.12.2019 the respondents vide order dated 26.12.2019 issued by Supretending Engineer (Commercial) decided to allow payment of outstanding dues amounting to Rs. 6,62,26,629.00 in 12 monthly installments, however, they did not reduce the demand charges of Rs. 2,85,26,840.00 charged for the disconnected period and the Executive Engineer, Kotdwar vide OM dated 27.12.2019 accordingly fixed 12 monthly installments of the outstanding dues of Rs. 6,62,25,629.00. As such their prayer for fixation of easy monthly installment of Rs. 25,00,000.00 each was rejected by the respondents and also they did not waive off the demand charges imposed for the disconnected period from September 2016 to August 2017 and simply fixed 12 equal installments of Rs. 55,18,886.00 along with delayed surcharge.</p>
27	<p>As their request was not acceded to in responndent's order dated 26.12.2019</p>

	and 27.12.2019, a fresh representation was filed on 28.12.2019 for reconsideration of the aforesaid OMs wherein it was prayed that the appellant can pay the outstanding dues in monthly installments of Rs. 25,00,000.00 each and further demand charges for the disconnected period may be reduced from the outstanding dues. (Annexure 15)
28	The appellants have submitted that although they were the honest and bonafide industrialist but due to court litigation, not fulfillment of obligations by the earlier directors were facing financial crisis and therefore they wanted that the respondents may take some leniency by allowing them to pay the arrear of 6.62 crores in monthly installments of Rs. 25,00,000.00 each in place of existing monthly installments of Rs. 55,18,886.00 so that they can run the industry smoothly failing which they would have no option but to close down their unit.
29	The respondents vide their letter dated 31.12.2019 refused to reduce the demand charges from the outstanding dues and also refused to reduce the amount of monthly installment to Rs. 25,00,000.00 and directed to comply with office order dated 27.12.2019 on or before 25.01.2020 by depositing the first installment of Rs. 62,46,719.00 out of the outstanding dues of Rs. 6.62 crores failing which the installment facility shall stand discharged and they have to pay the entire dues in one go (Annexure 16)
30	The petitioner have submitted that the total outstanding dues Rs. 6,62,26,629.00 includes a sum of Rs. 2,85,29,840.00 towards the demand charges for the disconnected period from September 2016 to August 2017 which is liable to be reduced from the total outstanding dues as during the said period due to temporary disconnection no demand was registered in the meter and also no electricity was consumed and therefore no production was carried out, so addition of these demand charges is wholly illegal, arbitrary and not sustainable in the eye of law.
31	In accordance with their submission under para 30 above they have submitted that if a demand charges of Rs. 2,85,29,840.00 are deleted or reduced from the total dues of Rs. 6,62,26,629.00 then the payable outstanding dues shall be Rs.

	<p>3,76,96,789.00 and thus monthly installment would be Rs. 31,41,399.00 if 12 installments are allowed in place of the ordered monthly installment of Rs. 62,46,719.00. But due to illegal addition of demand charges as aforesaid the total outstanding dues are inflating despite the facts that since September 2016 to December 2019 the appellant company had paid about Rs. 8 crores to the respondents. Which is a sufficient proof to prove the bonafides of the appellant and thus they cannot be victimized by the respondent corporation.</p>
32	<p>As the first installment of Rs. 62,46,719.00 in terms of OM dated 27.12.2019 could not be paid on or before 25.01.2020 due to shortage of funds the appellant company approached the Forum for reduction of demand charges and re-fixation of installment excluding late payment surcharge on fictitious arrears. They also submitted before the Forum that they were ready to deposit Rs. 25,00,000.00 in lieu of first installment fixed vide office order dated 27.12.2019 and requested that direction may be issued for non disconnection of supply. They further proposed before the Forum that regular monthly bills which are approximately Rs. 1.50 crores shall also be paid by them.</p>
33	<p>In their complaint before Forum they requested for quashing the OM dated 26.12.2019, 27.12.2019 and 31.12.2019 (copy of the complaint is at annexure 17)</p>
34	<p>It is submitted that a written argument was also submitted before the Forum which is available at annexure 18.</p>
35	<p>Although the respondent no. 3 filed reply to the complaint vide letter dated 18.07.2020 but a copy thereof was never given to them, so they have no opportunity to counter the same, However their complaint was rejected by the Forum vide order dated 25.08.2020 (available at annexure 3)</p>
36	<p>They have submitted that they came to know about Forum's order dated 25.08.2020 only on 07.09.2020 when they received a recovery notice dated 04.09.2020 so the limitation of 30 days for filing this appeal will start from 07.09.2020.</p>
37	<p>A recovery notice dated 04.09.2020 for a sum of Rs. 7,45,79,164.00 was served</p>

	<p>to them consequent on passing Forum's order and without any notice or opportunity and without giving details as to how the amount of Rs. 6.62 crores have inflated to Rs. 7.45 crores even when the appellants have made payment of Rs. 8 crores during the interregnum. No details or calculations were ever provided. In spite the fact that the appellants continued to pay Rs. 10,00,000.00 every month towards the arrears. On receipt of notice dated 04.09.2020 they approached the prescribed authority i.e. executive engineer demanding breakup of the amount of Rs. 7,45,80,164.00 but the same was never provided to them. The appellants have submitted that Rs. 10,00,000.00 were being accepted by the respondents every month against the total dues of Rs. 6.62 crores and the supply was never disconnected since then by them, amounts to acquiescence by them and therefore the licensee has waived its right to initiate any recovery proceeding against the appellant company. It is only when the Forum gave a positive order to the Licensee but they initiated the recovery proceedings against them.</p>
38	<p>The appellants have submitted that the recovery proceedings initiated vide notice dated 04.09.2020 as well as orders passed by the Forum dated 25.08.2020 and orders dated 26.12.2019 and 27.12.2019 are exfacie illegal, unwarranted and unjustified in law. They have further stated that it is violative of article 14 (9) (g) of the Constitution of India and section 56, 45 and 62 of Electricity Act, 2003.</p>
39	<p>The appellants have submitted that the Forum's order dated 25.08.2020 has been signed by Member Technical and Member Consumer only and it does not carry signatures of Member Judicial as required under clause 3.3 (5) of 2019 Regulations so it does not carry any sanity in the eyes of law as all the members have to sign the order (The appellants have submitted a copy of undispached letter of the Forum with which Forum's order dated 25.08.2020, which does not carry Member Judicial signature but a copy of Forum's order issued vide their letter no. 08 dated 16.09.2020 is available on file which has duly been signed by Member Judicial Mrs. Sundari Gairola Devi, however with</p>

	a remark that “ये पूर्व का केस है” so appellant’s objection does not sustain)
40	The appellants have submitted that the Forum’s order is unreasoned and cryptic with non application of mind as to why the complaint was rejected. No reason has been given for arriving at such a conclusion. Their conclusion is not supported by any finding so the entire proceedings as well as the impugned order dated 25.08.2020 deserves to be quashed and set aside by the Hon’ble Ombudsman .
41	The impugned order dated 25.08.2020 is just in the teeth of clause 3.3 (1) and 3.3 (5) of UERC (Guidelines for Appointment of Members and procedure to be Followed by the Forum for redressal of the grievance of the consumers) Regulations, 2019
42	They have referred the case law of Hon’ble Supreme Court in case of S.N.Mukherjee vs Union of India reported in AIR 1990 (SC 1984) vide six judges decision; has held that the natural justice requires that there has to be a decision supported by quasi-judicial authority. Another similar case law of ORXY Fishries Pvt. Ltd. vs Union of India 2010 (13 SCC 427) vide para 4 of which it has been held that the quasi-judicial authority has to record the reasons in support of its conclusion and non recording of reasons violates the conclusion.
43	Issue a positive directions to the Licensee by the Forum is an act as if they were adjudicating the complaint of the Licensee and not that of the complainant. No directions could have been given to the Licensee to recover the dues under chapter 4 of Supply Code 2007.
44	As Forum’s order dated 25.08.2020 is illegal non-erst and void ab-initio, the same cannot form the basis of either disconnection of supply or recovery of the amount shown in recovery notice dated 04.09.2020 and therefore the same deserves to be quashed and set aside by the Hon’ble Ombudsman
45	The appellants have submitted that under the scheme section 42 (5) of the Act, 2003 read with clause 3.3 of UERC Regulation 2019. The Forum is obliged either allow or reject the complaint but it cannot under clause 3.3 of 2019

