

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Windlass Healthcare Pvt. Ltd.
(presently Windlass Healthcare Pvt. Ltd.
have been merged with Windlass Biotech Pvt. Ltd.)
Mohobbewala, Dehradun,
Uttarakhand

Vs

The Executive Engineer,
Electricity Distribution Division (South),
Uttarakhand Power Corporation Ltd.
18, EC Road, Dehradun, Uttarakhand

Representation No. 21 /2021

Order

Dated: 25.04.2022

Being aggrieved with Consumer Grievance Redressal Forum, Garhwal Zone (hereinafter referred to as Forum) order dated 17.07.2021 in their complaint no. 117/2019, before the said Forum, against UPCL through Executive Engineer, Electricity Distribution Division (South), SIDCUL, Dehradun (hereinafter referred to as respondent) M/s Windlass Healthcare Pvt. Ltd. (presently Windlass Healthcare Pvt. Ltd. have been merged with Windlass Biotech Pvt. Ltd.) Mohobbewala, Dehradun (Petitioner) filed this representation for quashing and setting aside the assessment vide impugned letter no. 2017 dated 26.11.2019 of respondent for quashing and setting aside judgment dated 17.07.2021 passed by the Forum in their complaint and quash the bill dated 05.01.2020.

2. The petitioner, M/s Windlass Healthcare Pvt. Ltd. has preferred this appeal and has made point wise submissions as follows:
 - i) The present appeal is preferred against Forum order dated 17.07.2021 in their complaint no. 117/2019 as the Forum has been pleased to dismiss their complaint out rightly without appreciating and considering the documents placed on record judiciously.

- ii) The said complaint was instituted before the Forum against respondent for raising arbitrary, illegal, unjustified and unwarranted demand of Rs. 1,80,69,376.00 (Rupees One Crore Eighty Lakhs Sixty Nine Thousand Three Hundred and Seventy Six) besides the regular consumption charges which has been regularly deposited without any default, therein sought relief of quashing and setting aside the same.
- iii) The petitioner with a contracted load of 1000 KVA is the consumer of respondent vide connection no. SD0K0000006639 in the above factory premises and has been regularly paying the consumption charges as per demands being raised by the respondent through monthly bills and there has been no default on their part since release of connection.
- iv) That the factual matrix leading to filing the present petition are detailed herein below:
 - a) The petitioner is an industrial unit engaged in the pharmaceutical business with its registered office and plant at plot no. 183 and 192 Mohobbewala Industrial Area Dehradun.
 - b) That on 04.10.2019 officials of respondent came at their premises and installed a check meter.
 - c) That the check meter was finalized on 22.10.2019. During finalization of the check meter the respondent alleged that as per MRI of main meter and according to phasor diagram phase sequence found changed RBY.
 - d) That petitioner was shocked and surprised to see letter no. 2017 dated 26.11.2019 from respondent's office wherein they have been asked to pay huge amount of Rs. 1,80,69,376.00 on account of assessment of slow running as mentioned herein above after around 1 month.
 - e) That the respondent did not do anything regarding their grievance and hence they were forced to raise a complaint before the Forum which was dismissed by the Forum.

- v) The present appeal is being preferred on being aggrieved with Forum order dated 17.07.2021 in their complaint no. 117/2019 before the Forum.

Grounds of appeal by petitioner

- A. The impugned amount has been raised by UPCL in most illegal, obscure, erroneous, arbitrary, unwarranted, perverse, irregular and unjust manner in clear violation of the settled proposition of law resulting in manifest injustice and causing serious prejudice to them and hence the same deserves to be quashed and set aside.
- B. Action of UPCL is in clear violation of principles of natural justice, equity and good conscience in as much as no notice or opportunity of being heard was given to them before raising the demand through impugned bill.
- C. It is well settled proposition of law that a person cannot be penalized or asked to pay undue amount by the state without the same actually having been fallen due and is not permissible in law.
- D. No tampering of the metering system was done by them and also no allegations regarding the same has been leveled by the respondents.
- E. The Forum did not consider the submissions made in the hearing as well as did not consider the submissions made through various rejoinders submitted as per their direction and also the written arguments submitted by them were not considered judiciously by the Forum.
- F. The Forum have dismissed the complaint without providing any reasoning in their judgment.
- G. The Forum has referred to the documentary evidence and had specifically referred the sealing certificates dated 04.10.2019 and 22.10.2019 and the tamper report to arrive at the conclusion for dismissing the complaint. The documents referred itself made it very clear that the meter was working properly and within limits. In the sealing certificate dated 22.10.2019 it was clearly mentioned that the

phase sequence was changed and as per specification of the meter, change in phase sequence has no effect on recording by the meter. The Forum dismissed the complaint without perusing this fact.

H. The Forum dismissed the complaint and awarded the judgment in favour of UPCL without considering the following submissions:

- a) In their replication of respondent's (opposite party) submissions before Forum they submitted that in the period of alleged assessment to periodic test would have fallen as per sub clause 1 of clause 3.1.3 of UERC (The Electricity Supply Code) Regulations, 2007 and also submitted that in these test the respondent never disputed that the meter was running slow or defective. This submission was never denied by the respondent and hence the same was an admitted fact that the meter was never defective nor running slow.
- b) They submitted in their rejoinder before the Forum that as per sub clause 6 of clause 5.1.4 of Supply Code Regulations, 2007 (first amendment issued vide notification dated March 28, 2008) that the variation in the consumption is to be carefully analyzed and inspection was also to be carried out in doubt full cases. It was further submitted that no action taken by the respondent established that the meter was working correctly, this submission was never denied by the respondent before the forum and hence it was an admitted fact that the respondent never found any abnormality in the consumption pattern.
- c) They submitted before the Forum that as per the energy audit report for calculation of feeder wise losses which was being regularly carried out by the respondent as mandated under sub clause 5.1.4 (7) of Supply Code 2007, no discrepancy was observed. This fact was never denied by the respondent it is therefore clearly established that they (respondent) never found any abnormality linked with working of the meter.

- d) They have submitted detailed analysis of the instantaneous report of the MRI carried out on a logical, sound scientific and mathematical basis which was also co-related with the electricity bills generated on MRI report for the complete period of alleged assessment. This analysis clearly established that the meter was working correctly irrespective of phase sequence as provided in the instantaneous report. The respondent denied the aforesaid analysis on the basis of M/s L&T's report. Further the Forum failed to see an acknowledge the quid pro quo the respondent were having with meter manufacturer which was clearly evident from the concluding remarks of the report which are "We trust the above is in line of your requirement" and "thanking and looking forward for your valuable order". It clearly establishes that M/s L&T's report was prepared in favour of UPCL in lieu of the procurement of meters

The Forum failed to realize that the respondent has submitted that Maximum demand is the one i.e. highest of the instantaneous value for the month. To explain in detail that the actual maximum demand cannot cross the instantaneous value as per the instantaneous report for the data read on 07.06.2017 at 12.41.02 hours. A detailed analyses for a particular and general stand was placed for perusal before the Forum and which has been reproduced in the petition under this point as case no. A&B.

- e) The respondent submitted that the meter was running slow right from the date of its installation on 09.01.2017. The respondents have specifically and categorically mentioned in their letter no. 2017 dated 26.11.2019 and at many places in written statement and subsequent rejoinder on the basis of MRI report as also in their written argument that the alleged wrong association of voltage and current occurred on 09.01.2017. The Forum had made this submission of the respondent the basis of their judgment

The respondent never provided a copy of MRI report for the month of January 2017, February 2017 and March 2017 to them or to the

Forum to establish their claim of alleged wrong phase association on 09.01.2017 to establish that respondent's allegation regarding alleged wrong phase association are false analysis was presented before a member of the Forum. It is submitted that as per page 12 and 14 of the tamper report for meter no 15580689 installed at their premises the event **“wrong connection”** for alleged wrong phase association occurred on 05.03.2017 at 20:14:53 hours. It is further stated that it is pertinent to mention that as per tamper report the last event captured is on 05.12.2016 at 20:41:49 hours. It is needless to mention that the same meter was installed on 01.12.2016 from 05.12.2016 to 05.03.2017 there was no tamper of wrong connection it clearly establishes that there was nothing wrong in the connection since 09.01.2017 the date of finalization of the check meter as alleged by the respondent and this is the reason for the respondent for not providing the MRI reports for the month of January 2017 to March 2017. The tamper report submitted by the respondent clearly states that the tamper of wrong connection occurred on 05.03.2017 at 20:14:53 hours for the first time. Instantaneous values of various parameters occurring at that time have been as follows:

Voltage	Voltage	Voltage
RV (V)	YV (V)	BV (V)
64.70	64.70	64.70

It clearly shows that at the time of tamper event voltage was having non 0 (zero) value and the values 64.70 corresponds to 11 KV on the line side. It was not possible for anyone to interchange the connection of a charged connected line as alleged by the respondent so this clearly establishes that the assessment was actually based on malafide basis since the tamper report clearly establish beyond doubt that the tamper event occurred on 05.03.2017 due to some inherent defect in the meter, however the meter was recording everything correctly due to various anti tampering features of the meter.

- f) As per tamper report of the installed meter the event “current unbalance R phase” occurred on 21.01.2017 at 23:00:51 hours and

recovered on 22.01.2017 at 16:14:13 hours. It is clear from tamper report that the current in Y and B phases were negative and as per meter specifications this should also be recorded as “Current reversal in Y phase” and “current reversal in B phase” but no such tamper recorded prior to 10.03.2017 at 18:48:14 hours. This clearly establishes that there was some malfunctioning started within the meter.

- g) The petitioner has submitted that as approved by UERC the metering unit is KVAH for which 2 parameters voltage and current are required all the instantaneous reports as provided clearly establish that meter was getting equal voltage and current in all the 3 phases. The only difference is the sign convention of the current in 2 phases. The meter specifications states that the meter shall be unidirectional and shall register energy consumption correctly even though CT polarity of 1 or more phases are reversed and record the same. He has therefore stated that the meter will work correctly in view of the submitted facts.
- h) He has therefore submitted that the meter was recording everything correct as no deviation in the power factor and other parameters were observed, while the respondent have claimed that the phase association of the metering system was changed allegedly on 09.01.2017 while finalization of check meter on the basis of instantaneous MRI report shows current in 2 phases (Y&B) as negative. It was submitted that a perusal of the sealing certificate dated 04.10.2019 and 22.10.2019 the current value in these sealing certificates were shown as 2.37, 2.28, 2.35 amp and 2.23, 2.04, 2.29 Amp respectively in respective phases, no negative values which shows that there was no problem in the connection and recording of various parameters was not taking place as per instantaneous MRI report and it was established that meter was recording correctly.
- i) The Forum failed to acknowledge that admittedly meter was found running slow by 66% in YMPL testing carried out on 27.06.2019,

while it was found running slow by 34% in check meter study subsequently carried out which means that the results found in YMPL study were 32% higher than the actual. Further on the same day i.e. 27.06.2019 YMPL conducted test at another premises of the petitioner with connection no. 288 in the name of M/s Windlass Biotech Pvt. Ltd. where the meter was found 33% slow so the error of 32% as confirmed above when applied to YMPL test results of M/s Windlass Biotech the meter was actual found running slow by 1%. The respondents have alleged the same defect i.e. wrong phase association for slow running of meter in both the premises. Which was also confirmed by the meter manufacturer, this establishes that the meter will work correctly in view of alleged wrong phase association as the slowness of the meter installed at M/s windlass biotech Pvt. Ltd. was actually 1% slow in spite of the alleged defect claimed by the respondent. This also confirms that the meter installed at petitioner's premises cannot run slow because of the alleged defect, hence it is also established that the meter cannot run slow to the tune of 34% from the date of its installation on 09.01.2017 (the tamper of the wrong connection appears on 05.03.2021 in the tamper report and never before 05.03.2021) as alleged by respondent. These facts establishes beyond doubt that petitioner's meter was working correctly with alleged wrong phase association. The petitioner has summarized the case in a table form which is available in the petition.