	Regulation give a positive direction to the Licensee to recover the amount so Forum's directions are ex-facia illegal and arbitrary and have further mentioned the provisions under clause 3.3 (4) of 2019 regulation regarding the directions which can be issued by the Forum (Annexure 19)
46	Forum's order dated 25.08.2020 has been passed totally unmindfully of the legal facts and position and therefore the same deserves to be quashed and set aside by the Hon'ble Ombudsman as the Forum has acted as if it was adjudicating the complaint of the Licensee and not that of the complainant consumer.
47	Referring to relevant provisions of tariff dated 05.04.2016 and 29.03.2017 pertaining to RTS 7 HT category consumers which provides for charging the demand charges and where the billable demand has been defined. They have stated that the reference of the word "higher" indicates a higher demand and that can only be when a unit is into operation and running i.e. when the meter is registering current and demand which can only be in a case of supply of electricity and not during a disconnection period. Further it is stated that the word higher indicates a higher demand out of the two i.e. demand registered either in MDI which should be higher than 80% of the contracted load or the higher demand recorded by the maximum demand indicator in the meter. The measurement of demand is in KVA and once a unit is not into operation during a temporary disconnection or permanent disconnection, no demand is registered in the meter and therefore no KVA recording are there and thus there can be no realization of any demand charges form the consumer. Copies of tariff orders are enclosed as annexure 20.
48	As per tariff orders referred to above there is concept of realization of fixed and minimum demand charges per month i.e. minimum of 80% of the contracted load when a unit is into operation, when the demand is being registered in the meter, but the minimum demand cannot be charged when there is no demand registered in the meter, since if the same is realized during a disconnected period it would amount to realization of minimum charges which minimum

	consumption guarantee is already being charged from RTS 7 HT category.
49	They have stated that by realizing demand charges during a disconnected period the Licensee would be realizing minimum charges (irrespective of whether a consumer is using electricity or not, whether electricity current is being registered or not.) surcharges are already being charged as MCG in the tariff order. This would amount to realization of MCG twice which is against the intents of Tariff Order. In their case the respondents has charged demand charges of Rs. 15.36 lakhs and 16.56 lakhs for the disconnected period from September 2016 to August 2017 alongwith LPS which is contrary to the statutory orders.
50	There is no approval of UERC to realize the demand charges during disconnected period. Clause 16 of General Conditions of Supply of Tariff Order dated 05.04.2016 and 29.03.2017 clearly provide that no other charges can be recovered from the consumer unless approved by the Commission. Thus realization of demand charges during temporary disconnection deserves to be deducted and reduced out of the total arrears shown due and payable by the appellant.
51	Under the applicable framework i.e. Electricity Act, 2003 UERC regulations 2007 or any rules or regulation or any order of the Commission there is no charge enabling or empowering provision to realize demand charges during a temporary disconnection and in the instant case the respondents are illegally charging the demand charges for the period of disconnection against the applicable statutes. Further they have stated that there is no scope for implies powers 1989 SCC (1) 14 and 1992 (5) SCC 285 so realization of demand charges during temporary disconnection is confiscatory.
52	While framing the tariff orders by UERC there was no proposal for realization of demand charges during a disconnected period and consequently no objections were invited from the consumer's representatives so in such a case a realization of demand charges from the appellant company is illegal and cannot be realized.

53	The Licensee has no plenary and therefore realization of demand charges during the disconnected period amounts to malice in law or legal malice.
54	Fixation of tariff is legislative function of UERC and the commission had not empowered the Licensee to collect the demand charges during temporary disconnection or permanent disconnection and therefore realization of such charges is arbitrary having no force of law.
55	While minimum charges are not a charge having it is base as consumption of electricity but the demand charges can only be charged when there is demand in the meter which can be minimum 80%. Demand charge cannot be levied when there is no consumption of electrical energy. The Hon'ble Apex Court have clearly said that what cannot be done directly, cannot be done indirectly.
56	Section 62 (6) of EA Act, 2003 prohibits realization of a price or charge exceeding the tariff and there is no provision in the tariff to realize the charge during temporary disconnection.
57	Referring to UERC Supply Code Regulation 2007 the appellant company has submitted that if there is no demand recorded or measured in the meter no demand charges can be levied. So, demand charges cannot be realized during disconnection period.
58	Thus, the element of demand charges in the total outstanding amount is illegal, arbitrary and results to be deleted and rectified.
59	Demand is the rate at which electricity is used by a consumer at a given point of time and during disconnection period no electricity is provided so no demand charges can be levied during disconnection period (Annexure 21)
60	Referring to their severe financial crisis and still they want to bonafidely pay the legitimate dues of the respondents and hence they are unable to pay the dues in one go but ready to pay in installments. The appellant categorically undertake to pay the regular dues of regular consumption month by month in case fixation of installment by the licensee pursuant to the orders passed by this appellate forum. Photocopy of the bank loan's paper enclosed as annexure 22
61	Order passed in an identical matter which was placed before the CGRF was not

	considered a copy of which is annexed herewith as annexure 22(a) (CGRF's Haldwani order dated 26.12.2018 in complaint no. 50/2018 of M/s Multiwal Duplash Pvt. Ltd. Kashipur)
62	In view of the facts and circumstances stated hereinabove it will be in the interest of justice that the Hon'ble Ombudsman be pleased to stay the effect and operation of recovery notice dated 04.09.2020 and Forum's order dated 25.08.2020.
63	As per MOU dated 15.04.2013 all current and non-current liabilities were to be discharged by the earlier Board of Directors. Hon'ble High Court's order is annexed as annexure 24 (No order of Hon'ble High Court as said to have been annexed as annexure 24 is available on file)
64	The appellant prayed that the Hon'ble Ombudsman may be pleased to direct the respondent not to resolve to cohesive measure for recovery of any amount from the appellant or to disconnect the supply since the liability to pay is to be decided by arbitrator appointed by the Hon'ble High Court.
65	A perusal of order dated 25.08.2020 shows that late payment surcharge has been imposed in violation of statutory provisions even the payments of the bills were made within the due date. The LPS was released because receipts of payments were issued after the due date of payment.
66	It is stated that within the period 13.04.2013 to march 2019 the appellant has made payment of its regular bills by way of RTGS which payments were duly received by the respondents instantly and which payments are made within due date as prescribed in the bill but receipts thereof were issued after the due date of payment hence the respondents illegally and arbitrarily realized the late payment surcharge.
67	Formal complaints made to Executive Engineer on 07.05.2019 regarding illegally realized LPS was rejected vide his letter dated 13.06.2019. Supplementary complaint filed before CGRF on 25.01.2020 is annexed as Annexure 25.
68	Thus realization of LPS Rs. 36,17,393 is illegal arbitrary and deserves to be

	refunded back along with interest at the rate of 18% p.a.
69	As no finding about illegally realized LPS has been given in Forum order dated 25.08.2020 as such the said order deserves to be quashed and set aside by the Hon'ble Ombudsman.
70	Since there is no default in payment so no LPS can be realized.
71	The grievance of the appellant in the form of the present appeal is being made on the following amongst other grounds.
	<u>GROUND</u>
A	As recovery proceedings vide notice dated 04.09.2020 as well as orders of Forum dated 25.08.2020 are ex facie illegal, unwarranted and unjustified in law. It is violative of Article 14(1)(G) of the Constitution of India and in violation of section 56, 45 and 62 of Electricity Act 2003
B	Forum's order dated 25.08.2020 bears signature of Member Technical and Member Consumer only and does not bear signature of Member Judicial Mrs. Sundari Garola Devli.
C	Because Forum's aforesaid order is unreasoned and cryptic and contrary to settled law.
D	Because conclusion is not supported by any finding so Forum order dated 25.08.2020 deserves to be quashed and set aside by the Hon'ble Ombudsman
E	Form's order dated 25.08.2020 is in the teeth of clause 3.3(1) and 3.3(5) of UERC Regulation 2019
F	Since order dated 25.08.2020 has not been signed by Member Judicial as per clause 3.3(5) of 2019 Regulation, the same carries no sanctity in the eyes of law and positive directions given as per chapter 4 of UERC Supply Code Regulations, 2007.
G	Because impugned order dated 25.08.2020 has been issued totally unmindfully having no mention of legal grounds and thus deserves to be quashed.
H	Because by realizing demand charges during disconnected period the licensee would be realizing the minimum charge, which are already being charged as MCG and as tariff applicable and Supply Code Regulations, 2007 does not

	provide for imposition of minimum charges twice or doubling of minimum charges.
I	Because there is not approval of UERC to realize the demand charges during disconnected period thus realization of such charges during temporary disconnection deserves to be reduced and run away with by rectifying the total arrears by excluding the late payment surcharge.
J	Because the licensee has no primary powers to what they cannot charge demand charges during the disconnected period.
K	Because fixation of tariff is legislative function of UERC and they have not empowered the licensee to collect the demand charges during temporary disconnection and therefore realization of the same is confiscatory and arbitrary having no force of law.
L	Demand charges can be levied when demand is recorded in the meter.
M	Since the element of demand charges in the total outstanding dues is illegal, arbitrary and deserves to be deleted and rectify. Therefore, bills deserves to be revised and LPS be reduced from the outstanding dues.
N	Since the demand is the rate at which electricity is used and during the disconnection period there is not electricity so there cannot be any demand the thus no demand charges are leviable and therefore such charges deserves to be set aside by the Hon'ble Ombudsman.
O	Because Tariff order dated 05.04.2016 and 29.03.2017 shows the methodology of billable demand and charging the same in the instant case during the period of disconnection there was no KVA recording and thus there can be no realization of any demand charges.
	<u>Prayer</u>
i	To issue order quashing the impugned order dated 25.08.2020 of the Forum and consequential recovery proceedings including the impugned recovery notice dated 04.09.2020 including orders dated 26.12.2019 and 27.12.2019.
ii	To issue a direction to the respondents to reduce an amount of Rs. 2,85,29,840 sought to be realized as demand charges from the total outstanding dues of Rs.

	6,62,26,629 during the disconnected period from September 2016 to November 2016 (both inclusive) and from March 2016 to August 2016 (both inclusive) and thereafter re-fix 12 equal installments of rest outstanding dues of Rs. 3,76,96,840 after reducing and deducting late payment surcharge on the final corrected amount.
iii	To issue order directing the respondents to permit the appellant to deposit first 4 installments of Rs. 25,00,000.00 each towards the payment of total remaining outstanding dues of Rs. 3,76,96,779.00 and upon deposition of the first installment the respondents may not disconnect the supply to appellant's industrial unit
iv	To issue any other order as deemed fit
v	To award the cost of appeal

4. The Forum after recording contents of the submissions by both parties made in complaint and reply respectively have dismissed the complaint vide their order dated 25.08.2020 by issuing the orders which are reproduced below:

“परिवादी का परिवाद निरस्त किया जाता है विपक्षी लाइसेन्सी UERC द्वारा पारित सप्लाई कोड, पैरा 4 के Sub para 1 में वर्णित Chapter 4 Disconnection and reconnection para 1 Disconnection on nonpayment of the licencees dues.

The Licencees may issue a disconnection notice in writing as per section 56 of the Act to the consumer, how defaults on his payment of dues giving him 15 clear days to pay the dues there after the licencees may disconnect the consumer's installation on expire of the said notice period. If the consumer does not clear all the dues, including arrears within 6 months of the date of disconnection of such connections shall be disconnected permanently का पालन सुनिश्चित करें, परिवादी यदि इस निर्णय से संतुष्ट न हो तो वे एक माह के भीतर लोकपाल (विद्युत), बसन्त बिहार देहरादून में अपील कर सकते हैं। पत्रावली दफ्तर दाखिल हो।”

5. Respondent no. 3, the Executive Engineer, Electricity Distribution Division, Kotdwara a authorized representative of respondent corporation UPCL has submitted a written

statement dated 19.10.2020 wherein he has submitted the para wise reply to the petition as follows:

1. The point is a matter of record but it is pertinent to clarify that the petitioner's challenge to Office Order dated 26.12.2019 and 27.12.2019 is not maintainable not being consistent with law. It is further clarified that the complaint before Forum was limited only regarding admissibility of demand charge/fixed charge during the period of disconnection and the present petition has to be confined within the matter of complaint before Forum and it cannot be extended any further. Neither the petitioner can challenge the issue of notice under section 3 before the Hon'ble Ombudsman.
2. Not admitted. There is no basis for challenging the aforesaid order. Neither the grounds submitted in the petition are legal and therefore not maintainable. It is clear from this para of the petition that he has raised objections on inclusion of demand/fixed charges during the period of disconnection for the period September 2016 to August 2017 which were not paid and this is the only ground put up by the petitioner for challenging the order, but no ground under law has been submitted to support their logic.

It is further submitted that all bills including demand/fixed charges have been issued strictly in accordance with the relevant regulations and provisions of the appropriate tariffs which are liable to be paid by the petitioner. It is a false submission by the petitioner that 12 installments for payment of dues Rs. 6,62,26,629.00 were granted without his notice, while the fact is that on his request SE (Commercial) UPCL Dehradun's order dated 26.12.2019 was revised by order dated 25.01.2020 and 29.01.2020 wherein 4 installments of Rs. 25,00,000.00 each including LPS and the balance 8 installments of equal amount including LPS were granted. Further calculation of LPS has been done as per provisions of the Tariff issued by Hon'ble Commission due to nonpayment of dues within the due dates.

3. Para 3 of the petition is not admitted. After disconnection on 03.12.2019 the petitioner vide their letter dated 11.12.2019 for the first time requested for adjustment of demand/fixed charges along with interest for the period of

disconnection which was refused vide respondent's letter dated 19.12.2019 wherein it was clarified that the billing has been done as per provisions of UERC Tariff. Further, it was stated that since demand charges were also included in the amount of outstanding bills and were levied as per tariff provisions and therefore were payable by the petitioner and hence these charges cannot be separated from the total outstanding dues. Facility of installment was granted for payment of the outstanding dues on the request of the petitioner which they did not pay and consequently the respondents had to issue notice and proceeded with the actions for disconnection.

4. No comments are required.
5. It is a matter of record and responsibility to establish the same lies on the petitioner.
6. It is a matter of record and no comments are required.
7. Not admitted in the absence of facts and responsibility to establish these facts lies on the petitioner. The petitioner has submitted that they had to pay a liability of Rs. 5.20 crores at the time of change of directors, while no dues on connection no. 909 were outstanding in the month of April 2013. That time bills were being paid regularly. The respondent have substantiated his submissions with copy of bills for the month of March and April 2013 as Annexure 5 and 6. The appellant company started making irregular and part payments of the bill where after the dues went on increasing continuously.
8. Para 8 of the petition is not admitted, not being relevant with the appeal. It is a false submission that responsibility for payment of the dues were of the directors.
9. Para 9 is irrelevant and is not concerned with the respondent so no comments are required.
10. Under para 10 the petitioner has admitted that the company could not pay the bills for some months and they were aware that due to nonpayment of the bills the dues shall reach to a figure of 4 to 5 crores in a few months.
11. The para is false and denied. Due to nonpayment of the amount of bills the connection of the petitioner's unit was disconnected on 11.08.2016 as per rules, where after 4 equal monthly installments of outstanding dues Rs. 2,11,37,839.00 ending July 2016 were granted vide UPCL's OM no. 2460/E2 dated 19.08.2016 but

as per conditions of the said OM due to nonpayment of regular monthly bills with monthly installments the supply was disconnected on 31.08.2016.

12. The connection was disconnected as per rules for recovery of outstanding dues. The supply was disconnected on 11.08.2016 for nonpayment of dues of Rs. 1,15,69,911.00 for the month of June 2016. The facility of payment in 4 monthly installments with payment of LPS was granted vide OM no. 2460 dated 19.08.2016 for dues amounting to Rs. 2,11,37,839.00 ending July 2016. The respondent paid the first installment of Rs. 63,00,000.00 but connection was disconnected for nonpayment of regular bills on 31.08.2016 where after in consideration of appellant company's application which was also endorsed to Hon'ble Chief Minister, the facility of payment of outstanding dues Rs. 2,41,00,701.00 ending September 2016 in 5 monthly installment was granted. After payment of first installment of Rs. 60,00,000.00 the supply was restored on 02.11.2016 but the supply was again disconnected for nonpayment of the dues regularly.

Where after the appellant filed a writ before the Hon'ble High Court for granting 5 nos. quarterly installments of outstanding dues Rs. 2,10,02,399.00 ending October 2016. The Hon'ble High Court ordered for payment of the said dues in 5 nos. equal quarterly installments. According to which the first installment was to be paid up to 31.12.2016 but due to nonpayment of the first installment by the scheduled date and even after allowing time up to 10.01.2017 by MD, UPCL, the first installment was not paid and therefore supply was disconnected on 11.01.2017.

An application was submitted by the appellant to MD UPCL to pay Rs. 30,00,000.00 immediately and further 34,00,000.00 within 8 days so after depositing Rs. 30,00,000.00 the supply was restored on 11.01.2017. Subsequently due to nonpayment of the installments and current bills against total outstanding dues of Rs. 2,58,455,485.00 ending January 2017 the supply was again disconnected on 09.02.2017. Section 3 and section 5 notices for recovery of aforesaid outstanding dues Rs. 2,58,55,995.00 were issued on 17.02.2017 and 21.03.2017 respectively where after the appellants submitted an affidavit to the effect that they intend to pay the outstanding dues against their both the connections for which RC has already been issued in installments and requested to call back the

RC. Further submitted that they were ready to pay any charges as may be required for calling back the RCs from DM office. Further, order for payment of outstanding dues of 5.10 crores in 8 monthly installments up to March 2018 and balance installments after adjustment of MCG were ordered vide OM no. 3551 dated 28.08.2017. After depositing first installment of Rs. 25,00,000.00 the supply was got restored on 03.09.2017 and as the conditions of the order payment of the bills up to December was made with some delay, report thereof was submitted to the Hon'ble High Court after that Hon'ble High Court on 11.01.2018 ordered for postponement of section 5 till the appellant continues to pay the outstanding dues.