- j) The Forum failed to acknowledge that the check meter study had been further done with malafide intention which is established by the sealing certificate itself. The sealing certificate dated 04.10.2019 states that the meter box of the check meter has been sealed with seal no. 7523374 while the seal present on the meter box as clearly mentioned in the sealing certificate dated 22.10.2019 is 7523364 which shows that integrity of the check meter was changed during testing without petitioner knowledge. Further the petitioner has stated that the check meter was installed outside their premises directly on

the 11 KV line. Since integrity of both the meters is not same as it was before and after the test, the test result actually interprets nothing and cannot be relied upon. The same has been established in Ombudsman's order dated 27.12.2019 in the presentation no. 55/2019 of M/s Udaan Exports vs EE, UPCL, which states that *"Advantage of the assessment evident by the tamper report cannot be given to respondent if either the check meter study is incomplete or absurd."*

- k) In the hearing dated 06.02.2019 before the Forum 2 reading slips were submitted by respondent for the main meter and the installed check meter to establish that both the meters were working correctly. The petitioner has submitted that the check meter apart from being tampered during the test as aforesaid was again tampered by the respondent after the test as established by the sealing certificate dated 22.10.2019 and submitted reading slips dated 06.02.2020. The reading slip for the check meter shows the seal number as 03595166 whereas sealing certificate dated 22.10.2019 shows the seal number as 8077181 on the check meter which clearly establishes that UPCL tampered the meter to impose their illegal and arbitrary demand on the petitioner. Details of the seals and tampering has been summarized in a table given in the petition.
- l) The petitioner has submitted that the impugned assessment has been based on the instantaneous report of the meter. The MRI reports does not rule out any possibility of the meter being defective inherently as there are many internal connections in the meter itself. Respondent had failed to provide any periodical testing report of the meter before the Forum. These testing reports were essential to establish that the meter was properly calibrated and was working as per specification and if there is any deviation it would have been brought out in the report. He has further stated that any report of the meter which is not duly tested and calibrated cannot be relied upon during adjudication of any dispute. Hon'ble Maharashtra Electricity Regulatory

Commission order dated 23.02.2005 in case no. 19/2004 “in the matter of amendments/supplementary bills” order to withdraw the supplementary bills if due meter testing has not been done with the results intimated to the consumer. This view have been considered by Hon’ble Ombudsman, Uttarakhand in case no. 53/2019 M/s Kundan Care Product vs EE, EDD, Haridwar.

- m) He has mentioned clause 14 (metering of the supply agreement of annexure 1.3 present in UERC HT Regulations, 2008 states “*the readings of the meter or meter referred to in clause 12 shall be taken at regular intervals by Distribution Licensee through MRI and the readings so taken shall be conclusive and binding on both the consumer and the distribution Licensee as to the amount of maximum demand and electrical energy supplied to the consumer, except in case of tampering of such meter whereby the distribution Licensee shall have right to proceed as deemed fit*”. So the reading taken and billed is binding on both the parties hence the assessment is liable to be quashed.
- n) The sealing certificate filled nowhere mentions that there was any discrepancy in the connection which had duly been signed by many senior officers of UPCL as well as by a representative of the petitioner. The assessment has been raised by the respondent for the reasons known to them only. The entire story has been prepared by the respondents for justification of the alleged assessment which is without any basis and is based only on their whims and fancies and without any legal basis. Hence the assessment is liable to be dismissed.
- o) The respondents have failed to establish that there was anything wrong with the connection of the meter or the meter was running slow. On the contrary the petitioner has clearly established in view of aforementioned points and on the basis of documents placed on record by the respondent that there was nothing wrong with the connections of the meter and the meter was running correctly within

prescribed limit of 3% so in view of this also the assessment is liable to be quashed.

- p) The respondent never provided the test results to the petitioner as directed by Hon'ble UERC guidelines and changed the phase sequence of the supply as per sealing certificate dated 22.10.2019 and subsequently raised the assessment. Hence the petitioner were denied the opportunity to raise the dispute before electrical inspector as per supply code regulations, guidelines and the legal remedy available to the petitioner was denied by the act of respondent.
- vi) The petitioner has stated that under the aforesaid circumstances he was left with no alternative but to approach the Hon'ble Ombudsman by way of the present appeal for necessary relief and redressal with humble and respectful submission that the disputed amount Rs. 1,80,69,376.00 may be quashed as per legal "maxime ignoratia unis knows as quest" the ignorance of law is not an excuse. Still the judgment was awarded against the petitioner even when the respondents have breached the regulation of Supply Code issued by UERC. The respondent in utter violation of principles of natural justice never gave a chance to them to present their grievances before them, that there is not efficacious alternative remedy available to the appellant for the relief prayed in this appeal. They have also stated that no appeal has previously been filed in a similar grievance before Hon'ble Ombudsman in the court or in any other court or Forum in India. The present grievance petition is filed bonafide, in the interest of justice and without delay

Prayer

In the aforesaid premises the petitioner has submitted his prayers for Ombudsman's consideration as follows

- a) Call for records of the case for perusal.
- b) Call the Forum file and peruse all the rejoinder submitted by both parties on direction of Forum along with the written arguments submitted.

- c) Quash and set aside the assessment vide impugned letter no. 2017 dated 26.11.2019 raised by the respondents herein been the same illegal , arbitrary, perverse, malafide, unjust and on account of being violative of UERC Regulations and denying the opportunity to the petitioner of raising the dispute before Electrical Inspector.
 - d) Quash and set aside the impugned judgment dated 17.07.2021 passed by the Forum in complaint no. 117/2019 and allow the appeal.
 - e) Quash the bill dated 05.01.2020 being arbitrary and not in accordance of section 56 (2) of Indian Electricity Act, 2003.
 - f) Pass any other order or direction which the Hon'ble Ombudsman may deem fit and proper on the facts and circumstances and in the interest of justice.
3. The petitioner has substantiated his averments and submissions in the petition with documentary evidences which has been adduced as annexure 1 to 13 enclosed with the petition and all are available on file.
4. The petitioner has also submitted an application dated 18.08.2021 for granting stay (the interim stay was granted on 23.08.2021 which was subsequently extended till next date of hearing on 27.08.2021.
5. The petition has been filed by the authorized representative Shri Pawan Kumar Sharma on behalf of the petitioner for whom authorization letter has duly been submitted and is available on file. A confirmation order of scheme of merger or amalgamation between Windlass Healthcare Pvt. Ltd. with Windlass Biotech Pvt. Ltd. issued by Regional Director (NR) on 24.12.2020 has also been submitted.
6. After perusal of records and hearing arguments from both parties as well as after perusal of their written arguments the Forum being of the view that *“the meter phase sequence change during the period under reference than what petitioner has actually consumed, he is liable to pay for the energy which he had consumed but could not be billed during this period of (09.01.2017 to 22.10.2019) 986 days, despite respondent's negligence and not detecting this abnormality promptly. In view of above clarification as well as the documentary evidences i.e. sealing certificate dated 04.10.2019 and*

22.10.2019 for installation and finalization of check meter respectively and the tamper reports, the demand of Rs. 1,80,69,376.00 raised by the respondent vide letter 2017 dated 26.11.2019 to recover the cost of energy escaped to be billed in regular monthly bills due to less recording by the meter by 34% for a period of (09.01.2017 to 22.10.2019) 986 days due to phase sequence change continuously is the genuine demand and they are entitled to recover the same. अतः इस प्रस्थितियों में उक्त वाद खरिज किये जाने योग्य है।

आदेश प्रस्तुत वाद खरिज किया जाता है।”

7. The respondent Executive Engineer has submitted his written statement dated 18.09.2021 along with duly notarized affidavit as follows.

- i) Contentions of the petitioner is denied in totto and nothing hereinafter shall be deemed to be admitted unless specifically admitted.
- ii) Petitioner has no legally sustainable ground of appeal to challenge Forum's order, the appeal is totally based on misconception and misunderstanding of the electricity law, the rules and regulations framed by State Regulatory Commission.
- iii) Para 1 of the appeal as represented is wrong and denied it is a wrong submission that the Forum has dismissed the complaint out rightly without considering the documents placed on records.
- iv) Para 2 of appeal pertains to record and needs no reply, rest of the contents are wrong and denied.
- v) Para 3 of the appeal pertains to record, needs no reply and rest of the contents are wrong and denied. It is clarified that question in the present appeal is not payment of the current bills but the escaped in raising the bill of correct consumption due to wrong phase association of RYB phase.
- vi) Para 4 of the appeal lays down the factual matrix which pertains to record and needs no reply rest of the contents are wrong and denied. Demand of Rs. 1,80,69,376.00 was raised due to reasons clearly specified in the assessment i.e. recording of less energy by the meter due to wrong phases association. Slowness was decided by check meter study.

- vii) Para 5 of the appeal need no reply. Ground raised by the petitioner do not qualify to be any just and law full ground to interfere with Forum's order, bald allegations without any basis are made by the petitioner which is no ground for challenge
- A. Grounds mentioned in sub para A are mere baseless allegations without any justification or basis.
- B. Grounds mentioned under this sub para are mere baseless allegations. It is vehemently denied that no opportunity of hearing was given. It is a false statement against the evidence available on record. The petitioner has failed to show that which principle of natural justice or equity or good conscience was applicable and how the order is in violation of the same.
- C. Grounds mentioned under this sub para apart from being vague are mere baseless allegations.
- D. Grounds mentioned under this sub para are false and baseless allegations
The respondent has never made any allegation about meter tampering.
- E. Grounds mentioned under this para are mere baseless allegations.
- F. Ground mentioned under this para are mere baseless allegations without any justification or basis.
- G. Grounds mentioned under this para are mere baseless allegations. The issue in the present matter is not about correctness of meter but less recording of consumption due to wrong phase association, which has nothing to do with correctness of the meter or its accuracy. The petitioner has admitted and has not challenged the fact of change in phase but his contention that the wrong phase association has no effect on the recording by meter is totally incorrect. Even from the MRI report and instantaneous parameter as reflected in the report the effect on less recording of consumption is self evident, hence petitioner's submission is not only wrong but is against the available evidence on record.

- H. At the outright the respondent has submitted that before replying to this sub para the petitioner's submissions before the Forum which were not sustainable and therefore not considered cannot be a ground of challenge.
- a. Contentions under this para are not relevant and are incorrect. the petitioner is wrongly interpreting the provisions of Supply Code, Regulations which is not applicable in the present case as this is not the case of slow meter as mentioned in clause 3.3.1 of Supply Code Regulations. The respondent has never stated that the meter was either defective or was running slow hence the contentions are totally irrelevant.
 - b. Contentions under this para are not relevant and are incorrect.
 - c. Contentions under this para are not relevant and are incorrect.
 - d. Contentions in this sub para which pertains to record needs not reply, rest of the contents are wrong and denied. Petitioner's submission has no basis and is based upon conjecture and surmise. Submissions made by him and a calculation were totally based upon misunderstanding of the principles of metering and recording of energy by the meter. The petitioner had admitted the report of L&T. It is emphasized that the petitioner has not been able to show that the report was incorrect and has not even pleaded the same but is just making baseless allegations. The logic and reasoning given by him are totally illogical and baseless and totally based upon assumptions.
 - e. Contentions under this sub para pertains to record and needs no reply, rest of the contentions are wrong and denied. Submissions of the petitioner has no basis and purely based upon conjecture and surmise. As per specification of the meter contains certain tampers and it does not include tamper for wrong phase associations. The facts about this para are more fully explained in additional pleas.