13. It is a false statement of the appellant that they were compelled to apply for installments as there was no other option available with them. The situation of accumulation of outstanding dues was created due to nonpayment by him and he was responsible for not making payment of the dues and therefore there is no justification for alleging that since the respondent are the only distribution company, he had no option.
14. No comments are required as far as it concerns to the records but it's a wrong submission that the committee was constituted for resolving any dispute. They have themselves admitted that on their request the facility of installment was allowed taking a lenient view by the respondents.
15. No comments are required as far as records are concerned but it is pertinent to mention that Rs. 5.10 crores were outstanding against the appellants and facility of installment was granted by the respondent UPCL taking a lenient view. Orders for 12 equal monthly installments were issued vide UPCL's OM no. 3551 dated 28.08.2017 and the supply was reconnected on 03.09.2017 on payment of first installment. But the appellants did not pay the monthly installments as well as monthly regular bills by the scheduled due dates for which supply was repeatedly disconnected and after giving assurance to the higher authorities for expeditious payments the supply was restored each time.
16. No reply is required as it is a matter of records.
On appellants request a revised order for installments was issued on 24.01.2018 wherein facility of monthly installment of Rs. 15,00,000.00 each was allowed up to

March 2018 and it was ordered that after March 2018 the matter be put up before the committee already constituted vide corporation's OM no. 3893 dated 20.05.2017. Facility for payment of outstanding dues Rs. 3,06,00,179.00 in 10 nos. monthly installments was allowed vide corporations order no. 2346 dated 08.06.2018 but the petitioner even did not comply with the same and the dues were not paid. They started to pay installments of Rs. 10,00,000.00 each at their own volition and again requested the corporation to grant installments for lesser amount. It is pertinent to mention here that the supply was disconnected repeatedly due to nonpayment of the dues and the same having been restored on higher authorities verbal instructions.

17. Matter of records and no reply is necessary. The appellant had never paid the electricity dues regularly and timely.
18. Matter of records and no reply required. However, the OM for installments was issued by the Executive Engineer, in compliance to Headquarter's OM no. 2346 dated 08.06.2018.
19. The Para 19 is denied as stated.
20. It is clarified that the appellants did not pay the outstanding dues and regular bills due to which the respondents were compelled to disconnect the supply as per rules.
21. On assurance given by the appellant to the higher authorities that they would immediately pay Rs. 50,00,000.00 order for reconnection was issued by higher authorities and connection was reconnected on 22.07.2019.
22. Not admitted as the appellants did not pay the dues regularly and timely the outstanding dues went on increasing. It is wrong to say that Rs. 10,00,000.00 per month were regularly paid up to November 2019 in compliance to OM dated 13.06.2018. It is clarified that installment of Rs. 10,00,000.00 per month were not granted vide OM dated 13.06.2018.
23. Matter of records and no reply is required. Due to nonpayment of dues the supply was again disconnected on 03.12.2019.

The appellant company for the first time vide their letter dated 11.12.2019 objected inclusion of demand/fixed charges for the disconnection period from September 2016 to August 2017 in reply to which it was clarified to them vide letter dated

19.12.2019 that demand/fixed charges have been levied as per provisions of UERC Tariff as already clarified it was again clarified that demand/fixed charges is a part of the bill and is as per provisions of UERC Tariff and hence the petitioner is liable to pay this amount also .

24. It is submitted that after disconnection due to nonpayment the appellant have been complaining to Hon'ble Chief Minister and public representatives without any basis and grounds and just to pressurize the officers by alleging that they are being harassed by the respondent officers.
25. It is submitted that due to nonpayment of the dues by the petitioner the outstanding dues has mounted to Rs. 6,62,26,629.00 till November 2019 and the petitioner have requested once again to allow installment of the aforesaid amount before the respondent. After considering their request facility of payment of the said dues in 12 equal monthly installment was granted vide OM dated 26.12.2019 and installments were accordingly fixed by the Executive Engineer vide OM dated 27.12.2019. Although the appellant has admitted to pay the aforesaid outstanding dues but despite admitting to pay the dues, they are challenging the dues so the appeal is against the principle of estoppel and acquiesce.
26. The facts are the matter of record and reply to the facts has already been included in the following paragraphs.
27. The appellant have again submitted an application dated 28.12.2019 showing their intention to pay the total outstanding dues but have requested to allow first 3 installments of Rs. 25,00,000.00 each and 9 installments of the balance amount. In acceptance of their request SE commercial UPCL vide OM dated 25.01.2020, 29.01.2020 and 30.01.2020 directed to recover the outstanding dues Rs. 6,35,24,696.00 in 12 monthly installments (first 4 installment of Rs. 25,00,000.00 each along with LPS and balance 8 equal installments with LPS and accordingly the installments were fixed vide Executive Engineer EDD, Kotdwara vide OM dated 31.01.2020. The appellant made payments of only 2 installments and no payments were paid thereafter from the month of March 2020 onwards.

Disconnection of any category of consumers was banned up to 30.06.2020 in view of Covid-19 as per Uttarakhand Government orders. After lockdown installments

were not paid up to 30.06.2020 and even payments of regular monthly bills was not made timely and regularly where after approached Forum claiming the outstanding dues as disputed amount. The Forum vide their order dated 08.06.2020 stayed disconnection with the condition to pay current bills only. In compliance to Forum's order section 3 notice was issued and connection was disconnected on 04.10.2020 for nonpayment.

28. In spite of granting the facility of payment in installments repeatedly on their request the appellant company never paid the installments/outstanding dues regularly and as such the present stage of outstanding dues has reached for which the appellants are themselves responsible.
29. Matter of records. No reply is required.
30. Reply has already been given in the foregoing paragraphs. It is stated that demand charges are included in the outstanding dues of Rs. 6,62,26,629.00 as per tariff provisions which is justified and legally correct and the appellant company are liable to pay the same.
31. Reply already given under the foregoing paragraphs.
32. The appellants have admitted nonpayment of installments
33. Matter of records.
34. Matter of records.
35. Matter of records.
36. Matter of records.
37. Contents of para 37 as stated are false and denied only contents related to records are admitted. Bills are being regularly issued and amount shown in section 3 is the dues of electricity bills. Copy of bills for September 2020 is enclosed. The outstanding dues are going on increasing due to nonpayment by the appellant.
38. Contents are false and not admitted.
39. Contents are false and not admitted.
40. Contents are false and not admitted.
41. Contents are false and not admitted.
42. Have mentioned a case law of Hon'ble Supreme Court. this does not apply to the facts of the instant case.

43. Contents are false and not admitted.
44. Contents are false and not admitted.
45. Contents are false and not admitted.
46. Contents are false and not admitted.
47. Contents are false and not admitted.
48. Reply has already been covered in the foregoing paragraphs.
49. Contents are false and not admitted perhaps they are making such submissions due to not understanding the difference between MCG and fixed charges. Their contention are against Tariff orders.
50. Contents are false and not admitted.
51. Contents are false and not admitted.
52. Contents are false and not admitted.
53. Contents are false and not admitted.
54. Contents are false and not admitted.
55. Contents are false and not admitted.
56. Contents are false and not admitted.
57. Contents are false and not admitted.
58. Contents are false and not admitted.
59. Contents are false and not admitted.
60. Contents are false and not admitted.
61. Not concerned with the respondent.
62. They are not entitled for stay order. The appeal is without any reasonable grounds. The stay orders shall be detrimental to the interest of the respondent. It is submitted that the complaint of the appellants before the Forum was regarding the question of levy of demand/fixed charges for the period the Supply remained disconnected for nonpayment of outstanding dues so the appellants cannot challenge issue of section 3 notice by the respondents.
63. Contents are false and not admitted.
64. The request is not liable to be considered being against law
65. Contents are false and not admitted.
66. Contents are false and not admitted.

67. Matter of records.
 68. Contents are false and not admitted.
 69. Matter of records. No reply required.
 70. Contents are false and not admitted.
 71. Contents are false and not admitted. The ground submitted in this para is wrong. No maintainable grounds is available to the appellant under law. They are interpreting the facts and provisions from their own point of view. Their interpretation and grounds not only wrong but against law. A perusal of the complaint before Forum and this appeal shows that this have been filed simply to delay payments of outstanding dues. They have not challenged any dues or have not held these dues as wrong but they have been agreeing to the outstanding dues and the bills completely and have been continuously and repeatedly requesting for allowing them payment of the dues in installments.
 72. The complaint before Forum and the instant appeal shows only the after thoughts and as such this is not maintainable.
 73. Appeal is not maintainable.
 74. The appellants are not entitled for any relief and their appeal is liable to be dismissed for not being maintainable under law.
 75. The reliefs asked for are out of jurisdiction and not admissible under law. It is therefore requested that the appeal be dismissed and stay be also vacated.
6. The petitioner company has submitted a rejoinder along with an affidavit dated 18.11.2020 before submission of para wise reply to the written statement of the respondent. The appellant at the very outset has submitted that the legal issues raised in the instant appeal before the Hon'ble Ombudsman have not been controverted by any provision empowering the Licensee to recover demand charges during a disconnected period, thus they stand admitted as the "doctrine of non-traverse" and on this scope along the appeal deserves to be allowed for by granting the reliefs prayed for in the appeal. Further they have submitted that all along the reply by the respondents, they have asserted that demand charges were recovered as per the tariff order by the UERC but no such specific provision have been quoted by which approval of UERC has been given to realize the demand charges during the period of disconnection.

7. Having said that the parawise replies to the written statement has been submitted. Following paras of the rejoinder are merely reiteration and re affirmation of the contents of concerned paras of their appeal

Para 6 to 10, 12 to 22, 24 to 26, 34, 39, 42, 43, 46, 48 and 59

Replies against other paras of their rejoinder are as follows

Para 5 Averments made in para 1 are incorrect and wrong and hence denied. It is stated that after the illegal order of CGRF dated 25.08.2020 recovery notice no. 1586 dated 04.09.2020 was issued immediately thereafter as a vindictive measure to realize the illegal dues of Rs. 7,45,80,164.00 and since the said recovery notice was consequential and an outcome of the order dated 25.08.2020, the same is also amenable to the appellate Forum exercised by the Hon'ble Ombudsman under section 42 (6) of Electricity Act, 2003.

Para 11 The averments made in para 9 of the written statement are admitted as stated. A copy of the Hon'ble High Court order passed in arbitration proceeding appointed a neutral arbitrator has been submitted as annexure no. RA-1 **(It is clarified that in the referred Hon'ble High Court's order dated 24.09.2020 the Hon'ble High Court have passed orders for appointment of a neutral arbitrator to resolve the disputes as per para 36 of the MOU dated 15.04.2013 signed between the outgoing and the incoming Directors of the petitioner's company. The respondent UPCL was neither a party to the said MOU nor the MOU has anything to do with the subject matter of the instant appeal and therefore reference of this MOU and appointment of arbitrator is superfluous for the present case).**

Para 23 Averments made in paragraph 21 of the reply need no reply.

Para 25 Averments made in para 23 of the counter affidavit/reply need no reply since the respondents have admitted the disconnection from September 2016 to August 2017.

Para 27 Averments made in para 25 of the written statement are not admitted in the manner as stated. Since amount of Rs. 6.62 crores includes the illegal and fictitious arrears of minimum demand charges and interest thereon during the disconnection period having no authority of law the same is liable to be set aside by the Hon'ble Ombudsman.

Para 28 Averments made in para 26 of the counter affidavit/reply needs no reply.

Para 29 Averments made in para 27 of the counter affidavit are not admitted in the manner stated, hence denied.

Para 30 Averments made in para 28 of the counter affidavit are incorrect and wrong, hence denied.

Para 31 Averments made in para 29 of the counter affidavit need no reply.

Para 32 Averments made in para 30 of the counter affidavit are incorrect and wrong hence denied.

Para 33 Averments made in para 31 of the counter affidavit in the preceding paragraphs of this rejoinder affidavit may be read.

Para 35, 36 and 37 Averments made in para 32 of the counter affidavit need no reply.

Para 38 Averments made in para 36 of the counter affidavit are incorrect and wrong hence denied. The answering deponent is put to strict proof to prove the averments made in para under reply.

Para 40 Averments made in para 38, 40 and 41 of the counter affidavit have been denied. The legal issues raised in the appeal backed by the statutory provisions have not been countered by the respondents by means of any other statutory provisions in support thereof and thus they stand admitted.

Para 41 Averments made in para 42 of the counter affidavit are incorrect and wrong and hence denied. The answering deponent is put to strict proof to prove the averments made in para under reply.

Para 44 Averments made in para 45 and 46 of the counter affidavit need no reply.

Para 47 Contents not clear.

Para 60 Averments made in para 75 of the counter affidavit are incorrect and wrong hence denied. The appeal is full of merit and deserves to be allowed with heavy cost upon the respondent licensee.

Para 61 In addition to above the counsel for the appellant has also submitted a copy of Hon'ble High Court judgment dated 24.09.2020 in their arbitration petition no. 12 of 2018 as also a copy of the agreement signed between the UPCL as a Licensee and the appellant company as a consumer signed on 28.10.2016 for supply of 6000 KVA contracted load

8. Hearing in the case was fixed for 27.11.2020. Petitioner himself and his counsel Shri Mayank Agarwal, Advocate, High Court Allahabad participated in hearing, Executive Engineer, EDD, Kotdwar, Senior Law Officer, UPCL were also present before the Hon'ble Ombudsman along with their counsel for hearing. Both parties argued their case. The hearing was concluded, however on the request of both the parties they were allowed to submit their written arguments by 10.12.2020 and were also asked to submit if they want any further hearing in the case, where after this date was extended up to 21.12.2020 on petitioner's request. Both parties submitted their written arguments on 21.12.2020.

The respondent no. 3, Executive Engineer, EDD, Kotdwar as an authorized representative of the respondent corporation UPCL submitted his written argument vide letter no. 2734 dated 21.12.2020 wherein he submitted that respondent have already submitted their case before the Hon'ble Ombudsman in hearing on 27.11.2020 and detailed reply to the petition had already been submitted vide letter dated 15.10.2020 and thus he has requested that the case may kindly be decided as early as possible without any further hearing.

9. The counsel for the petitioner also submitted a written argument on the scheduled date wherein he has submitted that ground of challenge of Forum's order have clearly been mentioned in para 39 to 46 of the appeal. Forum's order is in clear violation of Supply

Code Regulation, 2007 and UERC Regulations, 2019. It has been reiterated that no positive directions could have been given to Licensee to recover the amount and thus the Forum have acted in violation of law. Further there was no finding in Forum's order regarding illegal realization of LPS amounting to Rs. 36,17,393.00 that notice of disconnection as required under section 56 (1) of the Act has not been given. Sub regulation 3.3 (2) of Supply Code Regulation, 2007 has not been followed. That object of fixation of installment was to tide over the crisis of the consumer as well as the Licensee. Supply was disconnected several times between 2015 till August 2017. During which period no demand was registered in the meter (**earlier in their petition they have repeatedly submitted that the supply remained disconnected continuously from September 2016 to August 2017 during which no supply was available to the consumer as such no demand and energy was recorded, on the basis of which they have been demanding deletion of demand charges along with LPS for the period of continuous disconnection of supply but now in this para of the written argument they have withdrawn their earlier stand by submitting that the supply was disconnected various times between 2015 till August 2017. During the hearing they admitted that supply did not remain disconnected continuously from September 2016 to August 2017 but was disconnected and reconnected a number of times during this period.**)

10. In the written argument they have submitted the following grounds also:
11. No sale without consumption. They have submitted that as there was no supply so no demand was recorded and therefore no demand charges can be imposed when no demand is recorded. The petitioner has quoted a case law of Bihar State Electricity Board vs Green Rubber 1990 (1) SCC page 731 as also a case law of Ahemdabead Urban Development Authority vs Sharad Kumar 1992 (3) SCC page 285 also a judgment in case no. 1989 SCC (1) page 14. A case law of Jharkahand High Court year 2006 123 para 5 and 7 on the basis of above case laws as also section 45 62 (6) and 146 of Electricity Act, 2003 they have argued that levy of demand charges during the period of disconnection is a case of Malice in law, unjust, enrichment and further fixation of tariff is a legislative function and the legislature does not prescribe or have empowered the Licensee to collect

the demand charges during temporary disconnection and therefore it is a case of deliberate and willful violation of tariff order.

Since both parties submitted their written arguments on the revised scheduled date 21.12.2020, as discussed in above paras no. 8 to 11 and as none of them indicated for a further hearing in the case. The date of order was fixed for 10.02.2021 vide letter no. 324 dated 08.02.2021 sent to the parties via email and whatsapp. The petitioner however submitted a letter dated 09.02.2021 in response to the aforesaid letter dated 08.02.2021 wherein, they have requested for a next date for arguments as they have still some points to submit which had not been argued earlier. It is clarified that sufficient opportunities were provided for submission of arguments and they also submitted their written arguments on 21.12.2020 as mentioned above and as in the said written arguments dated 21.12.2020 no request was made for further date till 09.02.2021 which has been written after the date of order was fixed for 10.02.2021 vide this office letter dated 08.02.2021, they never requested for any further argument and as such the arguments including written arguments already stands concluded, their request dated 09.02.2021 for allowing another date for further arguments cannot be acceded to and the same is hereby turned down.

12. All the case law referred in the written arguments as well as earlier in the petition, as submitted by the petitioner have been taken on records and are available on file and have been discussed in the following paras of this order.
13. Arguments from both parties were heard on prefixed date 27.11.2020 when both parties appeared along with their counsels and argued their respective cases mainly on the basis of their averments made in their petition and rejoinder by the petitioners and written statement by the respondent. Hearing was concluded with mutual consent. However both parties requested to submit written arguments which was allowed to be submitted by 10.12.2020 subsequently on the request of the petitioner the date was extended up to 21.12.2020. At the same time both parties were asked to indicate if they would like one more hearing. The written arguments from both parties were received on the prefixed

date 21.12.2020 which was taken on record. Both the parties intimated that they do not want any further hearing so the order was reserved.