- f. Contentions under this sub para pertains to record and needs no reply, rest of the contents are wrong and denied. Petitioner's arguments are not legally tenable. More facts are explained in additional pleas.
- g. Contentions in this sub para pertains to record and need no reply, rest of the contentions are wrong and denied. His arguments are not legally tenable. The petitioner is not even able to understand the difference between phase reversal, wrong phase association and polarity reversal. It is submitted that it is not a case of polarity reversal. The facts are more fully explained in additional pleas.
- h. Contentions under this para pertains to record and needs no reply, rest of the contentions are wrong and denied. Arguments are not legally tenable. Facts are more fully explained in additional pleas.
- i. Contentions under this para pertains to record and needs no reply, rest of the contentions are wrong and denied. Submissions are not legally tenable. Petitioner's submission are even otherwise irrelevant as the assessment has been raised after analysis the effect on the meter by installing the check meter and only the difference of the same which has resulted in less recording has been charged. But not admitting the fact he is submitting that even if for the sake of arguments it is considered that YMPL by mistake have evaluated the slowness as incorrect even then the consumer has not been affected by the same. Although it is relevant to mention that the parameter recorded in the report shows that the same pertains to recording of energy by the meter and did not give slowness which from the report itself seems to be a human error, in correctly recording that the meter was recording only 66% and was therefore slow by around 33%. Facts are more fully explained in additional pleas.
- j. Contentions under this para pertains to record and needs no reply, rest of the contentions are wrong and denied. Arguments are not legally tenable. Even if the facts are admitted to be correct for the sake of arguments even that it has not relevant as the other seals are intact and

the meter box seal if broken or changes, points only to some malpractice at the end of the consumer when seals of CT and PT are intact the wiring cannot be altered and hence cannot change anything. The order relied upon by the petitioner is neither relevant nor applicable in the facts and circumstances of the case. Facts are more fully explained in additional pleas.

- k. Contentions under this para are totally absurd and baseless and are vehemently denied. The petitioner never raised any such submission before the Forum and therefore cannot be permitted to change his stand in the present appeal, however even otherwise these facts are not relevant the assessment can be verified on the basis of MRI report and other parameters. The petitioner cannot be permitted to make such serious allegations without any proof. The petitioner is called upon to furnish strict proof or else withdraw these allegations, such defamatory and malicious statement entail consequent action under penal law of the country. It is submitted that study on site can anytime be conducted which will show that the contentions regarding tampering and incorrectness of the assessment can be ruled out.
- l. Contentions under this para pertains to record and needs no reply, rest of the contentions are wrong and denied. Arguments are not legally tenable.
- m. Contentions under this para pertains to record and needs no reply, rest of the contentions are wrong and denied. Arguments are not legally tenable. It is pertinent to mention here that the discrepancy as was noticed in the present matter cannot be observed or would become aware by simply looking at the meter and its connections, hence it makes no sense to state that the same should have been noted during testing, further the contention regarding assessment on the recording by the meter can both be analyzed from the MRI and also gets validated from the check meter Contentions regarding manipulation and tampering during testing is totally ill logical as the MRI instantaneous data which shows wrong phase association has a day

and time stamp which cannot be backdated and has neither been contested by the petitioner hence it is absurd to suggest that the connection were altered at the time of installing check meter or during testing. The petitioner till date neither requested for testing of meter nor deposited any fee for the same as required by the regulations neither this is a case where a dispute to be raised before electrical inspector even otherwise nothing was stopping the petitioner from doing what he desired. The calculation and argumentative basis for suggesting that meter was only slow by 3% has no merits and is not legally tenable being without any legal basis, but only on assumption and wrong understanding of the facts and law. Facts are more fully explained in additional pleas.

- viii) Para no. 6 needs no reply. It is submitted that the petitioner has no cause or legally sustainable basis and ground against the Forum order and therefore the petition is without merits and liable to be dismissed.
- ix) Para thereafter numbered 5 is vague and irrelevant, its contents are incorrect and hence denied.
- x) Para thereafter numbered is wrong and denied. The petitioner has failed to show any violation of natural justice and it is submitted that even after repeated opportunity the petitioner has failed to show any discrepancy in the assessment raised and cannot claim any such violation.
- xi) Para thereafter numbered no. 7 is wrong and denied
- xii) para 8 needs no reply
- xiii) Para 9 is erroneous, wrong and is denied. The appeal is not legally maintainable. There is no ground to interfere with Forum's order which is well reasoned and based upon facts and documents available on record. The petitioner cannot raise new contentions apart from the ones raised before Forum, to challenge the order on those grounds. The petitioner is not entitled for any relief, the appeal is totally meritless and is liable to be dismissed.

Additional pleas by respondent

- i) The petitioner in his first application dated 02.12.2019 and 09.12.2019 to the respondent requested to restrain the assessment up to 6 months.
- ii) Petitioner approached Forum on 09.12.2019 and prayed to restrict assessment up to 6 months only and had been throughout the proceedings before the Forum kept on changing the stand and take inconsistent view, it was brought to Forum's notice that petitioner was changing his prayer day by day.
- iii) The petitioner after receiving supplementary bill/assessment against less consumption vide respondent's letter no. 2617 dated 26.11.2019, requested as to why assessment has been raised more than 6 months vide his letter dated 02.12.2019, in reply of which it was clarified vide respondent's letter 2788 dated 10.12.2019 that assessment for the less consumption shall be determined from the date on which wrong association has occurred.
- iv) On approaching Forum the petitioner had requested to restrict assessment for 6 months as per UERC Supply Code, Regulations. It is very clear that the petitioner was fully aware that the metering unit installed at his premises was recording less than the actual being used due to wrong association of voltage and current. He only wanted to restrain the assessment for 6 months which could not be as the case law WP 8613 of 2017 and various orders of the Ombudsman including his recent order dated 16.10.2020. Attention of the Forum was drawn to similar case M/s Durga Rice Mill vs Andra Pradesh SEB in Hon'ble High Court of Andra Pradesh, contents of the judgment reproduced in written statement.

After sr. no. iv) the respondent has given reply under serial no. xiv) sr no. v) to xiii) does not appear in additional pleas

- xvi) Check meter was installed at petitioner's premises after analyzing that the phase association of B & Y phase was wrong in the metering system on dated 04.10.2019 and was finalized on 22.10.2019, as a result of the check meter metering system was found recording 34% less consumption, as the metering system was recording only 66% of the actual energy consumed by the

consumer so 34% energy consumption bill was raised for the less energy billed.

- xv) From instantaneous MRI report it was clear that voltage of all the 3 phases R, Y&B was 6.088 to 6.126 KV and current of all the 3 phases R, Y&B was also 2.557 to 2.642 Amp. and power factor of healthy phase was 0.99. Energy in KW of R phase was calculated as 14.99 KW (energy is not expressed in KW, it is either expressed in KWH or KVAH, as KW is the unit of active power while KWH is the unit of active energy and KVAH is the unit of apparent energy). As the voltage and current of Y&B phase was approximately same as that of healthy phase R, due to phase association in metering system the power factor of Y&B phase has changed to that all the actual physical supply supplied to the consumer (secondary metering), as the voltage and current and power factor of healthy system must be approximately same hence the total power shown in instantaneous parameter must be 47.449 KW, while in instantaneous parameter total power is 31.22 KW (14.99 + 9.29 + 6.94) which is approximately 34% slow (as our meter is unidirectional meter) as due to wrong phase association the power factor calculated was .58 and .44 of Y and B phase, instead of .995 as the KVA can never be less than KW, hence we are considering KVA = KW (Based on annexure 6).
- xvi) As the total power calculated in instantaneous is (-) 1.24 KW but in actual due to unidirectional meter it is 31.22 KW as mentioned about the demand of 1.3 KVA it will come as 0.07 Amp at voltage 6.1 KV, while the current is 2.5 Amp, hence this calculation given by the petitioner in para 4 (a) is not correct, a total minimum KVA will be 31.22.
- xvii) As per page 12 of 14 of Tamper report for meter no. 15580689 installed at consumer's premises, it is clear that sr. no. 87 the phase association is also wrong as the voltage shown 65.88 in all the 3 phase while the current Y&B phase is negative and also the power factor of R phase is 0.98 while Y & B phase it is 0.65 and (-) 0.52 on dated 05.03.2017 as the voltage in all the 3 phases R, Y & B was 64.7 in each phase and the current in all the 3 phases was 0. As in the absolute of current the meter has shown recovering of wrong connection and in current again recorded above appears then again shows

wrong connection. Due to current 0 on all the 3 phases, that is why the meter has shown recovered this wrong phase connection and then again shows occur as the current in all the 3 phases appeared hence the contentions of the petitioner regarding the tamper being shown from a later date is totally based upon misunderstanding of the functioning and logics of the recordings done by the meter.

- xviii As mentioned the KVAH is derived from active and reactive power. Due to phase association wrong both the active power recorded and reactive power recorded by the meter has changed hence KVAH recorded was also got changed but KVAH cannot be less than KWH.
- xix As per calculation the meter was recording about 34% less. As per YMPL there is difference of 32% while as per departmental procedure the check meter results are also 34% less hence all the 3 it is established that due to wrong phase association the meter was recording 34% less. It is pertinent to mention that the effective average value due to actual consumption recorded by the meter over a span of time and as considered unrecorded by any instantaneous parameter are bound to give certain variations due to various factors which come into play for recording correct consumption, therefore the cumulative effect on less recording of energy is most accurate as derived from check meter, although even by applying the principle of electricity the effect can be ascertained with quite certainty with mathematically formulas and does not necessarily require any validation by another recording device.
- xx The meter was Ok but due to wrong phase association the metering system was recording only 66% of the actual energy consumed by the consumer. The same meter (15580689) is working in the same premises. The tamper of wrong connection was continuously recorded by the meter.
- xxi Amount raised is not a penalty or undue demand as from the check meter it is clear that the metering system was 34% slow and was recording only 66% of the actual energy consumed by the petitioner. Hence UPCL has raised for the remaining 34% unclaimed energy charges.