14. All records documents case laws submitted by both the parties are available on file have been perused carefully. The petitioner has filed a complaint before the Forum which was registered in the Forum as complaint no. 20/2019-20 which was decided by the Forum vide their order dated 25.08.2020 and dismissed the complaint, however with the directions to the opposite party for issuing disconnection notice as required under sub para 1 of Chapter 4 of UERC Supply Code Regulations. Being aggrieved with the said Forum order the petitioner has preferred the instant appeal before Ombudsman. The subject matter in the complaint before Forum as well as in appeal before the Ombudsman was the same i.e. for quashing or reducing the demand charges of Rs. 2,85,29,840.00 from the total arrears of electricity dues of Rs. 6,62,26,629.00 as well as for refixation of 12 installments of the remaining outstanding dues amounting to Rs. 3,76,96,789.00 and reducing and deleting the late payment surcharge out of the total arrears shown in the OM dated 26.12.2019, 27.12.2019 as well as recovery notice dated 04.09.2020 and recalculating the actual arrears.
15. The petitioner have submitted that their directors were changed in the year 2013 when a MOU was signed between the outgoing and incoming directors on 15.04.2013 wherein it was provided that the outgoing directors will pay a sum of Rs. 5.20 crores to the new directors to pay off electricity dues, bank dues, commercial taxes and income tax etc. but the earlier directors failed to obey the MOU and did not pay Rs. 5.20 crores to the company, so company started facing financial crises due to which they failed to pay electricity bills and arrears went on increasing and reached a figure of about 5 crores. As regards their submission for not being able to pay electricity bills due to the earlier directors having not paid a sum of Rs. 5.20 crores to them, it is clarified that it is the internal matter of the petitioner company and the respondent UPCL has nothing to do with that neither they were the party to the MOU and neither this plea, that the outgoing directors did not obey the MOU dated 15.04.2013, for having not paid bills is maintainable.

Further statement submitted by the respondents along with written statement showing bill amount, amount paid and outstanding dues from April 2016 to September 2020 shows that total outstanding dues before April 2016 were (-) Rs. 43.17 lakhs i.e. to say that no arrears were outstanding against the petitioner before April 2016 but a surplus of Rs. 43.17 lakhs had been paid by them till then as per respondent's submission. This statement shows that the arrears went on increasing from month to month from April 2016 till September 2020 from 62.97 lakhs to 875.75 lakhs in the month of September 2020. A copy of the bill for the month of September 2020 has also been adduced by the respondent which also confirms that outstanding dues ending September 2020 were Rs. 8,75,79,542.00. This shows that after change of the directors in the year 2013 they continued to pay electricity bills regularly till March 2016 and the outstanding dues started against them from April 2016 due to nonpayment of the full amount of the bills, even due to nonpayment of installment granted a number of times and continued till September 2020, so petitioner's averment that they could not pay electricity bills for non receipt of Rs. 5.20 crores from the outgoing directors as per MOU dated 15.04.2013 does not prove to be correct.

It has also been noted that during this period installments were granted to the petitioner right from August 2016 a number of times till December 2019 with the approval of top management of UPCL, although the petitioners did not comply with the orders of payments in installment against any of the orders. Every time they stopped making payments of the installments after paying one or two installments or so and applied for facility of installments again and again. The same was allowed by UPCL management and during such period the supply was disconnected and reconnected eight times after receiving payment of one or two installments and thus that was the reason for accumulation of the arrears. The UPCL authorities thus appear favouring the petitioners by allowing facility of installments though the petitioner defaulted every time and supply was disconnected and reconnected without receiving the total outstanding dues. Details of disconnections and reconnections, amount due at each point of time and OMs for installments as adduced by the respondent are given here under:

S.No.	Disconnection	Reconnection	Due amount	Remarks
1.	11.08.2016	19.08.2016	1,15,69,911	4 equal monthly installments vide OM no. 2460 dated 19.08.2016 of amount Rs. 21137839.00 was fixed.
2.	31.08.2016	02.11.2016	2,25,68,224	The connection was disconnected on nonpayment of bill amount in full. 5 equal monthly installments vide OM no. 3686 dated 25.10.2016 of amount Rs. 2,41,00,701.00 was fixed.
3.	10.01.2017	11.01.2017	2,10,02,399	The connection was disconnected on nonpayment of bill amount. 5 equal Quarterly installments were also fixed by the Hon'ble HC in WP No. 3172 vide its order dated 30.11.2016, which was not paid timely and the electricity connection of the consumer again disconnected. The connection was reconnected on oral directions of the MD UPCL after receiving payment of Rs. 30 Lakhs.
4.	09.02.2017	03.09.2017	2,58,55,495 5,14,46,705	The connection was again disconnected on nonpayment of previous month's bills. Sec.-3 notice on 17.02.2017 and Sec. 5 notice on 21.03.2017 were issued. Hon'ble HC in disposing the WP No. 3172 vide its order <u>dated 18.07.2017</u> dismissing the WP and directed the petitioner to represent the case before dept. committee for installments. The consumer again been allowed to pay his dues in 08 equal monthly installments vide OM No. 3551 dated 28.08.2017 of amount Rs. 5.14 Cr. the connection again has been restored in the month of Sep 2017. The installments again been revised vide OM No. 324 dated. 24.01.2018 as Rs. 15 lakhs per month up to March 2018.
5.	-	-	3,06,00,189	In continuation of OM No. 3551 dated 28.08.2017, an OM No. 2346 <u>dated 08.06.2018</u> was issued for installments of amount of Rs.

				3,06,00,189, and the consumer was allowed to pay the dues in 10 equal monthly installments. Consumer again requested to revise the installment amount to Rs. 10 lakhs/month at HQ and arbitrarily paid the same irregularly.
6.	05.07.2018	06.07.2018	4,50,16,000	The connection was disconnected due to dishonoring of cheque of Rs. 34,42,521.
7.	20.08.2019	27.08.2019	4,91,53,997	The connection was disconnected on nonpayment of previous month's bills and reconnected on the oral directions of the Higher officials after receiving payment of Rs. 50 lakhs.
8.	03.12.2019	26.12.2019	6,62,26,629	The connection was disconnected on nonpayment of previous month's bills. Consumer approached corporate HQ for installments. Installments vide Corporation order no.4086 dated <u>26.12.2019</u> , was again fixed and allowed to pay the dues in 12 equal monthly installments.
9.	-	-	6,35,24,696	Consumer again approached HQ for change in its installment amount and vide Corporation order no.289 dated <u>25.01.2020</u> ; the consumer was allowed to pay the dues in 12 installments with first 4 installments of 25 lacs and 8 equal installments of remaining arrear amount. The consumer paid 02 installments of Jan and Feb months. Lockdown declared on 22.03.2020. The consumer did not pay any installments during lockdown and bills of month Feb 2020 and March 2020 of amount 1.16 Cr and 0.67 Cr respectively in lockdown period. GoU prohibited disconnection of all categories of consumers till June 2020 on non-payment of electricity dues. On 08.06.2020, CGRF Stayed disconnection and allowed to pay current bill till the disposal of case.

10.	05.10.2020	09.10.2020	7,68,57,875	On dated 04-09-2020, the order of Hon'ble CGRF passed in favour of UPCL, received through EDC Srinagar by email and the connection was disconnected on 05.10.2020 at disconnection date mentioned in the 'electricity bill & disconnection notice'. In compliance of Hon'ble Ombudsman's interim order no. 146A dated 07.10.2020 and 149A dated 09.10.2020, connection was restored on 09.10.2020.
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The petitioners had tried to use political influence for getting the installment facility as they had approached the Hon'ble Chief Minister but no directions from the Hon'ble Chief Minister are available on file.

16. Meanwhile RC for 5.1 crores was also issued against which they approached the Hon'ble High Court and under the directions of the Hon'ble High Court the recovery was kept in abeyance by the Hon'ble High Court. Thereafter a committee was constituted by the UPCL by order dated 20.05.2017 for the purpose of settling the dispute of arrears and where after 8 installments were granted on 28.08.2017 with the approval of MD and subsequently installments were allowed a number of times till 27.12.2019 but the petitioner defaulted every time resulting into mounting of the outstanding dues to 8.75 crores up to September 2020 as aforesaid.
17. Lastly 12 installments were granted by Executive Engineer, EDD, Kotdwara vide OM dated 27.12.2019 in compliance to Head Quarters approval dated 26.12.2019 for recovery of outstanding dues Rs. 6,62,26,629.00 (ending 11/2019), but the same order was also not complied with. A section 3 notice under Dues Recovery Act, 1958 was also issued on 04.09.2020 for a sum of Rs. 7,45,80,164.00 (outstanding dues up to August 2020).
18. In the instant appeal claiming that their supply remained disconnected continuously from September 2016 to August 2017, arrears Rs. 6,62,26,629.00 (ending 11/2019) includes a sum of Rs. 2,85,29,840.00 towards demand charges including a sum of Rs. 1,58,48,640.00 as LPS on such demand charges as such they have requested that only a

sum of Rs. 3,76,96,779.00 is the actual outstanding dues against them and for which order for refixing 12 installments be issued as the demand charges as aforesaid are not payable because supply remained disconnected for the said period and no demand was drawn by them so such demand charges are illegal and arbitrary and against law and there is no provision in any UERC Regulation or Tariff for levy of demand charges for the period of disconnection as no demand was drawn by them during this period because the supply remained disconnected.