- xxii The calculation submitted by the petitioner is totally wrong. A diagram has been given to substantiate his argument and further substantiated his argument on the basis of Annexure Band it has been concluded that on the basis of their arguments it is clear that the existing meter was recording less due to wrong association of voltage and the current and thus supplementary bill for less recording has been raised which is correct and payable by the consumer.
- xxiii Please see if any comments can be made regarding discrepancies in seal no. etc.
- xxiv On the aspect of wrong phase association the respondent has submitted that it is a settled law that the recovery of the amount due to less recording can be assessed for the duration wrong associating continued irrespective of any duration and further that the bar of assessment of 6 months as per clause 3.3.3 (6) does not apply. Following orders have been reproduced to substantiate his plea. Case no. 3 of 2013 of Doiwala Sugar Industries, in AIR 2011 Punjab and Haryana page 175 Satish Kapoor vs PEB and others in the Hon'ble High Court, Ombudsman's order in case no. 3 of 2015 of M/s Sai Enterprises, case no. AIR 2008 of Hon'ble Jharkhand High Court in M/s Tata Steel Ltd. vs Jharkhand SEB, judgment of Hon'ble Delhi High Court in S. D. Sourie vs Municipal Corporation of Delhi, Case no. 1987 DLT 73, Hon'ble Ombudsman's order in representation no. 07/2013 in case of M/s US Metal Product vs UPCL, Hon'ble Ombudsman order in case no. 05/2013 of Standard Electrical vs UPCL.
8. In the light of aforesaid legal provisions and as per the facts and documentary evidences available it is amply clear that the assessment raised by the respondent is correct and the challenge to the same and the grounds of challenge by the petitioner are not sustainable and the complaint therefore deserves to be dismissed with costs and interim stay granted to the petitioner is liable to be vacated.
9. The respondent has substantiated his submissions with documentary evidences such as phasor diagram calculation statement, annexure A1 and B and tamper reports, Annexure B.

10. As the documentary evidences required were not submitted with written statement by the respondent, he was asked vide this office letter no. 150 dated 20.09.2021 to submit the documents as mentioned from sr. no. 1 to 4 of the aforesaid letter. The respondent Executive Engineer in response to the above letter submitted the documents as mentioned at sr. no. 1 and 2 of Ombudsman's letter dated 20.09.2021 vide his letter no. 1567 dated 01.10.2021 but documents mentioned at sr. no. 3 and 4 of Ombudsman's above referred letter dated 20.09.2021 were not submitted, a copy of his letter dated 01.10.2021 along with documents was also not sent to the petitioner as desired, which was sent to the petitioner vide this office letter no. 165 dated 04.10.2021. The documents submitted by the respondent vide his aforesaid letter dated 01.10.2021 has been taken on record and are available in the case file.
11. The petitioner vide his letter dated 07.10.2021 pointed out that complete documents as asked for have not been submitted by the respondent and he requested that the respondent be asked to submit the remaining documents also. The respondents were accordingly directed vide this office letter no. 185 dated 12.10.2021 to submit the remaining documents also with a copy directly to the petitioner. The respondent Executive Engineer had submitted some documents vide his letter no. 1977 dated 23.10.2021 with a copy thereof directly to the petitioner which had been taken into record and are available on file.
12. The petitioner has submitted his rejoinder dated 09.11.2021 with an affidavit dated 11.11.2021 as reproduced below along with copies of the following documents
- Judgment dated 23.02.2005 of Maharashtra Electricity Regulatory Commission in case no. 19 of 2004
- Case law of Hon'ble High Court of Bombay, Writ petition no. 1688 of 2015 Judgment dated 13.08.2015, which all are available on file.
- “1) That before dealing with paragraph reply to the Counter (Written Statement) dated 20.09.2021, filed by UPCL (answering respondent); the appellant craves leave of the Appellate Court, to decide the following substantial questions of fact and law; apart from framing and dealing with any other substantial questions of fact and law, which may be considered by the Appellate Court as

valid; to decide the disputed issues, in accordance with the principles of natural justice and fair play:-

- (i) Whether the connections were actually wrongly connected, in as much as, according to the appellant; if the connections would have been interchanged, then the same ought to have been reflected in the YMPL test report dated 27.06.2019; and sustained in the various sealing certificates dated 09.01.2017, 04.10.2019, 22.10.2019, which certificates were signed/ countersigned by both the parties namely UPCL and the appellant and such ambiguity ought to have been reflected by YMPL in their report dated 27.06.2019 ?
- (ii) Whether the case of the respondent is sustainable, to the extent, that the contention of the respondent is that perhaps the wrong phase association concerning voltage and current, was on account of external accidental wrong phase interconnection, on account of an instantaneous MRI reports dated 04.05.2017 to 01.04.2018 (Y and B phase); whereas on the other hand the first sealing report dated 09.01.2017, in which no such external wrong phase association was detected; and further in the tamper no. 87 (dated 21.01.2017), the fluctuations in the power factor (as alleged at para no. 17 of the additional written statements dated 20.09.2021) in Y phase is 0.65 and in B phase is – 0.52; whereas no such fluctuation was present on 09.01.2017 (i.e. the alleged date of wrong phase association); and whether the contention of the appellant is sustainable, that the meter had an internal defect and not an external defect ?
- (iii) Whether in normal running condition of the meter, when the tamper no. 85 dated 05.03.2017 concerning wrong connection (i.e. page no. 12 of 14 of the tamper report), is sustainable; whereas the same meter no. 15580689, did not report any such wrong connection ambiguity prior to 05.03.2017; whereas, whether the contention of the appellant would be sustained, that there was no external evidence of connection interchange reported in any sealing certificate or whether the meter was defective having some internal defect?

- (iv) Whether the UPCL Test Laboratories, are duly accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL), as mandated by the Central Electricity Authority dated 17.03.2006 concerning the Central Electricity Authority (Installation & Operation of Meters) Regulations 2006 u/s 55(1), r/w Section 73(e) and Section 177(2) of the Electricity Act 2003, in respect to Clause 17(2), which mandates that the meter testing reports must be issued by NABL Accredited Testing Laboratories; whereas Clause 18(2) mandates “The testing for consumers meters above 650 volts should cover the entire metering system including CT’s, VT’s. Testing may be carried out through NABL Mobile Laboratory, using secondary injection kit, measuring unit and phantom loading or at any accredited test laboratory and recalibrated if required at manufacturer works”? Whether the test report generated by UPCL, which does not qualify to be categorized as an accredited testing laboratory, is reliable more so because of the settled law as returned by the Hon’ble Bombay High Court judgment in the matter of **Nestle India Ltd. vs. FSSAI (Writ Petition (L) No. 1688 of 2015)** dated **13.08.2015** ?
- (v) Whether the explanation given by the answering respondent, that on the strength of the MRI reports, their contention that there was an interconnection of Y and B interchange externally, is sustainable in law?; whereas the mandatory UERC (The Electricity Supply Code) Regulation 2007 in Clause 3.1.3, provide, that “The licensee shall conduct periodical inspection/ testing and calibration of the meters as per rule 57 of the Electricity Rules in the following manner:-
- (i) Periodicity of meter tests – the licensee shall observe following time schedule for regular meter testing:-

<u>Category-</u>	<u>Interval of testing</u>
Bulk supply meters (HT)	1 year

CT ratio and accuracy of CT/PT, wherever applicable shall also be tested along with meter.

- (vi) Whether, in absence of any periodical tests not conducted by the licensee, in respect to the HT supply meter installed in the premises of the appellant within one year (as mandatorily provided under Clause 3.1.3 of the UERC Regulation 2007), was there a denial of principles of natural justice and fair play, in as much as, if the said meter would have been periodically tested, then whether the fault was external or internal, would come forth and whether on account of such negligence on the part of the answering respondent, can the appellant be saddled with huge liability, whereas he could not even contest this dispute concerning accuracy of the meter in time, as mandated under the forthcoming sub-clauses of clause 3.1.3 ?
- (vii) Whether the mandatory condition imposed under Clause 3.1.3 sub-clause 4, that the meter testing report, should be furnished in the prescribed format in **Annexure V**; and whether the calculations returned by the answering respondent with meter sealing certificate, is sustainable in law; whereas the test result has to amplify, that ‘consumer meter recorded% Less / more consumption’ and on the basis of such test report, the answering respondent had to conclude ‘need replacement/ results are within limits’? Where in absence of such prescribed certificates, mere submission of meter sealing certificate (without any such prescribed calculations and result), would suffice the mandate of the substantive requirements enshrined under Clause 3.1.3 of the UERC Supply Code Regulations vide notification dated 17.04.2007 ?
- (viii) Whether in terms of the meter sealing certificate dated 22.10.2019; the answering respondent, in the presence of the appellant, changed the phase sequence (which merely cannot fortify the view that meter was running slow); more so, because of the fact, that test results were not shared and as such the exercise is legally unsustainable on the strength of MRI reports, as during the whole exercise, the answering respondent might have uploaded an internal software, in order to amend the programming, which interalia removed the internal defects of the

alleged slow meter; which exercise was not entirely transparent; and therefore not sustainable on the facts and peculiar circumstances of the case ?

- (ix) Whether the report of Larsen & Turbo Ltd. is reliable, in context to settled fact, that L & T is the highest supplier of UPCL and therefore a favoured supplier, who in his conclusion states “we trust the above is in line of your requirement”; in addition to the fact, that L & T was tutored, with all the inputs, to conclude a decision, as desired by UPCL; whereas, in order to return an independent and impartial view, UPCL not only shared the instantaneous report, but also shared, the conclusions, as arrived by UPCL, in respect to all the inputs; and therefore L & T did not carry on any physical test of the meter, to arrive at an independent decision; and the conclusion of L & T is sketchy and not detailed; as it does not amplify the basis and standard tests performed by L & T but only concludes that they hope that the said report is in line with the requirement of UPCL ?
- (x) Whether, a perusal of the test report dated 27.06.2019, conducted at the premises of the appellant/sister concern of the appellant namely Windlass Biotech Private Limited by Yadav Measurements Pvt. Ltd. (YMPL), Rajasthan, is reliable; in as much as, the findings returned by YMPL, in case of the appellant were that the electric meter was slow by 66% on 27.06.2019; whereas the electric meter of Windlass Biotech Private Limited on 27.06.2019 was slow by 33%; and the causes attributed by UPCL, both in case of the appellant as well as his sister concern Windlass Biotech Private Limited were on account of wrong phase association, is sustainable both on facts and law, when the parallel check meter, states that in case of the appellant, the meter was slow by 34%, whereas no check meter was installed in the premises of M/s Windlass Biotech Private Limited ? Whether an error apparent on record, concludes an error of +32% in the YMPL report, in comparison to the check meter in case of the appellant and for sake of argument, since this error of 32% remains uncontradicted, it further substantiate

the fact that the meter installed in Windlass Biotech Private Limited was only running slow to the extent of 1%, and whether this final conclusion, would establish the fact, that there could not be any fastening of demand from the inception i.e. 09.01.2017, when the report of YMPL pertains to the verification done on 27.06.2019?

(xi) Whether a perusal of the YMPL test report dated 27.06.2019 and the findings/ conclusions returned by UPCL are sustainable, even to the extent of 34%; whereas this ground is being taken without prejudice to the fact, that there can be no question of substantibility of any question of meter being slow on account of wrong phase association; moreso because of the fact that meter cannot be slow as there was no external reason attributable and admitted by UPCL, that there was any external tampering done by appellant in either case; leaving only an unadmitted question, whether an internal defect (unsubstantiated by any meter reading/ meter sealing report), could fasten a demand beyond a period of six months upon the appellant, as UPCL has been unable to substantiate their claims concerning tampering w.e.f. 09.01.2017; and further if UPCL is changing its grounds periodically, could this allegation of external tampering be sustainable in law ?

(xii) Whether, for sake of argument only, on the one hand UPCL is alleging that both the meters in the case of appellant as well as in the case of Windlass Biotech Pvt. Ltd. were running slow on account of interchange phasing; then why the meter installed in Windlass Biotech Private Limited was only running slow to the extent of 1% and why and how, the electric meter based on the same fact as alleged i.e. on account of interchanged phasing, how could on account of external factors, the meter installed in the premises of the appellant could be running slow by 34% ?

(xiii) Whether the contention of the answering respondent, that a superficial and visual perusal of the interconnections, cannot establish the fact, that the electric meter is suffering from any external defect, is sustainable on fact and law or not; especially considering the fact, that

the visual colour codings among the three phases, in the interconnection i.e. **R – red colour**, **Y – yellow colour** and **B– blue colour** is apparent on the phase of the interconnections, which would clearly establish the fact that there was no external defect, which could not be visually observed; more so because of the fact, that no discrepancy whatsoever, has ever been alleged by YMPL/ UPCL in their sealing certificate, tamper reports or test reports ?

- (xiv) Whether, on facts, grounds and binding statutory law/ regulations, could UPCL unilaterally and without prior notice, as mandated under Clause 3.1.3(3) of the UERC Supply Code vide notification dated 17.04.2007, install a check meter and test the same, without informing the petitioner about the proposed date and time of testing at least two days in advance ? Whether without adhering to the mandated procedure, could UPCL open the sealing of the meter and thereafter issue a sealing certificate/ conduct test reports/ conduct tamper reports, whereas the binding mandate of Indian Electricity Act, was not religiously followed and after opening the sealing/ installing the test meter, a signature of the employee of the appellant was mechanically obtained, which is against the principles of natural justice and fair play; notwithstanding the fact, that the appellant is not even sure, how many times more would UPCL have tested/ opened the seal of the electric meter, as the said meter is installed in the open space on an electric pole, outside the precincts of the boundaries of the appellant's factory and the fact that no advance notice was serviced upon the appellant by UPCL, before conducting such tests?
- (xv) Whether a deliberate attempt is being made by UPCL, to malafidedly conceal the Test reports, for the period 2017 to 2021, in which the correct meter readings could be counter verified, as the said results would have been transparently reflected in the test reports; and as such on account of the failure of UPCL to ensure due diligence and failure of comparing the meter testing reports, with the actual assessments; and failure of sharing the same with the consumer, the said assessment

is patently illegal, non-est in law and for which reliance is placed upon the **Maharashtra Electricity Regulatory Commission order no. 19 of 2004** dated **23.02.2005** captioned “**Amendment/ Supplementary Bills**” ?

- (xvi) Whether, there is a deficiency in service and the said assessment goes against the pith and substance of Clause 3.1.3(1) of the UERC Supply Code 2007; and whether the conduct of UPCL, in sharing such test reports (namely test report dated 20.10.2015 of Meter No. 15580689 (make L & T); test report dated 27.12.2016 of Meter No. 8056229 (make Genus); YMPL test report dated 27.06.2019, letter no. 319 dated 23.10.2019 of the Assistant Engineer, Metering UPCL); which documents were already with the appellant; would substantiate the claim of the appellant, **that there was an inherent technical defect in the meter and that the meter was not running slow on account of an alleged wrong phase association**; and as such the check meter study was not conducted as per specific procedures and as such, it being a settled law, that if there are two opinions, then the one which benefits the consumer, has to be adopted ? **He has not given the law referred so no comment can be given.**
- (xvii) Whether, a perusal of the reading slips, now provided by the Executive Engineer (South) (vide letter no. 1977 dated 23.10.2021), would indicate and substantiate the fact; that UPCL reading slips, are merely trouble shooting exercise; and not transparent and reliable reports, which could be relied, for testing the veracity and authenticity of the actual meter readings (with the check meter readings); in as much as, the check meter has been unilaterally altered, behind the back of the consumer; and for which a comparison of the reading slips dated 15.10.2019 and 08.11.2019 (for meter no. 8056229 (make Genus)), is being compared; in which in the initial CT ratio installed along with check meter was 40/5; whereas in the reading slip dated 08.11.2019, the CT ratio installed along with the check meter is 60/5?

- (xviii) Whether the inference drawn or any liability whatsoever, fastened on the appellant with regards to the working of main meter installed at the premises of appellant by conducting a check meter study w.r.t a check meter is sustainable both on fact and law? Wherein, the calibration of the electricity meter being used as a check meter is due for more than one year and the status of the calibration of the CT and PT, installed along with the check meter is unknown?
- 2) At the outset, it is specifically and categorically submitted herein that the contents of the written statement, filed by the respondent before the Hon'ble Ombudsman are specifically and categorically denied (being devoid of merits) and for which no cogent explanation has been furnished, unless specifically admitted by the appellant in the forthcoming paragraphs.
- 3) That the ensuing dispute, which has been raised by the appellant, in his appeal memo, is based on the Indian Electricity Act, 2003, the Indian Electricity Rules, 1956 and the Central Electricity Authority notification dated 17.03.2006 and the UERC Regulations vide notification dated 17.04.2007 respectively; and it is being brought on record, that the Judicial discipline entails, that the powers of the distribution licensee i.e. UPCL, are not unbridled but are circumscribed; which mutatis mutandis, are enshrined in the Indian Electricity Act, Rules and UERC Regulations and the Electricity Supply Code respectively.
- 4) That the contents of para no. 3, are wrong, false and hence denied. That the Ld. CGRF has been pleased to dismiss the said complaint of the complainant/appellant out rightly without appreciating and considering the documentary evidences on the records.
- 5) That the contents of para no. 4, are wrong, false and hence denied. The formula adopted in Annexure A to the Counter (WS) is erroneous, therefore leading to the calculation of various parameters in Annexure A(1), is providing wrong conclusions.
- 6) That the contents of para no. 5, are wrong, false and denied. It is denied that there is any wrong phase association. The contention of the appellant, that

meter was working accurately and as such there could not be any scope of slow meter reading, has been expressed in the substantial questions of facts and law, which for sake of brevity, are not being repeated again.

- 7) That the contents of para no 6. are wrong, false and denied. The substantial questions of fact and law as elaborated in para 1 above, categorically establish the fact, that meter was not running slow and more so there was no phase interchanged possible but due to internal defects, the meter was defective, in as much as, in periodic verification, no ambiguity or irregularity was ever detected by UPCL and if UPCL would have detected any ambiguity or irregularity, a show cause notice, was required to be issued to the appellant, with opportunity of hearing and a speaking order; however, the allegation that meter was slow right from inception, has no good ground, because of the substantial questions of fact and law, as enumerated by the appellant in para 1, to this Rejoinder, which for sake of brevity is being relied upon and not being repeated again. The demand of Rs. 1,80,69,376/-, has no legs to stand and the meter cannot be construed to be running slow, by an alleged wrong phase interchange, as the same is not coming out from the tamper reports/ sealing certificates. At the cost of repetition, it may be stated that the respondent never provided any test results neither in Annexure-V nor in any other format violating clause 3.1.3 (4) of UERC Supply Code 2007 and has raised an illegal assessment/ notice of demand, which is unlawful and non-est in law.
- 8) That the contents of para no. 7 of the Counter, are wrong, false and denied. At the cost of repetition, the substantial questions of fact and law, as elaborated in para 1 above, would fortify the view, that the appellant has established the ground root position, to state, that no violation to the UERC Supply Code, nor the Electricity Act 2003, nor the UERC Regulations or the Central Electricity Authority notification dated 17.03.2006 respectively.

REJOINDER REPLY(by petitioner) TO THE AVERMENTS MADE IN THE COUNTER (WRITTEN STATEMENT), CONCERNING THE GROUNDS OF APPEAL RAISED BY THE APPELLANT

- (A) That the contents of para A, of the Counter merely state, that the grounds of the appellant are baseless without any justification or basis. Heavy burden is placed upon the answering respondent, to establish why and how the contents of para A of the appeal are wrong and false.
- (B) That the contents of para B of the Counter, are sketchy, do not mention why and how the ground B, raised by the appellant is being wrong and denied. The answering respondent denies that he did not provide any opportunity of hearing. If that be so, heavy burden is placed upon the answering respondent, to provide the copy of personal hearing and how he has dealt with this bald allegation. The appellant relies upon the substantial questions of fact and law raised in para no. 1, which for sake of brevity, are not being repeated again, to place on record that test results (Annexure V) or in any other form, were never provided to the appellant establishing violation of the UERC Supply Code and therefore the root of the allegation stemming from a slow meter reading from inception, has no legs to stand.
- (C) That the contents of para C of the Counter, are sketchy, merely denying the fact that the averment made in ground C by the appellant is baseless without justification. The appellant would once again reiterate, that Article 265 of the Constitution of India, is very clear and unambiguous that no demand can be fastened without authority of law and if the demand is without basis and justification, the said demand frustrates the promises made in Article 265 of the Constitution of India.
- (D) That the contents of para D (which due to a typing mistake mentions the answer to para C of the ground) by the answering respondent, assists the cause of the appellant, categorically stating that “respondents has never made any allegation about meter tampering”. The sum affect of this averment is in favour of the appellant, because of the fact, that even the answering respondent, is alive of the fact, that the appellant never tampered the electric meter; and if no malicious intent, is proven or admitted, the charge of the answering respondent in fastening a demand of Rs. 1,80,69,376/-, is not sustainable, as this is in the shape of a penalty proposed to be imposed upon the appellant, on a charge that the meter was slow from inception; whereas the

apposite is established by the averments not only made in para D but also on several other occasions , for which the appellant would rely upon the jurisdictional Uttarakhand High Court judgment in case of **Uttarakhand Power Corporation Ltd. vs. Doiwala Sugar Company Ltd. (WPMS No. 1820 of 2010) dated 10.04.2015**, whose SLP filed by the answering respondent, was dismissed by the Hon'ble Supreme Court in **SLP No. 19645/2019 dated 05.07.2019**.

- (E) That the contents of para E of the Counter are absolutely frivolous and vexatious. The appellant merely stated that the Ld. CGRF did not consider their submissions in the complaint nor their submissions in the Rejoinders nor dealt with the same in the impugned order; whereas the answering respondent states “the appellant seems to be wrongly comprehending the meaning of the word “consideration” to mean “favourable consideration””. At the cost of repetition, it may be stated, that there was total denial of the principles of natural justice by CGRF, in as much as, justice should not only be done but shown to have been done, which entails show cause notice, reply, opportunity of hearing and a speaking order, dealing with rival submission.
- (F) That the contents of para F of the Counter are sketchy, just stating that the allegations in the grounds are baseless and without justification. The answering respondent, is not filing any reply to the allegation that Ld. CGRF, did not deal with the root cause of dispute and did not pass any speaking order.
- (G) That the contents of para G of the Counter are wrong, false and denied in totality. It is wrong to suggest, that the appellant never challenged the alleged wrong phase association of meter; whereas the appellant is vehemently arguing this fact, and is always challenging, that there was no wrong phase association, nor any deliberate tamper, which the answering respondent is also admitting that there was no deliberate tamper and the appellant is always stating, that neither the connection was wrongly interchanged and nor the meter was running slow and may be due to inherent technical defect in the meter, wrong readings were being depicted at different times by the MRI report (whereas perhaps deliberately the answering respondent is concealing the MRI report covering the period January 2017 to March 2017), to which the

appellant would rely upon the substantial questions of fact and law as elaborated in para 1 above.

- (H) That the contents of para H of the Counter, are wrong, false and denied. In order to maintain brevity and avoid repetition, the appellant would once again contend that the averments made in para H of the Ground of Appeal, are being reiterated. Further, the substantial questions of fact and law, as averred in para 1, are being relied upon. The contentions made in para H of the Counter Affidavit, would hold no ground at all; especially because of fact, that the answering respondent has failed to specifically answer the grounds averred in para H of the Appeal Memo.