The respondents have categorically denied that the supply remained continuously disconnected from September 2016 to August 2017 however they admitted that during this period the connection was disconnected a number of times for nonpayment of installment as granted but supply was restored each time on payment of one or 2 installment only under the instructions of higher authorities. Details of such disconnections and reconnections are given in para 15 above. Further, a perusal of the bills issued from September 2016 to August 2017 reveals that no demand or energy was recorded in the meter in the month of September 2016, October 2016 and again from March 2017 to August 2017. This clearly shows that supply must have remained disconnected during these billing cycles and supports the disconnection/reconnection details submitted by respondent and therefore billing as per appropriate tariffs has been done only for demand charges in the month of September 2016 to October 2016 and March 2017 and demand charges and MCG in the month of April 2017 to August 2017. Bills from November 2016 to February 2017 shows that demand and energy were recorded in the meter during these months and hence the connection was running during these 4 months.

19. From the above it is clearly established that connection remained disconnected during the aforesaid period intermittently at a number of times temporarily, so situation of getting the connection permanently disconnected and termination of agreement never arose. It is clarified that a consumer remains a bonafiedly consumer even during the period of temporary disconnection for nonpayment of dues and agreement Executed for supply of electricity between the consumer and the Licensee still remains operative and therefore billing has to be continued during such period of temporary disconnection although the

consumer might have not drawn any demand or energy during such period of disconnection. There is no provision for not billing during the period of temporary disconnection in either Tariff or in any of the Regulations. As such billing during the period of temporary disconnection for demand charges and levy of LPS on such charges is a bill or/and a part of the bill and being legitimate revenue of the respondent corporation is payable to them by the consumer (the petitioner) and they are entitled to recover such revenue, which is a part of outstanding dues which have accumulated over a period due to nonpayment by the petitioner, even in installments. As such their request for quashing or reducing the demand charges of Rs. 2,85,29,840.00 from the total arrears of electricity dues of Rs. 6,62,26,629.00 cannot be acceded to. As regards their request for refixing 12 equal installments of the rest of outstanding dues of Rs. 3,76,96,840.00 (Rs. 6,62,26,629.00 – Rs. 2,85,29,840.00) towards the payment of total remaining dues , it is clarified that as their demand for deleting a sum of Rs. 2,85,29,840.00 as demand charges is turned down as explained earlier in this para, their request for refixing 12 installments for the said amount cannot be accepted as they are liable to pay the total outstanding dues including the bill amounts for the period of temporary disconnection.

20. The petitioner have misinterpreted the concept of billable demand, as according to them since during the period of disconnection no demand was recorded in the meter so there could be no billable demand. It is clarified that since during the period of temporary disconnection, a connection released under an agreement between the consumer and the supplier remains alive and the consumer still remains a consumer of the Licensee in terms of section 2 (15) of Electricity Act, 2003 so he is liable to be billed under the provisions of the tariff even if no demand and energy has been recorded in the meter during the period of such temporary disconnection. The billable demand is defined under the appropriate rate schedule of UERC Tariff Orders as: -

“Billable demand shall be the actual maximum demand or 80% of the contracted load whichever is higher.”

Further sub regulation 1.1 (1) (o) and (w) of Supply Code Regulations, 2007 are relevant which are reproduced below:

o) "Demand charges" means the amount chargeable for the billing cycle or billing period based upon the billing demand in kVA;

w) "Fixed Charges" means the amount chargeable for the billing cycle/billing period based upon contracted load;

21. Since the connection was disconnected and reconnected temporarily a number of times as per details given above due to nonpayment of dues even after granting the facility of payment in installment a number of times, disconnection of supply to the petitioner by the respondent was a correct and lawful action in accordance with section 56 (1) of Electricity Act, 2003. Petitioner's objection that a disconnection notice was never given to them by the respondent for disconnection, the action of the respondent was illegal and arbitrary, is not sustainable in view of the fact that each bill issued by the respondent is a bill cum notice which is in confirmation of the compliance of section 56 (1) of the Act and as such no separate notice was required to be given.
22. Petitioner's request that recovery proceedings through section 3 notice dated 04.09.2020 for recovery of outstanding dues Rs. 7,45,79,164.00 up to 08/2020 be quashed on the grounds that the same notice was served to them consequent on passing Forum's impugned order and without any notice or opportunity and without giving details as to how amount of 6.62 crores have inflated to Rs. 7.45 crores and further as issue of notice under section 3 is violative of Article 14 (9) g of the constitution of India and section 56, 45, 62 of Electricity Act, 2003. It is clarified that the respondent's are empowered to initiate proceedings for recovery of their outstanding dues under Dues Recovery Act, 1958 and as such issue of section 3 notice dated 04.09.2020 is consistent with the said Act of 1958 and no separate notice for issuing such notice was required and sections 56, 45, 62, 61 and 64 of Electricity Act, 2003 do not prevent the respondents to issue a section 3 notice to a defaulter consumer. In fact these sections of 2003 Act, quoted by the petitioner are regarding disconnection of supply in default of payment, power to recover charges and determination of tariff respectively and as such these sections are not applicable to prevent issue of section 3 notice. Their objection that apart from the above sections of Electricity Act, 2003 issue of section 3 notice by the respondent is violative of

Article 14 (9) (g) of the Constitution of India, abstract of Article 14 is reproduced below, is also not sustainable.

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

A bare reading of above indicates that Article 14 is not attracted in the matter of issue of section 3 notice under Dues and Recovery Act, 1958 which is a statutory provision and cannot be considered violative of Article 14, unless held so, by the competent Court and as such it does not prevent a supplier of electricity to initiate proceedings for recovery of their outstanding dues under Dues Recovery Act, 1958 and as such issue of section 3 notice is not violative of the above article.

23. The petitioner apart from other grounds against the Forum order wherein they have alleged a number of shortcomings and infirmities in Forum order have also alleged that the Forum order is illegal, non erst and void ab-initio is under the teeth of clause 3.3 of UERC Regulations 2019 for the said order having not been signed by the Member (Judicial) and as such the said order is illegal and liable to be quashed. In order to reply to this objection following sub regulations of UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of the Grievances of the Consumers) Regulations, 2019 has to be referred to.

Sub Regulation 2.3 (1) Quorum

“Any two member of the Forum appointed under regulation 2.2 of these Regulations shall form the quorum for Forum’s sitting.”

Sub Regulation 3.3 (2)

If a member hearing the matter does not agree with the decision taken by other Members, he may record his note of dissent with reasons but the decision taken by majority of members hearing the case will prevail.

A reading of the above sub regulations shows that any 2 members of the Forum shall form the quorum and a majority decision shall prevail. In the instant case while the petitioner has submitted an undispached copy of Forum orders which bears the signatures of Member (Technical) and Member (Consumer) only and does not carry signature of Member (Judicial), a dispached copy of the Forum order submitted by the respondents as well as available in Forum's file (which has been summoned and gone through). The member Judicial has signed this order with the remark that "ये पूर्व का केस है/" which shows that in the instant case the Member (Judicial) was not a part of the quorum and that's why this order was not signed by her and since only Member (Technical) and Member (Consumer) were part of the quorum in the instant case and the order dated 25.08.2020 was accordingly signed by them, the Forum order being consistent with the aforesaid sub regulations is a valid and legal order and hence petitioner's objection does not sustain and is hereby overruled.

24. A number of case laws of Hon'ble High Court and Hon'ble Supreme Court have been adduced by the petitioner to corroborate their case as these case laws are distinguishable on the facts of the case which are different from those of the case laws, the same are not applicable in the instant case. as explained below:

- i) The judgment of Hon'ble Supreme Court reported in 1992 (3) SCC 285 and 1989 SCC (1) page 14 Ahemdabad Urban Development Authority vs Sharad Kumar Jayanti Kumar. In the above case the Hon'ble Court was dealing with fiscal provisions and held that imposition of fee and such fiscal matters delegated authority cannot impose tax or fee on the basis of employed authority, whereas the instant case pertains to Tariff of the respondent's as approved by UERC.
- ii) Case no. 210 Vol 13 SCC 427
- iii) 2014 (9) SCC 212
- iv) 2010 (Vol 3) SCC 732
- v) AIR 1990 SCC 1984

vi) AIR 1976 SCC 1785

In all the above cases the Hon'ble Supreme Court has emphasized upon the importance of reasons in the judgment given by Judicial and quasi judicial authorities there can be no denial of the proposition of law and importance of reasons in judicial orders but the Forums are created for settlement of the grievances of the consumers and since Ombudsman as per Electricity Act, 2003 is a second opportunity for the complainant for redressal of the grievance and complete hearing on merits of the case is provided to the petitioner, the order of the Forum even if does not give sufficient reason is of no consequence. Full opportunities has been afforded to the petitioner to represent his case so above judgments are not applicable in the instant case

vii) 1990 (1) SCC page 731 Bihar SEB vs Green Rubber. In this judgment the Hon'ble Supreme Court has held that Minimum charge is not a charge having its basis as consumption of electricity or registration of demand.

As such this judgment goes against the petitioner

viii) 1996 (4) SCC 686. This judgment deals with the provisions of repealed Indian Electricity Act, 1910 and Electricity Supply Act, 1948 and therefore has no relevance in the present case which has to be governed by the present statutes i.e. Electricity Act, 2003 and Regulations framed there under by the authorities such as UERC and CEA.

ix) AIR 2006 Jharkhand (123) Sujata Picture Palace vs Bihar SEB judgment dated 28.03.2006. In this judgment the Hon'ble High Court of Jharkhand has relied upon the petitioner but this goes against them as from the reading of the said order, it is evident that minimum consumption charges and fixed charges were held to be payable even when Cinema hall was closed and only when the petitioner ceases to be a consumer such charges could not be realized.