REPLY TO ADDITIONAL PLEAS by petitioner.

- (I) That the contents of para 1 are absolutely wrong, false and denied. A perusal of the applications dated 02.12.2019 and 09.12.2019, would make it abundantly clear, that the appellant had never stated that the assessments would be restricted to six months; however, the appellant had stated that what could be the binding law, even to assess the appellant beyond the period of six months; meaning thereby, that the appellant was not only contesting the assessments up to six months but was also contesting the assessments beyond a period of six months.
- (II) That even the averments made in para 2 of the additional please are against fact and law. It is settled law, that till such time as appeal is pending and there is an exchange of Counter and Rejoinders, the appellant can raise fresh grounds on the strength of the Counters/ documents which surface during the pleadings in the complaint. It is admitted, that for want of evidences / documents not shared by the answering respondent, the appellant had initially prayed that the assessment be restricted up to six months only; however, after acquiring knowledge of the fact concerning the tampering reports/ test reports etc. for the first time, the appellant became of the fortified view, that even the assessment up to six months was uncalled for, on the facts and circumstances of the case.

- (III) At the cost of repetition and as rightly answered in para 3 of the additional pleas, the answering respondent provided some clarifications in his letters dated 26.11.2019 and 10.12.2019 and countered the arguments of the appellant, by claiming that as early as on 09.01.2017, the meter was running slow right from inception and therefore the demand of electricity charges, could be imposed upon the appellant right from inception; which was contested through various written and oral arguments before the Ld. Consumer Forum.
- (IV) The contents of para 4 of the additional pleadings are not admitted and denied. The substantial questions of fact and law would establish the fact that the Hon'ble Ombudsman judgment in case of **Shri Aditya Bhargav Prop. M/s Bhargav Ice Factory vs. EUDD (S) UPCL**, would not apply; whereas the appellant is relying upon the jurisdictional Uttarakhand High Court judgment in case of **Uttarakhand Power Corporation Ltd. vs. Doiwala Sugar Company Ltd. (WPMS No. 1820 of 2010) dated 10.04.2015**, whose SLP filed by the answering respondent, was dismissed by the Hon'ble Supreme Court in **SLP No. 19645/ 2019 dated 05.07.2019**.
- (V) The contents of para 14 (may be on account of a typographic error by the answering respondent, para nos. 5 to 13 have been skipped), the contention that check meter was installed on 04.10.2019 and finalized on 22.10.2019. This may be correct, however, what held the answering respondent, not to install the check meter as early as on 09.01.2017, especially in the teeth of tamper reports dated 21.01.2017 and 05.03.2017? The conduct of the answering respondent is also apparent that the respondent is picking and choosing documents to his advantage, because of the glaring fact, that no MRI report was obtained during the period January 2017 to March 2017, which indicates that principles of natural justice and fair play have been done away with to the disadvantage of the appellant which is against the law of equity and fair play.
- (VI) The contents of para 15 of the additional plea is not admitted and hence denied. A perusal of Annexure 6 containing instantaneous report no. 36/ 63 would establish the fact that the voltage in R, Y & B phase (in Kw), shows a

net consolidated negative balance of -1.2450; whereas in the said pleading, the answering respondent is calculating the said instantaneous parameter, with a total power of 31.22 Kw; which shows that the pleadings of the answering respondent are erroneous and non-reliable, more so because of the fact, that the final analysis between YMPL test report and UPCL check meter report of both the sister concerns, shows that the meter cannot run slow on account of alleged wrong phase association, which shows a marginal and acceptable difference of 1% only.

- (VII) The contents of para 16 of the additional plea is not admitted and hence denied. A perusal of Annexure 6 containing instantaneous report no. 36/ 63 would establish the fact that the voltage in R, Y & B phase (in KVA), shows a net consolidated positive balance of 1.3040; whereas in the said pleading, the answering respondent is calculating the said instantaneous parameter, with a total power of 31.22 Kw (as alleged by them in para 15 above), which shows that the pleadings of the answering respondent are erroneous and non-reliable, more so because of the fact, that the final analysis between YMPL test report and UPCL check meter report of both the sister concerns, shows that the meter cannot run slow on account of alleged wrong phase association, which shows a marginal and acceptable difference of 1% only.
- (VIII) The contents of para 17 of the additional plea, is wrong and hence denied. The appellant would rely and refer to the substantial questions of fact and law, as mentioned in para 1 above and especially the fact, that if these averments as explained by the answering respondent are correct, then why these ambiguities, were not apparent from the tamper report for the tamper dated 09.01.2017?
- (IX) The contents of para 18 of the additional plea is wrong and hence denied. The appellant would rely and refer to the substantial questions of fact and law, as mentioned in para 1 above, which would establish the fact, that the meter cannot run slow on account of alleged interchange of phases.
- (X) The contents of para 19 of the additional plea, is wrong and hence denied. The appellant would rely upon the substantial questions of fact and law in para 1 of this written statement, in so far as the averments which concern the YMPL

report and the correlation with sealing certificate/ test reports, which averments made above, for sake of brevity, are not being repeated again and shall be relied upon.

- (XI) The contents of para 20 of the additional plea, is wrong and hence denied. The appellant would rely upon the substantial questions of fact and law as enumerated in para 1 above, more so because of the fact that if the meter reading would depend upon interchange connection, then why the said fact could not be apparent from the tampering report effective 09.01.2017 onwards?
- (XII) The contents of para 21 of the additional plea, is wrong and hence denied. It is indeed a penalty and undue demand, which without establishing the fact that the meter was running slow at 34%, the answering respondent is trying to fasten the demand upon the appellant, for which the appellant would rely on the substantial questions of fact and law as enumerated in para 1 above.
- (XIII) The contents of para 22 of the additional plea, is wrong and hence denied. That in representation No. 13/2016 at Hon'ble Ombudsman, Uttarakhand in the matter between **M/s Suraksha Pharma vs. Executive Engineer, UPCL**, at para no. 8 and 9d the respondent have submitted a formula and asserted the slowness up to 81%. However factually, the meter was found to be running normal within the permissible prescribed limits of 3%. The formula and logic, as averred by the answering respondent holds no good ground, for which the appellant would rely upon the averments made in para 1 of this Rejoinder.
- (XIV) That the content of para no. 23, is clearly establishing the ground position, that there were in fact no discrepancies, which were ever observed by the answering respondent, when he conducted the sealing (with or without the knowledge of the appellant as the check meter was installed outside the precincts of the appellant's factory), nor in any tamper report or in any other verification conducted by the answering respondent and without any advance notice of two days as mandated under Clause 3.1.3(3) of the UERC notification. The reply of the answering respondent is very clear, which states **"Please see if any comments can be made regarding discrepancies in seal**

no. etc.”, which establishes that the answering respondent is trying to make something out of nothing.

(XV) That the content of para no. 24, are not admitted and hence denied. In sum and substance, the answering respondent is referring to various judgments of High Courts concerning interpretation of Section 56 of the Indian Electricity Act, 2003 and referring to certain judgments, that if slow meter is established, then demand can be fastened right from the inception of wrong phase association. However, the peculiar facts and circumstances of the case, which have been summarized in the substantial questions of fact and law enumerated in para 1 above and replies made in the forthcoming paras after para 1, would establish the fact, that it is not a fit case, to be covered under the category of a slow meter with wrong phase association, which arguments are not being repeated for sake of brevity. The appellant would once again rely upon the jurisdictional Uttarakhand High Court judgment in case of **Uttarakhand Power Corporation Limited vs. Doiwala Sugar Company Ltd.**(WPMS No. **1820 of 2010**) **dated 10.04.2015**, whose SLP filed by the answering respondent, was dismissed by the Hon’ble Supreme Court in **SLP No. 19645/ 2019 dated 05.07.2019**.

(XVI) It is therefore most humbly prayed, that the Hon’ble Ombudsman (Electricity), would be pleased to take on record the Rejoinder (Written Statement) of the appellant and allow the appellant to argue the matter both on the averments made in the appeal memo as well as countered to the Counter (Written Statement) of the answering respondent in his Rejoinder Application, as well as the appellant would crave leave of this Hon’ble Court to allow furnishing of any evidence/ documents/ judgments, to substantiate the pleadings of the appellant, for which act of kindness the appellant shall as in duty bound, ever pray.”

13. Hearing in the case was fixed for 06.12.2021 which was subsequently adjourned for 27.12.2021 on the request of the respondent. Both parties appeared on the scheduled date of hearing and argued their respective case. The petitioner apart from the verbal arguments also submitted a written arguments at the time of hearing a copy of which was also given to the respondent. Contents of which are reproduced below:

- “(I) That the respondent have failed to establish that there is anything wrong in the metering connections or the metering system is running slow on account of alleged wrong phase association. That no abnormality has been brought out in the YMPL test report and the sealing certificate filled by the respondent which bears signature of higher officials of respondent with regards to metering interconnections.

Further as per the **sealing certificates** dated **09.01.2017, 04.10.2019, 22.10.2019** the current in each of the phase is having positive value. While the MRI report is showing negative values in two phases. This confirms the meter is having some technical defect.

- (II) That the respondent at para 7 (H) (v) of their WS has submitted that as per the specification the tamper for the wrong phase association has not been included and it can only be identified by the phasor angle. That the meter specification as supplied by the respondent regarding the wrong connection read as under

“WRONG CONNECTION:

The meter shall show the voltage phase sequence and current phase sequence in instantaneous parameters in MRI report and if both the phase sequence differs each other than it must record the event”

That this clearly establishes that if there is any wrong phase association of voltage and current as alleged than this tamper ought to have been reflected since 09.01.2017, the date on which the alleged wrong phase association occurred as claimed by respondent.

That further the respondent are in agreement that it is not possible to interchange connection of charged power line which confirms that the meter has developed some technical defect on **05.03.2017** on account of which tamper for wrong connection was recorded by the meter on **05.03.2017** as is evident from the tamper report as there is no occasion for the voltage and current to change their sequence in a running line.

That further the respondent has never provided the MRI reports for the month **January 2017 to March 2017**, in spite of many requests to establish their claim of alleged wrong phase association since **09.01.2017**.

- (III) That as per point B for Calculation of power by a three phase tri vector meter (Intelligent meter) installed at consumers premises of **Annexure-A** of the WS of respondent, the percentage error is claimed to be 33%.

That the said calculation for the error is based on wrong calculation. That the said calculation is for active energy, however the billing in the instant case is on apparent energy (KVAH). That the phase difference of 180 degree has been assumed which is not correct. That the basis of the calculation is interchange of yellow and blue phase, although no discrepancy was present in the metering connections.

That in representation No. **13/2016** at **Hon'ble Ombudsman, Uttarakhand** in the matter between **M/s Suraksha Pharma Vs Executive Engineer, UPCL**, at para no. 8 and 9d the respondent have submitted a formula and asserted the slowness up to **81%**. However in actual the meter was found to be running normally within limits of percentage error prescribed. This establishes that the formula submitted by respondent has no applicability with respect to practical situations. That the similar formula and logic is again given by respondent here in the instant case to justify their illegal demand.

- (IV) That as per **UERC Supply Code Regulations, 2007** definition of meter:

“Meter” means a device suitable for recording consumption of electrical energy supplied or any other parameter during any specified period and shall include, wherever applicable, other associated equipment such as CT, PT etc. necessary for such recording.

It shall also include any seal or sealing arrangement provided by the Licensee for preventing unauthorised use of electricity;

That all the seals installed in metering system is part of the meter itself and replacement of any seal installed at the metering system during the check meter study without the knowledge of the consumer will render the entire

check meter study **null and void** and no assessment based on test results of such check meter study (although no test results were ever shared with the consumer before raising the impugned assessment in the instant case) is legally tenable.

- (V) That further UPCL is not competent to carry out any site testing or any test in their premises as they have **not yet accredited** by **NABL** lab which is mandated by **CEA** guidelines. It is pertinent to mention that more than 15 years have been passed since the guidelines have been issued by the CEA, which clearly shows that the respondent is not having any intention of making the compliance to the said regulation without prejudice to the fact that the respondent being a public company owes high moral responsibility towards the regulatory compliances.

That the importance of the NABL can be seen from the very fact that clause 2.0 of the Standards of the meter specification of the respondent mandates that the **firm must have NABL accredited lab for acceptance tests of energy meters as per the IS.**

That in absence of meter testing lab having NABL accreditation no reliance can be placed on the test results obtained by the respondent more so because of the settled law as returned by the **Hon'ble Bombay High Court judgment** in the matter of **Nestle India Ltd. vs. FSSAI (Writ Petition (L) No. 1688 of 2015) dated 13.08.2015.**

- (VI) That no advance notice of check meter study was ever given and no test result was ever provided by the respondent in any format whatsoever before raising the impugned assessment. That further during the check meter study the check meter was opened by the respondent several times without the knowledge of the consumer without the sealing certificates being duly filled. That the purported check meter study is merely a trouble shooting exercise and the said study have not been conducted in accordance with the procedure as established in UERC Supply Code Regulations, 2007. Thus no liability can be fastened on the appellant based on such study.

- (VII) That the respondent never denied the YMPL report at the CGRF, Garhwal, UPCL.
- (VIII) That with reference to the documents regarding the **periodical test** submitted by the respondent, the **calibration and testing** of the energy meter which was used as a **check meter** for reference was **overdue**. Further **no test report** was provided for the **CT-PT unit installed along with the check meter**. Thus no reliance can be placed on any test results where the working of the reference meter with the prescribed error limits is not established. That it is in such scenario and practices the NABL accreditation assumed important role so as to ascertain the veracity of the test results.
- (IX) That at para **17** of additional pleas of the **WS**, the respondent have submitted that from the tamper of page **No. 12 of 14, S.no. 87 dated 21.01.2017**, it is clear that phase association is also wrong. However the respondent have failed to answer that why not such tamper event was present on **09.01.2017**, the date of the alleged wrong phase association.
- (X) That the correlation of the **YMPL test results** and the check meter study conducted at sister concern of M/s Windlass i.e **Windlass Biotech Pvt. Ltd. and Windlass Biotech Health Care limited** establishes that the meter installed at Windlass Biotech Pvt. Ltd. is running 1 % slow with the alleged wrong phase association. That this confirms that the meter cannot run slow because of the alleged wrong phase association, thus the meter installed at the premises of M/s Windlass Healthcare cannot run slow to the tune of 34% from **09.01.2017**.

That in W.S the respondent has denied the test report of **YMPL** with regards to slowness of **66%**. That it is pertinent to mention that the letter No. **63 dated 22.01.2020** of the office of **Executive Engineer, Electricity Test Division** at page No **2 para 5** sent to L&T specifically mentions that the meter was found **66% slow**. That this clearly establishes that the respondent are now changing their stand to justify arbitrary assessment. Further in the said letter is also mentioned that the wrong phase association was rectified during check meter finalisation and the same has been entered in the sealing certificate, however

no such remarks have been ever entered in the sealing certificate dated **22.10.2019**.

- (XI) In **M/s YMPL** testing the respondent claimed the meter is running slow as **CT of Y and B phase is running 33% slow** on the contrary now the respondent is claiming that the meter is running slow due to **wrong phase association**.
- (XII) That as per the sealing certificate dated 22.10.2019 it is clearly mentioned that the respondent changed the **phase sequence** from **RBY to RYB**. That it is clearly established whatever troubleshooting was done by respondent on **22.10.2019**, the same only resulted in change of phase sequence of the supply. That as per the specification of the meter the **change in phase sequence will have no effect in recording** of energy by the meter.
- (XIII) That **no assessment/supplementary bills is legally tenable** when the **periodical meter testing has not been done with the results intimated to consumers**. This view has been taken by **Hon'ble Maharashtra Electricity Regulatory Commission in its order dated 23.02.2005**. The copy of the said order have already been submitted.
- (XIV) That **M/s YMPL** reports pointed out that the **CT of Y and B phase were individually 33% slow**. That the CT itself is the part of the meter and defective CT would confirm the defect in the meter. The report was also signed by officials of respondent. That now the respondent are alleging the wrong phase association since 09.01.2017 which is contradictory to what is stated in the **M/s YMPL report**.
- (XV) That in the nutshell it is established that the meter is having technical defect and may be running slow. It is worth mentioning that any defect/abnormality in meter or anywhere else starts gradually i.e. it will increase from zero and will move the current position as discovered when the abnormality is noticed. The level of abnormality when found is its maximum value that have been reached. Hon'ble UERC regulation provides assessment on the basis of the maximum level of abnormality found during testing limiting to six months as the same will average out for the entire period of defect.

That in the instant case the appellant has clearly established that meter is having technical defect, although the meter is recording everything correct because of the various anti-tampering features available in the meter. Hence the impugned assessment is liable to be dismissed.”

14. The petitioner apart from the written argument, verbally submitted that no advance notice for installation of check meter was given to them by the respondent. No test results of the proposed check meter from a accredited lab were also given. The respondent categorically admitted that periodical testing of the existing meter as required under relevant regulations were not carried out. Further the respondent verbally stated during arguments that no advance notice for check meter installation was given to the petitioner as according to them was not required. The arguments were concluded with mutual consent. Order was reserved.
15. Post conclusion of arguments on 27.12.2021 the petitioner submitted following case laws vide their letter dated 19.01.2022, which according to them are applicable to the case for Ombudsman’s perusal and consideration.
 - i) WP 1069 of 2021 of Hon’ble High Court Uttarakhand
 - ii) WP 13141 of 2021 of Hon’ble High Court, Madras.
 - iii) WP 1865 of 1991 of Hon’ble High court Punjab and Haryana
16. The aforesaid submission of the petitioner was admitted in the interest of justice, taken on record and a copy thereof was sent to the respondent vide letter no. 360 dated 03.02.2022.
17. In response to the above letter the respondent Executive Engineer submitted an application dated 3803 dated 17.02.2022 wherein although he has mentioned that “वतर्मान मे परिवादी द्वारा जो तर्क दिये गये हैं उनका वाद से कोई सम्बन्ध स्पष्ट नहीं हो पा रहा है, क्योंकि सम्बन्धित वाद उपभोक्ता के परिसर में स्थापित मीटरिंग प्रणाली के फेज ऐसोसियेशन गलत हो जाने से सम्बन्धित हैं।”. He has further stated that after conclusion of the arguments no cognizance of the new facts submitted by petitioner should be taken, however if the Hon’ble Ombudsman do take cognizance of petitioner’s submission dated 19.01.2022 then a decision may judiciously be taken after arguments on these facts. In view of respondent’s submission and in the interest of

justice an opportunity of hearing from both parties was given vide letter no. 389 dated 18.02.2022 wherein hearing specifically on the 3 case laws submitted by petitioner vide letter dated 19.01.2022 was given and 02.03.2022 was fixed for arguments by both the parties. Both parties appeared and arguments were accordingly heard from them specifically on 3 case laws. These arguments were concluded with mutual consent and order was reserved.

18. After hearing arguments from both parties and perusal of documents available on file as well as perusal of Forum's case file the facts about the case has been observed as follows:-
19. The parties had filed elaborate pleadings making allegations and counter allegations which are more in a nature of arguments, rather than dealing with legal and factual matters. The controversy as can be seen is plain and simple and relates to the disputed assessment of Rs. 1,80,69,376.00 raised on the basis of check meter study conducted from 04.10.2019 to 22.10.2019 and there is no dispute about the regular monthly bills issued during the period from 09.01.2017 to 22.10.2019 and payments thereof, as there is no such evidence on record, and therefore I do not consider it necessary to refer to each and every contents of the parties, which any way I find irrelevant.
20. The petitioner has challenged the assessment amounting to Rs. 1,80,69,376 raised by the respondents vide their letter no. 2017 dated 26.11.2019 the CGRF has held this demand for a period from 09.01.2017 to 22.10.2019 i.e. for 986 days due to phase sequence change continuously as a genuine demand. The order of Forum on the face of it appears cryptic and unreasoned. The Forum although has referred to the order passed by the then Ombudsman dated 07.09.2017 in case no. 23/2017 without even making a distinction that the said order pertains to different aspect and as no relevance in a situation where there was change in phase sequence as observed by the Forum. Finding of the Forum that the demand due to phase sequence change is genuine, **is not only against CEA (Installation and Operation of Meters) Regulations 2006 and its subsequent Amendments Regulations of 2010 and 2019.** As provided under clause (3)(c) Anti-tampering feature of part III of schedule, which reads as follows "*(c) The meter shall work correctly irrespective of the phase sequence of supply (only for poly phase).*" but also against the facts of the case.

21. The respondents vide their letter no. 1567 dated 01.10.2021 has filed certain documents which include purchase order and technical specification for AC three phase four wire HT static 11 KV tri vector meter wherein the T&C no. 7.2.14 clearly provides **Phase Sequence Reversal** "*The electronic meter should work accurately irrespective of phase sequence of supply*". Therefore, by merely looking at the aforesaid CEA Regulation and the fact that working of meter as per aforesaid conditions of purchase order, could not be effected due to phase sequence change/reversal. Therefore, there is no hesitation in holding that the order passed by CGRF is unsustainable and is liable to be set aside. However, as the parties have been litigating in this petition and the issue needs to be resolved, therefore, I take up the matter to find the crux of the controversy and to see whether there is any grievance of the consumer that need to be resolved.
22. Considering all the facts and the documents in the case it is found that the only moot question for the consumer is to see whether the demand raised by the respondent is correct and the said demand being as per Act/Regulation is liable to be recovered. The only defense raised by the respondent is that of change of phase sequence as can be seen from the aforesaid letter dated 26.11.2019. In order to succeed, the respondent has to establish that there was change of phase sequence, the duration of change of phase sequence and also the effect of change of phase sequence on recording in the meter. In order to see the merits of the contentions/defense raised by the respondent, certain relevant facts evident from the records needs to be mentioned.
23. The issue seems to have arisen upon checking done by M/s YMPL which has been hired by the respondent company and thus is a representative of the respondent itself. The checking report dated 27.06.2019 wherein it is mentioned that PT wiring is OK and under the heading of "**abnormality found**" it is mentioned, "*Y phase CT found - 33% slow, B phase CT found -33% slow, overall system found -66% slow*".
24. It is very intriguing to note that the agency authorized by the respondent company for testing/checking the meter, has nowhere observed in its record of a fact of change in phase sequence or for that matter wrong phase association. In fact, the said report categorically mentions that Y&B phase CT are slow. However, respondent's aforementioned letter dated 26.11.2019 talks about change in phase sequence as the cause for meter recording less consumption to the tune of 34%. If the reason advanced

by the respondent is to be believed, then I fail to understand how the effect of CT being slow can also be accommodated in the less recording of consumption, especially, when the authorized agency of the respondent has found the slowness in recording of consumption by even one of the CTs to the tune of 33% which seems to be unbelievable.