In the instant case since the petitioner's supply was disconnected temporarily and never disconnected permanently and agreement was not terminated so the

petitioner did not cease to be a consumer, so demand charges during the disconnection period has rightly been levied in view of this judgment also. As such this judgment goes against the petitioner.

- x) The petitioners have also submitted a copy of CGRF, Kumaon zone Haldwani's order dated 26.12.2018 in complaint no. 50/2018 of M/s Multiwal Duplex Pvt. Ltd. Kashipur vs Executive Engineer, Electricity Distribution Division, Kashipur. A perusal of the said order suggests that the facts of the case are different from that of the instant petition. Further, the reasons and findings does not seem to be correct. The CGRF failed to see the distinction between permanent disconnection and temporary disconnection and also the purpose of fixed charges and as such this order is not applicable in the instant case. Further any order of any CGRF is not binding upon Ombudsman who is the appellate authority against the orders of the CGRFs.

25. The respondents during the course of arguments at the time of hearing brought attention of the undersigned to Ombudsman's earlier order dated 26.03.2019 passed in representation no. 02/2019 of M/s Uttaranchal Iron and Ispat, Jasodharpur, Kotdwara (another unit of the petitioner) that this Ombudsman in the similar matter in the said case has already held that there is no ground for, or provision of waiver of MCG, demand charges and LPS in a case where there is apparently willful default even after restoration of a connection and enabling payment of arrears in installments and as such it was ordered that request of the petitioner for waiver of MCG, demand charges and LPS is not admissible and as such the petition was dismissed. In the said case (02/2019) the petitioner had requested for waiver of fixed/demand charges which suggests that the petitioner were fully aware about the applicability of the same and never challenged the imposition of such charges in their earlier case as has been demanded by them in the instant case. Knowing well that such demand has already been turned down in their earlier petition, this clearly shows that their request for waiver of demand charges in the present petition is simply an afterthought for creating grounds to justify nonpayment and the default committed by them in making payments even in installments granted a number of times. Further it becomes more relevant that the issue challenging levy of

demand charges during the period of temporary disconnection was raised for the first time vide their letter dated 11.12.2019 as mentioned in para 23 of the petition as also in para 3 and 23 of respondent's written statement, while prior to this letter they have always been requesting for payment of total outstanding dues which includes demand charges of Rs. 2.85 crores for the disconnected period, in installments, as is evident from their averment in para 25 of the petition where they have clearly "prayed that they were ready to pay outstanding electricity dues in the easy installments in the tune of Rs. 25 lakhs per month so that the outstanding dues of Rs. 6,62,26,629.00 may be cleared."

26. In view of above deliberations wherein their objections have duly been addressed and turned down and as explained in the relevant paras of this order their prayers deleting the so called demand charges of Rs. 2,85,29,840.00 from the total outstanding dues of Rs. 6,62,26,629.00 till November 2019, which have further increased to Rs. 7,45,80,164.00 till August 2020 as per section 3 notice dated 04.09.2020 and have further increased to Rs. 7,68,57,875.00 till September 2020 (as per bill) due to repeated default in making payments in installments granted a number of times cannot be allowed as this amount is a part of the regular monthly bills and is held to be the legitimate revenue and is payable by the petitioners. Further their demand for refixing of 12 installments of the balance amount of Rs. 3,76,96,789.00 can also not be allowed firstly because this is not held to be the remaining outstanding dues against them and secondly for repeated default in making payment in installments allowed a number of times in past. As such their prayers for quashing impugned order dated 25.08.2020 and recovery notice dated 04.09.2020 and installment orders dated 26.12.2019 and 27.12.2019 are also disallowed. The petitioners are liable to pay the total outstanding dues as per bills issued by the respondents till date. However, subject to adjustment of such payments which might have been made by the petitioners against the total outstanding dues in compliance to the condition of stay order granted by the undersigned as referred above in this order. The respondents are at liberty to realize their total outstanding dues from the petitioners by adopting such means as are available to them under the provisions of Electricity Act, 2003, relevant UERC Regulations as also Dues Recovery Act, 1958. Stay granted on 07.10.2020 further

revalidated on 09.10.2020 and confirmed on 02.11.2020 stands vacated with immediate effect.

27. As such the petition is dismissed in totality. Forum order is upheld, except the advisory of issuing notice under section 56 (1), which is quashed as such notice is not required to be issued separately, because every bill issued by UPCL is a bill cum notice in itself and the same has duly been mentioned in all the bills issued to them.
28. In the end I would like to make the advisory comments for consideration by the UPCL management in view of heavy outstanding dues accumulated due to nonpayment by the petitioners even after granting facility of installments repeatedly.

The petitioners had challenged the levy of demand charges of Rs. 2,85,96,840.00 imposed in the bills during the period of disconnection from September 2016 to August 2017 as per the petitioners, although there have been various occasions for temporary disconnections and reconnections and have requested for waiver of the said demand charges from the total outstanding dues and have again requested for refixing installments for the remaining amount according to them which are actually payable by them. While, in this order all their prayers have been turned down and the petition has been dismissed as explained in detail in this order it is relevant to note that the total outstanding dues as per bill of September 2020 has surmounted to Rs. 7,68,57,875.00 and up to date position of outstanding dues may have to be worked out by the respondents taking into account the billing after September 2020 till date and accounting for the payments made, if any, by the petitioners during this period under the conditions of the stay granted by the undersigned. It has been observed that UPCL's management has been granting the facility of payments in installments repeatedly even the petitioner has been defaulting every time and installments have been granted for nominal amounts against the heavy total outstanding dues and that too without obtaining any sufficient security. A perusal of the monthly bill dated 06.10.2020 shows that only a sum of Rs. 98,90,157.00 has been deposited as security by the petitioner, while as per sub regulation 4.2 (1) of UERC (Electricity Supply Code, Release of New Connections and related matters) Regulations, 2020 provides for to maintain a sum equivalent of estimated average consumption of N+1

months previous financial year as the total security where N is the number of months in a billing cycle. In the instant case billing cycle being one month so security deposit must be equivalent to 2 months estimated average consumption and in order to secure the revenue the outstanding dues against a consumer at any point of time should have not increased beyond the security deposits with the respondents. In the instant case it has been observed that outstanding dues have been very very high than the security deposits and even such a situation the installments have been granted repeatedly, as such outstanding dues have become insecure.

In view of the overall scenario of the case I find the act of the respondents very negligent and detrimental to the interest of the respondent corporation UPCL. Further apart from outstanding electricity dues the petitioner has a heavy liability towards Bank loans as is evident from a letter no. 2004/CRM/SPL/2020-21 dated 29.06.2020 from Indian Overseas Bank written to the petitioner, which is available on this case file. The contents of this letter shows that the total contractual dues against the petitioner as on 30.06.2020 under all the credit facilities sanctioned by the Bank are Rs. 50,85,43,827.00 (Rupees Fifty Crores Eighty Five Lakhs Forty Three Thousand Eight Hundred and Twenty Seven only) and as mentioned in the aforesaid letter the Bank was not agreeable for discussing/considering OTS for any amount below Rs. 23 Crores + Simple interest @ MCIR on it from the date on which they have submitted OTS request to the Bank and the Bank has directed them to deposit 10% of such proposed OTS amount of Rs. 23 Crores for taking up the matter further. The Bank has further mentioned that the Bank will be shortly reporting company of the petitioner and all its current Directors as “Willful defaulters” to RBI.

In view of above situation, I deem it appropriate to draw attention of UPCL management with the hope that they will be more vigilant and shall ensure proper security of their outstanding dues before advancing any facility of payment in installments or showing any lenient view to the defaulters for realization of their outstanding dues. However if in any case the management considers a case proper for allowing payment in installment, the facility of installments should not be too long and should necessarily be secure rather than letting defaulting consumers to increase their outstanding dues and thereafter

initiating recovery proceedings under relevant law which not only are time consuming but also makes recovery very difficult.

It is also pertinent to note that the supply agreement dated 28.10.2016 which is available on file, executed between the supplier UPCL and the consumer M/s Uttaranchal Iron and Ispat Ltd. has been signed by some Shri Hasnain S/o Mohd. Ishak and Shri Shripal Singh S/o Shri Tikaram Shri Naim S/o Mohd Unaid and Shri Intzaar S/o Shri Taufik for which no authorization for signing the agreement is available with the said agreement. Neither these persons are the directors of the petitioner company. It can be understood that in case the heavy outstanding dues are not recovered in normal course it will be difficult if not impossible to recover these dues as arrear of land revenue under Dues Recovery Act, 1958 if such a situation arises. It will therefore be advisable if the petitioners are asked to execute a fresh agreement which should essentially be signed by their present directors so that it may be legally binding upon them.

Dated: 10.02.2021

(Subhash Kumar)
Ombudsman