25. The respondent, vide AEs meter letter no. 195 dated 22.10.2021 has filed sealing certificate no. 02/22 dated 01.12.2016 whereby check meter L&T no. 15580689 was installed in the premises of the petitioner. A sealing certificate no. 02/27 dated 09.01.2017 has also been filed vide the same letter whereby the said check meter was finalized. Assessing the old meter slow by 32.3% and removed the old meter from the site which suggests that the check meter with aforesaid no. continued at the site thereafter as main meter, the sealing certificates no. 89/09 dated 04.10.2019 and no. 195/15 dated 22.10.2019 also show the same L&T make meter no. 15580689 as the main meter which leaves no doubt that for this duration the check meter installed on 01.12.2016 continued as the main meter till date. It is pertinent to mention here that connections of meter no. 15580689 were initially done on 01.12.2016 when it was installed as check meter and were never changed thereafter till 22.10.2019 when it was declared slow by 34% as a result of check meter study conducted from 04.10.2019 to 22.10.2019 as is evident from the sealing certificate of these dates. The respondent has stated that the change in phase sequence occurred on 09.01.2017 and is continuing thereafter till 22.10.2019 when it is stated, to have been corrected as per remarks mentioned in the aforesaid sealing certificates ***“Check Meter final for above consumer as per MRI of main meter according to phasor diagram phase sequence found changed “RBY. Phase sequence change by making connection RYB accordingly to phasor diagram old meter resealed by seal TP/67912977, Meter Box/L7912673 and Check meter sealed by seal no. Box/8077181”***. If this contention of the respondent is to be believed, it would imply that the check meter installed on 01.12.2016 was itself incorrect and therefore the assessment made on its basis (check meter study from 01.12.2016 to 09.01.2017) would lose all its reliance.
26. The parties have referred to various case laws and provisions of the regulations but in light of the fact as observed from above analysis, the respondent when has failed to establish its defense/case, therefore, it would be a futile exercise to refer to each such

case law and provisions of the regulations. However the three case laws of Hon'ble High Courts and Supreme Court submitted by the petitioner vide their letter dated 19.01.2022, as referred in para 15 above, support their (petitioner's) case.

27. Therefore in light of above deliberation it is clear that the petitioner has been making additional and subsequent pleadings raising various new contentions and grounds during the course of proceedings both before the Forum and also here, before Ombudsman. This definitely must have caused difficulty for the respondent in replying but the basic purpose is to resolve the grievance of the petitioner hence the petitioner cannot be denied with the opportunity to present his case fully moreover this cannot adversely impact the respondent defense which anyway is to be established by proving the correct facts and on the basis of which the case is to be decided, like petitioner, respondent cannot be permitted to raise inconsistent and contradictory ground of defense as it is the sole responsibility of the respondent to justify the basis of its raising the disputed demand. In the instant case the demand raised by the respondent due to slow running of meter was attributed to changed phase sequence and therefore the respondent should have established the change in phase sequence and its effect on consumption correctly and accurately for sustaining their demand which they failed to do. It is very pertinent to mention here that in sealing certificate dated 22.10.2019 it is mentioned ***“Check Meter final for above consumer as per MRI of main meter according to phrasor diagram phase sequence found changed “RBY”. Phase sequence change by making connection “RYB” accordingly to phrasor diagram old meter resealed by seal TP/67912977, Meter Box/L7912673 and Check meter sealed by seal no. Box/8077181”*** which clearly shows that the respondent has only corrected the phase sequence so it is not a case of wrong phase association moreover there is nothing mentioned about slowness of CTs. In this regard it is relevant to refer to CEA Regulation 2006 which clearly mandates that the phase sequence change should not affect the metering, relevant sub regulation is reproduced below:-

Anti-Tampering Features, clause (3) (c) as provided in part III schedule, which reads as follows:

“The meter shall work correctly irrespective of the phase sequence of supply. (only for poly phase)”

28. The respondent as per the said specification has purchased the meter as per purchase order no. 1172/UPCL/CCP-II/1/2012-13 (L&T) dated 28.12.2012 submitted by them vide letter no. 1567 dated 01.10.2021 as evident from the facts observed above therefore it leaves no doubts that change in phase sequence which is the basis of assessment in the instant case as per respondents letter dated 26.11.2019 cannot have any effect upon recording of consumption by the meter which is as per accuracy and the specification laid down by CEA. Therefore, the demand on this basis raised by the respondent could not be sustained. The Forum failed to consider the matter in right perspective and without analysis the aspect of change in phase sequence and its effect upon recording of consumption. And has merely recorded in its order dated 17.07.2021 that *“In view of above clarifications as well as the documentary evidence i.e. sealing certificates dated 04.10.2019 and 22.10.2019 for installation and finalization of check meter respectively and the tamper reports, the demand of Rs. 1,80,69,376.00 raised by the respondents vide their letter 2017 dated 26.11.2019 to recover the cost of energy escaped to be billed in regular monthly bills due to less recording by the meter by 34% for a period of (09.01.2017 to 22.10.2019) 986 days due to Phase sequence change continuously is the genuine demand and they are entitled to recover the same. अतः इन परिस्थितियों में उक्त वाद खारित किये जाने योग्य है।”*
29. Although facts and merits of the case as discussed above are the sufficient grounds, reasons and logics to decide the petition in favour of the appellant and allow the petition and is being ordered accordingly. However it would be appropriate to mention here that the process and procedure followed by the respondent in dealing with this case and raising demand of Rs. 1,80,69,376.00 is violative of the following regulations:
- a) **UERC Supply Code Regulations, 2007**
- i) Sub regulation 3.1.1 (4) *“It shall be responsibility of Licensee to maintain the meter and keep it in working order at all times.”*
 - ii) Sub regulation 3.1.1. (5) *“Initial installation and replacement of the meter shall be done by the Licensee in the presence of the consumer or his authorized representative after giving one week’s notice. At the time of initial installation and replacement the Licensee shall record*

the particulars of meter in the Sealing certificate which shall be jointly signed by the Licensee and the consumer. A copy of the sheet shall be issued to the consumer under proper receipt.”

(It is clarified that replacement of a meter may be necessitated as a result of check meter study where the existing meter is not found working correctly within the prescribed limits of accuracy and thus this sub regulation inter-alia applies in the instant case. However the respondent categorically admitted that no advance notice was given as the same is not required but as explained above advance notice had to be given to the petitioner and other formalities as mandated in the aforesaid sub regulations were also required to be completed, which had not been done by the respondent and thus this sub regulation has been violated.)

iii) Sub regulation 3.1.3 Testing of meter provides as follows:

“The Licensee shall conduct periodical inspection/testing and calibration of the meter as per Rule 57 of the Electricity Rules, in the following manner:

(1)Periodicity of meter tests – The Licensee shall observe following time schedule for regular meter testing:

<i>Category</i>	<i>Interval of testing</i>
<i>Bulk Supply meters (HT)</i>	<i>1 year</i>
<i>LT meters</i>	<i>5 years</i>

CT ratio and accuracy of CT/PT, wherever applicable, shall also be tested along with meter.”

(The petitioner being a HT consumer, it was mandatory for the respondents to conduct testing of the meter once in a year in accordance with the above sub regulation, but as categorically admitted by the respondent in hearing and as no such test reports have been adduced by them, and as alleged by the petitioner, periodical testing has not been conducted by the respondents in the

instant case, while at least 2 number periodical testing should have been done during the period of alleged assessment from 09.01.2017 to 22.10.2019, which is a clear violation of the aforesaid sub regulation.)

- b) UERC (Release of new HT and EHT Connections, Enhancement and Reduction of Load) Regulation 2008

Clause 14 Meter reading provides that:

“The readings of the meter referred to in clause 12 above shall be taken at regular intervals by distribution licensee through MRI and the readings so taken shall be conclusive and binding on both the consumer and the distribution licensee as to the amount of maximum demand and electrical energy supplied to the consumer, except in case of tampering of such meters whereby distribution licensee shall have the right to proceed as deemed fit. Distribution Licensee shall provide a copy of MRI report along with the monthly bill. Distribution Licensee also agrees to provide full MRI report along with load survey on payment of amount as decided by the Commission from time to time”

(As it is not a case of tampering with the meter and is a case of check meter study, this sub regulation applies in the instant case.)

- c) **Admittedly labs of UPCL have not been accredited by NABL as mandatory under sub regulation 17 (2) and 18 (b) of CEA (Installation and operation of meters) Regulations 2006 which are applicable in the state of Uttarakhand in terms of sub regulation 1.1 (4) and sub regulation 3.1.1 (1) of UERC (Electricity Supply Code) Regulations, 2007, objections raised by the petitioner regarding correctness/accuracy of the UPCL meters is sustainable for violation of the aforesaid regulations. The sanctity and accuracy of the installed meter and the check meter in the instant case is not established for such meters having not been tested in NABL accredited laboratory. Thus the impugned demand raised by the respondents on the basis of results of check meter study by such a meter cannot be held as a genuine demand and therefore cannot be upheld.**

- d) The petitioner referring to order dated 23.02.2005 in case no. 19/2004 of Hon'ble Maharashtra Electricity Regulatory Commission in the matter of amendment/supplementary bills has pleaded that in view of the said order supplementary bills issued by the respondent in the case where periodical testing has not been carried out, shall be withdrawn. Abstract of the aforesaid order is reproduced below:

"... 46. After considering all these factors and the submissions made, the Commission directs that the supplementary/amendment bills issued in the circumstances set out at paras 42 and 43 above from 10th June 2003 (the date of coming into force of EA, 2003) and upto notification of the Supply Code –

(a) should be withdrawn, if due meter testing has not been done with the results intimated to the consumer;

(b) any amounts collected should be refunded to the concerned consumers (without interest considering the earlier lack of clarity on this matter on the part of the licensees); ... "

- e) **Regarding judgment dated 23.02.2005 passed by the Maharashtra Electricity Regulatory Commission in case no. 19/2004, adduced by the petitioner, it is clarified that although any order or judgment of any Electricity Regulatory Commission does not normally apply in any other state but in the aforesaid order the commission has directed that all supplementary/amendment bills issued in the circumstances from 10.06.2003 (the date of enforcement of Electricity Act, 2003) up to notification of Supply Code "*should be withdrawn, if due meter testing has not been done with the results intimated to consumers*" Here in the instant case the respondent did not conduct periodical testing of the metering equipment of the consumer as categorically admitted by the respondents in hearing and as no such reports has been adduced by them as mandated under sub regulation 3.1.3 (1) of UERC Supply Code Regulations, 2007 reproduced above in a) (iii). As such for this violation also the impugned demand raised by the respondent is not sustainable and is being rightly and judiciously quashed under para 31 of this order.**

30. Further as regards the case law from Hon'ble High Courts and Hon'ble Supreme Court as available on file, it is clarified that these judgments being distinguishable on facts, support petitioner's case in the instant petition.
31. In view of above, Forum order dated 17.07.2021 in petitioner's complaint no. 117/2019 before Forum is set aside and also the demand raised by the respondent vide letter no 2017 dated 26.11.2019 for a sum of Rs. 1,80,69,376.00 is set aside and quashed. Further the respondents are directed to refund any sum deposited by the petitioner against the aforesaid disputed demand by way of adjustment in the next monthly electricity bill (s). Petition is allowed. Since the petition has been allowed, the stay granted earlier stands vacated.

Dated: 25.04.2022

(Subhash Kumar)
Ombudsman